

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, in the seven years the applicant served, they had two negative instances which were both due to the traumatic loss of the applicant's sibling. Until this point, the applicant was a model Soldier for over five years.

b. **Board Type and Decision:** In a records review conducted on 7 November 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Civil Conviction) / AR 635-200, Chapter 14, Sec II / JKB / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 1 April 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 7 December 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 27 June 2010, the applicant was found guilty in Christian County Kentucky court of 4th degree assault and domestic violence. The applicant was sentenced by Judge A. L. to six months to serve 30 days, suspend and probate the balance and supervised probation.

(3) **Recommended Characterization:** General (Under Honorable Conditions)

(4) **Legal Consultation Date:** 8 December 2010 and on 23 February 2011, the applicant waived legal counsel.

(5) **Administrative Separation Board:** On 8 December 2010, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable discharge.

On 10 February 2011, the applicant was notified to appear before an administrative separation board and advised of rights.

On 24 February 2011, the administrative separation board convened, and the applicant elected to represent their self. The Board determined by a preponderance of the evidence the applicant was found guilty in Christian County Kentucky court of 4th degree assault and domestic violence. The applicant was sentenced by Judge A. L to six months to serve 30 days, suspend and probate the balance and supervised probation. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

On 24 March 2011, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 24 March 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 22 February 2009 / 4 years
- b. Age at Enlistment / Education / GT Score:** 23 / GED / 97
- c. Highest Grade Achieved / MOS / Total Service:** E-5 / 11B20, Infantryman / 6 years, 10 months, 20 days
- d. Prior Service / Characterizations:** RA, 13 April 2004 – 2 March 2006 / HD
RA, 3 March 2006 – 21 February 2009 / HD
- e. Overseas Service / Combat Service:** SWA / Afghanistan (4 March 2008 – 1 March 2009); Iraq (27 November 2005 – 15 November 2006)
- f. Awards and Decorations:** ACM-CS, ICM-2CS, ARCOM-2, MUC, NUC, AGCM, NDSM, GWOTSM, ASR, OSR-2, NATOMDL, CIB
- g. Performance Ratings:** 1 June 2008 – 31 May 2009 / Fully Capable
1 June 2009 – 31 May 2010 / Marginal
- h. Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 18 April 2010, on or about 23 April, 1 May and 10 and 11 June 2010, without authority, fail to go at the time prescribed to the appointed place of duty. The punishment consisted of a reduction to E-4; and extra duty and restriction for 45 days.

Commonwealth of Kentucky Report, 27 June 2010, reflects the applicant was the subject of an investigation for Assault, 2nd Degree – Domestic Violence.

Two Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Confined by Civil Authorities (CCA) effective 27 June 2010; and,
From CCA to PDY, effective 26 July 2010.

Report of Proceedings by Investigating Officer/Board of Officers, 24 February 2011, the Board determined by a preponderance of the evidence the applicant was found guilty in Christian County Kentucky court of 4th degree assault and domestic violence. The applicant was sentenced by Judge A. L. to six months to serve 30 days, suspend and probate the balance and

supervised probation. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

Three Developmental Counseling Forms, for failure to report to the specified time and place for duty on the morning of 23 April 2010; failure to report to the specified time and place of duty on the morning of 1 May 2010; and to discuss the applicant's charges and arrest on 27 June 2010, and related events which took place thereafter.

i. Lost Time / Mode of Return: 28 days (CCA, 27 June 2010 – 25 July 2010) / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: VA Rating Decision letter, 15 March 2013, reflects the applicant was granted 70 percent service-connected disability for PTSD.

VA Decision letter, 26 March 2013, reflects the applicant was granted 70 percent service-connected disability for PTSD.

(2) AMHRR Listed: Report of Medical Examination, undated, the examining medical physician noted multiple psych issues.

Report of Medical History, 9 August 2010, reflects the applicant was under care in ABH for psych issues to include anxiety.

Report of Behavioral Health Evaluation (BHE), 10 September 2010, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was screened for PTSD and mTBI IAW OTSG/MEDCOM Policy Memo 08-018 and screening was negative. The applicant was cleared for any administrative actions deemed appropriate by command.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; two VA letters; VA Form 28-1900; VA Form 21-686c; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(s):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval

Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings: 1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended; 2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender; Initiation of separation action is not mandatory. Although the conditions established in a (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, section II, misconduct (civil conviction).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

Army Regulation 635-200, in pertinent part, stipulates a Soldier may be separated when initially convicted by civil authorities, or when action is taken tantamount to a finding of guilty, if a punitive discharge authorized for the same or a closely related offense under the Manual for Courts Martial or the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation. Evidence in the AMHRR reflects on 27 June 2010, the applicant was found guilty in Christian County Kentucky court of 4th degree assault and domestic violence. The applicant was sentenced to six months, to serve 30 days, suspend and probate the balance and supervised probation.

The applicant contends good service, including two combat tours.

The applicant contends the two negative instances were due to traumatic loss of a sibling. The family issues affected the behavior and ultimately caused the discharge. The applicant provided VA Rating Decision letter, 15 March 2013, which reflects the applicant was granted 70 percent service-connected disability for PTSD. A VA Decision letter, 26 March 2013, reflects the applicant was granted 70 percent service-connected disability for PTSD. The AMHRR shows the applicant underwent a Behavioral Health Evaluation (BHE), 10 September 2010, which reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was screened for PTSD and mTBI IAW OTSG/MEDCOM Policy Memo 08-018 and screening was negative. The applicant was cleared for any administrative actions deemed appropriate by command. A Report of Medical Examination, undated, the examining medical physician noted multiple psych issues. A Report of Medical History, 9 August 2010, reflects the applicant was under care in ABH for psych issues to include anxiety. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, Anxiety, Depression, Dysthymia, PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found in service diagnoses of an Adjustment Disorder, Anxiety, Depression, Dysthymia, and PTSD, and the VA has service connected the PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. While the multitude of applicant's BH conditions are noted and liberal consideration is applied, neither an Adjustment Disorder, Anxiety, Depression, Dysthymia, or PTSD have a natural sequela with perpetrating assault and domestic violence in the context of an argument with one's spouse. The police report reveals that the applicant's spouse had confronted the applicant about taking medication and the incident occurred in the context of an escalating argument. This reflects conscious choice and motivation to perpetrate

violence against a specific victim that is uncharacteristic of an impulsive or sudden event that may be associated with PTSD.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety, Depression, Dysthymia, and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated domestic violence offense.

b. Response to Contention(s):

(1) The applicant contends the two negative instances were due to traumatic loss of a sibling. The family issues affected the behavior and ultimately caused the discharge. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's experience of losing of a family member and the applicant's behavioral health conditions of Adjustment Disorder, Anxiety, Depression, Dysthymia, and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated domestic violence offense. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends good service, including two combat tours. The Board considered the applicant's six years of service, including combat tours in Iraq and Afghanistan, but determined that the applicant's record does not outweigh the applicant's domestic violence offense.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant or the applicant's representative may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all evidence before the Board, the applicant's Adjustment Disorder, Anxiety, Depression, Dysthymia, and Post Traumatic Stress Disorder did not outweigh the medically unmitigated domestic violence offense. The Board also considered the applicant's contention regarding good service but found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000626

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

11/13/2024

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs