

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, serving the country honorably except for one mistake. The applicant is not downplaying the incident, and knows it was wrong; however, at the time they did not understand what was going on with them. Upon returning from deployment, the applicant was depressed at how they had seen and experienced death. It led them to drinking upon returning and the applicant was drinking uncontrollably. The applicant returned from deployment in November of 2007 and by 1 January, received a DUI on post and was given an Article 15. The chain of command knew of the drinking and did very little to help the applicant fix, what they are now finding out from the VA, is PTSD. Now with medical help the applicant is coping with the mental condition of the time in Iraq. The general (under honorable conditions) discharge hinders the applicant from getting the education they need to live a more productive life.

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 (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 5 September 2008

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 25 July 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: For drunk driving and wrongful appropriation. On or about 23 February 2008, the applicant appropriated a 2007 Chevrolet Silverado 1500 and on or about 23 February 2008, the applicant was driving while impaired having a blood alcohol content of 0.20.

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

(4) **Legal Consultation Date:** 7 August 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 15 August 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 October 2006 / 3 years, 21 weeks

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 91

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B1P, Infantryman / 1 year, 11 months, 4 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (26 March 2007 – 3 November 2007)

f. Awards and Decorations: ICM, AAM, NDSM, GWOTSM, ASR, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Memorandum, Commander's Inquiry Concerning Wide-Spread Drug Use, 23 February 2008, shows evidence to support multiple Soldiers were abusing drugs within the company to include the applicant.

MPR# 01101-2008-MPC023, 24 February 2008, reflects the applicant was the subject of an investigation for Traffic Accident – Injury Destruction of Property – Traffic Accident Resulting in Personal Injury (1 INJ / 1 TOW) (On Post); Impaired Driving (NCGS 20-138.1.) (Blood Results Pending) (On Post); and Careless and Reckless by Manner (NCGS-20-140 (B)) (On Post).

General Officer Memorandum of Reprimand, 27 March 2008, reflects on 23 February 2008, the applicant was arrested for driving while impaired after the civilian police officer detected a strong odor of alcohol emanating from their person. A blood test determined the Alcohol Content to be .20 percent which is over twice the legal limit.

FG Article 15, 17 April 2008, on or about 23 February 2008, wrongfully appropriate a 2007 Chevrolet 1500 Silverado, of a value of over \$500, the property SPC R. M. A. The punishment consisted of a reduction to E-1; forfeiture of \$670 pay per month for two months; and extra duty and restriction for 30 days.

Two Developmental Counseling Forms, for DUI; and Unsatisfactory Behavior, Failure to Obey Lawful Orders; Destruction of Property; and Reckless Endangerment.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation (MSE), 18 April 2008, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate

the difference between right and wrong; and met medical retention requirements. The MSE does not include a diagnosis.

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; self-authored statement; certificate; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is engaged and has been working for corporate AT&T for about three and a half years. The applicant attends worship every Sunday and has started receiving help for the PTSD.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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.

The applicant contends good service, including a combat tour.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends upon returning from deployment, the applicant was depressed at how they had seen and experienced death and led them to drinking uncontrollably. The applicant returned from deployment in November of 2007 and by 1 January, received a DUI on post and was given an Article 15. The chain of command knew of the drinking and did very little to help the applicant fix, what they are now finding out from the VA, is PTSD. Now with medical help they are coping with the mental condition of the time in Iraq. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition.

The AMHRR shows the applicant underwent a Mental Status Evaluation (MSE) on 18 April 2008, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The MSE does not contain a diagnosis. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board.

Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant is engaged and has been working for corporate AT&T for about three and a half years. The applicant attends worship every Sunday and has started receiving help for the PTSD. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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: TBI. Additionally, the applicant asserts PTSD and Depression, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with a TBI, and the applicant self-asserts Depression and PTSD during military service.

(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. The applicant's in-service TBI occurred as a result of the misconduct that led to the separation. The TBI did not exist prior to the drunk driving incident and therefore, did not contribute to the misconduct that led to the separation. And there is no medical documentation to support that the applicant's self-asserted Depression or PTSD existed during military service. The applicant was diagnosed with these conditions three years post service, and the VA has not service-connected either condition. Without medical evidence to support that the self-asserted Depression and PTSD existed during military service, these conditions provide no mitigation. Accordingly, there is no mitigation for the basis of separation.

(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 Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder and Depression outweighed the applicant's medically unmitigated offenses of DUI and wrongful appropriation of a vehicle.

b. Response to Contention(s):

(1) The applicant contends upon returning from deployment, the applicant was depressed at how they had seen and experienced death and led them to drinking uncontrollably. The applicant returned from deployment in November of 2007 and by 1 January, received a DUI on post and was given an Article 15. The chain of command knew of the drinking and did very little to help the applicant fix, what they are now finding out from the VA, is PTSD. Now with medical help they are coping with the mental condition of the time in Iraq. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder and Depression outweighed the applicant's medically unmitigated offenses of DUI and wrongful appropriation.

(2) The applicant contends good service, including a combat tour. The Board considered the applicant's nearly two years of service including a combat tour in Iraq, but this did not outweigh the offenses of DUI and wrongful appropriation of a vehicle.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but determined that the applicant's offenses of DUI and wrongful appropriation of a vehicle were of a severity to warrant separation with a General characterization of service.

(4) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(6) The applicant is engaged and has been working for corporate AT&T for about three and a half years. The applicant attends worship every Sunday and has started receiving help for the PTSD. The Board considered the applicant's post-service accomplishments but determined that the applicant's employment does not outweigh the applicant's medically unmitigated offenses of DUI and wrongful appropriation.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder and Depression did not outweigh the medically unmitigated offenses of DUI and wrongful appropriation. The Board also considered the applicant's contentions regarding good service and the misconduct being an isolated incident 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000630

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:

- 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