

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, was deployed to Afghanistan and after nine months in theatre, was hit with an IED and was almost killed. The applicant was medivac from Afghanistan to Germany for emergency surgery and it took several months to recover. After being released from the hospital, the applicant was placed into a warrior transition unit to receive a medical discharge and was diagnosed with severe PTSD and Lunar Nueritus. Somehow the applicant fell through the cracks and the warrior transition unit placed the applicant back into the original unit in rear detachment. The applicant continued therapy for PTSD and nerve pain, and the unit told the applicant they needed a medical discharge ASAP; however, medical stated they wanted to give the applicant 12 months to see if they improved, but the enlistment contract ended in six months. The applicant was allowed to reenlist and given an honorable discharge. The applicant was then moved to Fort Campbell and when the 1SG found out the applicant was still in the Army with their injuries, they contacted the brigade surgeon, and the applicant was set up for a medical board. The applicant was prescribed 120 mg of oxycontin for the pain, which is normal dosage for a person for one month. The applicant became physically addicted to the prescription medication and went to the 1SG for help and was placed in detox for three days and released and cut off the medication. Three days was not enough, and the applicant was severely sick. The applicant had to buy the medication off the streets and was eventually caught doing so and arrested. This was the first time the applicant had been in trouble in six years. The applicant received an honorable discharge from the first contract, received several medals and awards, and was a wounded veteran.

b. **Board Type and Decision:** In a records review conducted on 22 October 2024, and by a 5-0 vote, the Board denied the request after determining the discharge is 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:** 24 October 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 22 August 2012

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant was convicted in the Circuit Court of Cullman County, Alabama on 17 May 2012, of Burglary in the 3rd Degree, and was sentenced to serve three years in the State Penitentiary. Also, the applicant was absent without leave for 22 February to 24 February 2012 and from 17 May to 22 August 2012.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: NIF / Memorandum for Record, Submission of Election of Rights, 27 September 2012, reflects on 22 August 2012, the applicant was notified of initiation of separation. The applicant acknowledged receipt of the intended separation on 22 August 2012 and further acknowledged if they failed to respond within 7 duty days, it would constitute a waiver of rights.

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: 15 October 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 28 October 2010 / NIF

b. **Age at Enlistment / Education / GT Score:** 20 / GED / 104

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 91B10, Wheeled Vehicle Mechanic / 4 years, 4 months, 13 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** SWA / Afghanistan (9 July 2009 – 7 July 2010)

f. **Awards and Decorations:** PH, AFM-CS, ARCOM, AAM, AGCM, NDSM, GWOTSM, ASR, OSR, NATOMDL, CAB / The PH is not reflected on the DD Form 214 or Enlisted Record Brief (ERB); however, the applicant provided Permanent Orders 281-005 awarding the PH; the CAB also is not reflected on the DD Form 214 or ERB; however, the applicant provided Permanent Orders 281-006 awarding the CAB.

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Five Personnel Action forms, reflect the applicant's duty status changed as follows:

From Absent Without Leave (AWOL), to Confined by Civil Authorities (CCA), effective 24 February 2012;

From CCA to AWOL, effective 17 May 2012;

From AWOL to Dropped From Rolls (DFR), effective 18 June 2012;

From DFR to PDY, effective 22 August 2012; and

From PDY to AWOL, effective 6 September 2012.

The Circuit Court of Cullman County Alabama, Plea Agreement, 17 May 2012, reflects the applicant agreed to enter a plea of guilty to Burglary 3rd/Ct 1 as charged in the information. The applicant was given a sentence of three years in the State Penitentiary; ordered to make

restitution in the amount of \$350 to the victim; ordered to pay all court costs; ordered to pay \$50 crime victim's compensation assessment; ordered to pay appointed attorney's fees; and payment to commence within 30 days or as otherwise set out in this agreement.

Report of Return of Absentee, 21 August 2012, reflects the applicant's absence began on 18 May 2012 and was apprehended by civil authorities and returned to military control on 21 August 2012.

Report of Return of Absentee, 10 November 2012, reflects the applicant's absence began on 6 September 2012 and was released from Cullman Country Detention Center on 10 November 2012.

Developmental Counseling Form, for being in debt to the government \$984.

i. Lost Time / Mode of Return: 7 months, 18 days:

AWOL, 22 February 2012 – 22 August 2012 / Apprehended by Civil Authorities

AWOL, 6 September 2012 – 24 October 2012 / Apprehended by Civil Authorities

j. Behavioral Health Condition(s):

(1) Applicant provided: Warrior Screening Matrix for WTU, 23 November 2011, reflects the applicant was diagnosed with Moderate PTSD – improving.

(2) AMHRR Listed: Report of Mental Status Evaluation (MSE), 22 August 2012, 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. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with: Axis I: Anxiety Disorder NOS.

Report of Medical Examination, 22 August 2012, the examining medical physician noted the applicant's medical conditions in the comments section. The applicant was diagnosed with Anxiety DO, NOS; substance abuse; opioid dependence; and amphetamine dependence.

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; Recommendation for Award; Warrior Screening Matrix for WTU; Permanent Orders 281-005; Permanent Orders 21-006; Certificate of Release or Discharge from Active Duty; Good Conduct Medal Certificate; Permanent Orders 152-09; Orders 126-33.

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 3-5c, 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. Delete if NA

(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) 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. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends good service, including a combat tour and receiving of the Purple Heart and Combat Action Badge. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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 being diagnosed with severe PTSD and lunar nueritus and in severe pain. The applicant became addicted to prescription medication after suffering injuries in Afghanistan. The applicant was placed in detox for three days released, and cut off from the medication. Three days were not long enough, and the applicant became severely sick and started to buy medication off the streets and eventually was caught and arrested. The applicant provided Warrior Screening Matrix for WTU, 23 November 2011, which reflects the applicant was diagnosed with Moderate PTSD – improving. The AMHRR contains Report of Mental Status Evaluation (MSE), 22 August 2012, 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. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with: Axis I: Anxiety Disorder NOS. Report of Medical Examination, 22 August 2012, the examining medical physician noted the applicant's medical conditions in the comments section. The applicant was diagnosed with Anxiety DO, NOS; substance abuse; opioid dependence; and amphetamine dependence.

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: PTSD Chronic, Dysthymic Disorder, various Adjustment Disorders, Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found the applicant is 100 percent SC for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. Given the nexus between PTSD and avoidant behavior, the applicant's multiple instances of AWOL are mitigated. The applicant endorsed being high on opioids during the burglary and that becoming addicted to the drugs after being prescribed them to address pain secondary to the IED blast that constituted the Criteria A Trauma for PTSD. Given the nexus between the applicant's injury resulting in PTSD and subsequent development of comorbid Opioid Dependence, the applicant's burglary and theft offenses are mitigated, given the applicant endorsed being under the influence of opioids during the misconduct. However, the board should consider the egregiousness of the misconduct during deliberation and the fact that the applicant attempting to flee the scene suggest he was cognizant enough to appreciate that his actions were wrong, which suggest he was able to differentiate between right and wrong and adhere to the right at the time of the misconduct. The applicant previously petitioned the board and was granted relief in the form of an upgrade to GD, which appears appropriate given egregious misconduct that resulted in conviction by civil authority.

(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 Post Traumatic Stress Disorder, Chronic, Dysthymic Disorder, various Adjustment Disorders, and Anxiety Disorder outweighed the applicant's medically unmitigated burglary offense.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with severe PTSD and lunar nueritus and in severe pain. The applicant became addicted to prescription medication after suffering injuries in Afghanistan. The applicant was placed in detox for three days released, and cut off from the medication. Three days were not long enough, and the applicant became severely sick and started to buy medication off the streets and eventually was caught and arrested. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Chronic, Dysthymic Disorder, various Adjustment Disorders, and Anxiety Disorder outweighed the applicant's medically unmitigated burglary offense.

(2) The applicant contends good service, including a combat tour and receiving of the Purple Heart and Combat Action Badge. The Board considered the applicant's four years of service, including being wounded in combat in Afghanistan, but determined that the applicant's record does not outweigh the applicant's medically unmitigated burglary offense.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but found that the applicant's burglary offense was of a severity to warrant discharge with a General characterization of service.

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 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 Post Traumatic Stress Disorder, Chronic, Dysthymic Disorder, various Adjustment Disorders, and Anxiety Disorder did not outweigh the medically unmitigated burglary offense. 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. 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:

11/1/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs