

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 and a change to the narrative reason for separation.

The applicant seeks relief contending, in effect, being wrongfully discharged for a pattern of misconduct two months before the applicant's actual separation date. The applicant was an 11B, Infantryman, assigned to the 10th Mountain Division, Fort Drum. The applicant enlisted on 20 August 2008 and was discharged on 20 June 2012. The applicant would have been discharged one year earlier, but the applicant extended for one year to complete a second tour overseas with the applicant's company. The applicant served with the scouts in the battalion for two years and one tour overseas in Kunar Province, Afghanistan, and acquired various awards for excellent service and the Good Conduct Medal after three years. The applicant was in the line of fire constantly as a scout and conducted several patrols. The applicant served the country very well during the tour and never was in any trouble, which warranted a possible Article 15. The platoon and the applicant looked out for each other. The applicant was assigned to a team leader position approximately one month after obtaining E-4. The applicant trained the team to the best of the applicant's abilities in preparation for the next deployment. The applicant had such compassion and dedication for the division. In August 2011, during the applicant's second deployment, the applicant went home for rest and relaxation (R&R) and was arrested for resisting a peace officer outside of a bar. The incident was a result of the applicant drinking too much because the applicant had just found out the applicant's five friends were killed in action. The applicant lost control. After the applicant's release from the jail, the applicant immediately informed the rear detachment. The applicant returned overseas for a month and was sent back to the states because of court hearings. The applicant fought the case and won for the most part, as most of the other charges were dismissed. While the applicant was in the states, the rear detachment command began looking for reasons to get the applicant in trouble because the unit did not like the fact the applicant was allowed to return early from the deployment. While in the states, the applicant had to cope with stress because of a financial hardship caused by traveling from New York to Illinois for court hearings. The rear detachment command was breathing down the applicant's neck and looking for any mistakes the applicant made, which led to the applicant having mental health issues, suicidal thoughts and actions. The applicant missed three formations in a period of three months, and the command attempted to give the applicant an Article 15, but the applicant demanded trial by court-martial and the Article 15 was dropped. The command looked for other ways to punish the applicant. The applicant missed one more formation and the command recommended separation. The applicant tried to fight the separation to no avail. The actions by the rear detachment leadership were wrong. After serving the country with two deployments to Afghanistan, extending the enlistment contract, and receiving multiple awards, the applicant deserves an honorable discharge. The applicant paid into the Montgomery GI Bill and cannot use it because of the discharge. The applicant has a four-year old child and would like to provide the best life for the child and believes college is a necessity. The applicant has earned the right to be called an excellent Soldier. The applicant went beyond the call of duty. The applicant is very happy to have served in the Army as an infantryman and has zero regrets about joining.

b. Board Type and Decision: In a records review conducted on 1 October 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: Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 20 June 2012

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 30 May 2012

(2) Basis for Separation: The applicant was informed of the following reasons: On 30 January 2012 and 7, 9, and 10 February 2012, the applicant failed to report. On 22 September 2010, the applicant made a false official statement to the Military Police. On 14 August 2011, the applicant committed an assault on a police officer.

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

(4) Legal Consultation Date: 31 May 2012

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 7 June 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 August 2008 / 3 years, 17 weeks / The applicant's AMHRR reflects the applicant was extended at the request and for the convenience of the government in support of contingency operation. The AMHRR is void of any enlistment contract retaining the applicant on active duty after the initial enlistment period.

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

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years, 10 months, 1 day

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (1 March 2009 – 9 December 2009, 20 March 2011 – 29 December 2011)

f. Awards and Decorations: ACM-3CS, ARCOM, AAM, AGCM, NDSM, GWOTSM, ASR, OSR, NATOMDL, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 16 January 2010, reflects the applicant was apprehended for: drunken and disorderly (on post). Investigation revealed the applicant and another Soldier, while in a drunken state, were horseplaying when the applicant became upset and left. The applicant returned and when another Soldier, who was in a drunken state, was attempting to help the applicant return to the applicant's room, the Soldier fell and received a serious laceration on the head. The Soldier was transported to the hospital for treatment. The applicant and two other Soldiers were apprehended.

Military Police Report, 3 September 2010, reflects the applicant was apprehended for: false official statement; (on post). The applicant reported being pursued by an individual wielding a knife and attempting to stab the applicant. Investigation revealed the applicant fabricated the story. The applicant was interviewed and admitted to lying about the knife incident.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 10 February 2012; and

From AWOL to PDY, effective 10 February 2012.

Peoria Police Department, Criminal Report, 14 August 2011, reflects the applicant was arrested for aggravated battery on a police officer; criminal damage to property; and resist, obstruct, disarm an officer. The police were dispatched because of a report of a person fighting with 3 to 5 other people. The police officer found the applicant running away from the scene and ordered the applicant to stop. The applicant began running towards the officer and attacked the officer. The officer deployed the taser on two occasions to subdue the applicant.

Three Developmental Counseling Forms, for failing to report to formation on multiple occasions and missing Army Substance Abuse Program appointments.

i. Lost Time / Mode of Return: None**j. Behavioral Health Condition(s):**

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 13 April 2012, reflects the applicant was cleared for administrative separation. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. 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 command was advised to consider the influence of these conditions. The applicant diagnosed with mood disorder, not otherwise specified; adjustment disorder with disturbance of conduct and emotions; and alcohol abuse.

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: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; and self-authored statement.

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) Paragraph 1-17 states no Soldier will be considered for administrative separation because of conduct that has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof.

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

(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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(7) 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.

(8) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as

the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends harassment by members of the chain of command, which led to mental health issues. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 13 April 2012, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant was diagnosed with mood disorder, not otherwise specified; adjustment disorder with disturbance of conduct and emotions; and alcohol abuse. The MSE was considered by the separation authority.

The applicant contends various civilian charges were dismissed. Army Regulation, paragraph 1-17, states no Soldier will be considered for administrative separation because of conduct that has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof. The applicant did not submit any evidence, other than the applicant's statement, to support the contention nor any evidence to show the applicant's charges resulted in an acquittal.

The applicant contends good service, including two combat tours.

The applicant contends being discharged two months before the applicant's expiration term of service. The applicant's AMHRR shows the applicant's original expiration term of service was 17 December 2011. The applicant was extended for the convenience of the government. The record is void of any enlistment contract retaining the applicant on active duty after the initial enlistment period. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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.

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 found that, based on the Board's Medical Advisor opine, a review of the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, Depression NOS, Adjustment Disorder with Depressed , Adjustment Disorder with Anxiety and Depressed Mood, and Episodic Mood Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that, based on the Board's Medical Advisor's opine, the applicant is 70 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 partially mitigate the discharge. Given the nexus between PTSD and avoidance the applicant's FTR offenses are mitigated. However, the offenses of making a false official statement and assault of a police officer are not mitigated as the misconduct is not natural sequela of the applicant's BH conditions. The applicant asserts that the applicant had been drinking on the night the applicant assaulted the police officer. While the alcohol use can be considered a mitigating factor, the egregiousness of the misconduct outweighs relief under liberal consideration guidance. Additionally, the applicant has a history of assault during blackout the predates PTSD and other diagnosed BH-conditions.

(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, Adjustment Disorder, Depression, or Episodic Mood Disorder outweighed the applicant's medically unmitigated offenses of making a false official statement and assault of a police officer.

b. Response to Contention(s):

(1) The applicant contends harassment by members of the chain of command, which led to mental health issues. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the assertion that the applicant experienced harassment or discrimination from the chain of command. Further, the Board liberally considered the applicant's behavioral health conditions but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Adjustment Disorder, Depression, or Episodic Mood Disorder outweighed the applicant's medically unmitigated offenses of making a false official statement and assault of a police officer.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but determined that the applicant's Pattern of Misconduct narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of making a false official statement and assault of a police officer.

(3) The applicant contends various civilian charges were dismissed. The Board considered this contention but found insufficient evidence of the charges being dismissed to support a discharge upgrade.

(4) The applicant contends good service, including two combat tours. The Board considered the applicant's three years of service, including two combat tours in Afghanistan, but determined that the applicant's record does not outweigh the offenses of making a false official statement and assault of a police officer.

(5) The applicant contends being discharged two months before the applicant's expiration term of service. The Board considered the applicant's length of service but determined that it did not outweigh the applicant's offenses of making a false official statement and assault of a police officer.

(6) 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.

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, Adjustment Disorder, Depression, or Episodic Mood Disorder did not outweigh the medically unmitigated offenses of making a false official statement and assault of a police officer. The Board also considered the applicant's contentions regarding good service, harassment from command, and dismissal of some of the civilian charges 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, as the reason the applicant was discharged was both proper and equitable.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000749

(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:

1/30/2025

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