

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

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

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

The applicant seeks relief contending, in effect, while serving in Afghanistan, the applicant was riding with another Soldier. The Soldier lost control and almost overturned the vehicle. At the same time, the applicant was going through a divorce. These two incidents caused the applicant great anxiety and depression and caused the applicant to drink heavily. The applicant was not offered treatment for this condition and received a Driving Under the Influence (DUI). The unit required the applicant to attend a three-day substance abuse course. The applicant did not receive an Article 15 or any disciplinary action. The unit decided to discharge the applicant with only two months remaining in the enlistment. Until the time of the DUI, the applicant's performance was above average; the applicant did everything expected of them; and the superiors were happy with their performance. The applicant believes their performance and dedication to duty should have allowed them to receive an honorable discharge. There are no other disciplinary actions taken against the applicant.

b. **Board Type and Decision:** In a records review conducted on 10 September 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see the Board Discussion and Determination portion of this document for more details regarding the Board's decision. Board member names available upon request.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Minor Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-3 / Honorable

b. **Date of Discharge:** 23 January 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 30 November 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 7 May 2011, the applicant was arrested for Driving While Intoxicated by the Watertown Police department; on or about 2 October 2011, was arrested for Disorderly Conduct; and on divers occasions between on or about 23 May 2011 and on or about 12 August 2011, failed to report to the appointed place of duty.

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

(4) Legal Consultation Date: 1 December 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 October 2008 / 3 years, 22 weeks

b. Age at Enlistment / Education / GT Score: 25 / High School Graduate / 101

c. Highest Grade Achieved / MOS / Total Service: E-2 / 88M10, Motor Transport Operator / 3 years, 2 months, 24 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (2 April 2010 – 13 March 2011)

f. Awards and Decorations: ACM-CS, MUC, NDSM, GWOTSM, ASR, OSR, NATOMDL

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: New York State Department of Motor Vehicles Uniform Traffic Ticket, 7 May 2011, reflects the applicant was charged with Driving While Intoxicated; DRIV G W.08 of 1 percent or more of ALC; Aggravated UNLIC Op 3rd; speed in zone; and improper/no signal.

Military Police Report Number 04238-2011-MPC552, 2 October 2011, reflects on 2 October 2011, the applicant refused to depart the area of a bar when told to do so numerous times by police. The applicant was arrested and transported to the Fort Drum police station where they were processed and released to the unit. The applicant was charged with Disorderly Conduct NYPL 240.20(6)(Civil) (Off Post).

New York State Arrest Report, 2 October 2011, reflects the applicant arrested and charged with Disorderly Conduct.

Several Developmental Counseling Forms, for various acts of misconduct.

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), 22 August 2011, 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 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 evaluation contains a diagnosis.

Report of Medical History, 21 October 2011, the examining medical physician noted the applicant's evaluation for depression in the comments section.

The ARBA's medical advisor reviewed DoD and VA medical records, including documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge and 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) 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.

(4) 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.

(5) Paragraph 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (minor infractions).

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 while serving in Afghanistan, and riding with another Soldier, they lost control of a vehicle and almost overturned the vehicle. At the same time, the applicant was going through a divorce. These incidents caused the applicant great anxiety and depression and the applicant started to drink heavily and received a DUI. The applicant was not offered any treatment for this condition and was transferred to Fort Drum where the problems continued. 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 22 August 2011, which indicates 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 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 evaluation contains a diagnosis. Report of Medical History, 21 October 2011, the examining medical physician noted the applicant's medical conditions in the comments section. All the medical documents in the AMHRR were considered by the separation authority. Army Regulation 635-200, paragraph 1-17d(2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality Soldier. Army Regulation 600-85, paragraph 3-8 entitled self-referrals, states Soldiers may self-refer to the Army Substance Abuse Program (ASAP) counseling center for assistance.

The applicant contends the unit did not impose an Article 15, or any other disciplinary action. The applicant was discharged with only two months remaining in the applicant's enlistment. Until the time of the DUI, the applicant states that the applicant's performance was above average, and the superiors were happy with the applicant's performance. The applicant believes the applicant's performance and dedication to duty should allow them to receive an honorable discharge. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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 determined, after applying liberal consideration, that the applicant's Adjustment Disorders and PTSD with subsumed mood and substance disorders (PTSD) mitigated the applicant's basis of separation that warranted a previous Board to upgrade the characterization to honorable, change the narrative reason to "minor misconduct" and SPD code change to "JKN" and now warrants a reconsideration of the applicant's RE code.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Adjustment Disorders and PTSD existed during the applicant's military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board determined, based on the Board Medical Advisor opine, that the applicant's behavioral health conditions mitigate the applicant's offenses of DUI, Disorderly Conduct and FTR given the trauma event occurred prior to misconduct and the nexus between trauma, substance use/behavior, and avoidance.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's behavioral health conditions do not outweigh the remaining aspect of the applicant's discharge, the applicant's RE-3 code, given the applicant's above-mentioned behavioral health conditions require a medical waiver prior to reenlistment.

b. Response to Contention(s):

(1) The applicant contends relief is warranted based on combat experience and divorce resulting in depression, drinking, DUI, and the Command's lack of treatment/assistance. The Board considered this contention and determined the applicant received the appropriate relief based on the BH conditions outweighing the discharge with the exception of the RE-3 code. Given the BH conditions, an RE-3 (waivable) is most appropriate.

(2) The applicant contends the unit did not impose an Article 15, or any other disciplinary action. The applicant was discharged with only two months remaining in their enlistment. Until the time of the DUI, the applicant's performance was above average, and the superiors were happy with the applicant's performance. The applicant believes their performance and dedication to duty should allow them to receive an honorable discharge. The Board considered this contention and determined the applicant received the appropriate relief based on the BH conditions outweighing the discharge with the exception of the RE-3 code. Given the BH conditions, an RE-3 (waivable) is most appropriate.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a 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 the applicant already holds an honorable characterization and further relief is not available.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000776

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

(3) The RE code will not change as a RE-3 code is appropriate because a medical waiver is required based on the applicant's behavioral health conditions. Additionally, 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:

11/5/2024

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