

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, after returning home from Afghanistan, they were having emotional problems. The applicant could not adjust and started to self-medicate by drinking and other substance abuse. The applicant was told by the company they would not be entitled to any benefits, which the applicant recently discovered was not true. The applicant believes they were done wrong by the company. The applicant is being treated at VA Medical Center for TBI and PTSD and has been completely clean and sober for over a year.

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

b. **Date of Discharge:** 22 March 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 16 February 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 30 October 2011, the applicant wrongfully stole another Soldier's credit card and used it to steal goods and services of a value less than \$500; and on 1 May 2011, the applicant drove under the influence of alcohol. This is prejudicial to the good order and discipline of the unit and is not compatible with Army values.

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

(4) **Legal Consultation Date:** On 22 February 2012, the applicant waived legal counsel.

(5) **Administrative Separation Board:** NA

(6) Separation Decision Date / Characterization: 24 February 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 8 January 2009 / 4 years, 19 weeks
- b. **Age at Enlistment / Education / GT Score:** 19 / High School Transcript / 102
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 3 years, 1 month, 23 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (12 February 2010 – 15 February 2011)
- f. **Awards and Decorations:** ACM-CS, ARCOM, NDSM, GWOTSM, ASR, OSR, NATOMDL
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report Number 02598-2011-MPC, 1 May 2011, reflects the applicant was charged with Driving Under the Influence (KRS 189A.010) (On Post); Fleeing the Scene of an Accident (KRS 189.580) (On Post); and Traffic Accident with Damage to Government Property (On Post). Investigation revealed the applicant was driving in the PX parking lot and struck three concrete pillars, knocking them over causing damage. The applicant then drove to building 6763 where the military police were called. The applicant was administered a series of field sobriety tests which they passed the one leg stand and walk and turn but failed the HGN. The applicant was apprehended and transported to the installation Provost Marshal's Office where they provided a sample of breath to an intoximeter EC-IR II, with a result of .045 percent.

Military Police Report Number 07452-2011-MPC033, 1 November 2011, reflects the applicant was charged with Larceny of Private Property (Article #121, UCMJ) (On Post) and Larceny of Private Funds (Article #121, UCMJ) (On Post).

FG Article 15, 26 January 2012, between on or about 30 October 2011 and on or about 31 October 2011, steal goods, of a value of less than \$500, the property of Army and Air Force Exchange Services; and between on or about 30 October 2011 and on or about 31 October 2011, steal goods, of a value of less than \$500, the property of Kentucky Fried Chicken; the continuation sheet is not contained in the AMHRR. The punishment consisted of a reduction to E-1; forfeiture of \$733 pay per month for two months; and extra duty and restriction for 45 days.

Personnel Action Form, reflect the applicant's duty status changed as follows: From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 1 March 2012.

Three Developmental Counseling Forms, for patterns of misconduct; larceny of private property; and indebtedness to the US Government.
- i. **Lost Time / Mode of Return:** 21 days (AWOL, 1 March 2012 – 22 March 2012) / NIF
- j. **Behavioral Health Condition(s):**

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 8 August 2011, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation (MSE), 25 January 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; 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 does not contain 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; Orders 079-0623; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is being treated at VA Medical Center for TBI and PTSD and has been completely clean and sober for over a year.

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans

Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

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

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

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

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

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

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

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

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

The applicant contends after returning home from Afghanistan, they were having emotional problems. The applicant could not adjust and started to self-medicate by drinking and other substance abuse. 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 contains, Report of Medical History, 8 August 2011, the examining medical physician noted the applicant's medical conditions in the comments section. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 25 January 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; 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 does not contain a diagnosis. All medical documents contained in the AMHRR were considered by the separation authority.

The applicant contends being told by the company they would not be entitled to any benefits, which the applicant recently discovered was not true. The applicant believes they were done wrong by the company. Eligibility for veteran's benefits 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's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being treated at VA Medical Center for TBI and PTSD and has been completely clean and sober for over a year. 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's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant held in-service diagnoses of Adjustment Disorder, Anxiety Disorder NOS, Mood Disorder, Alcohol Dependence, and ongoing assessment for Antisocial Personality Disorder. Post-service, the applicant is service connected for TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder, Anxiety Disorder NOS, Mood Disorder, Alcohol Dependence, and ongoing assessment for Antisocial Personality Disorder.

(3) Does the condition or experience 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 in-service diagnosis of Anxiety Disorder NOS was based on combat trauma/anxiety symptoms, combat occurring prior to the DUI and related substance behavior, and nexus between anxiety/trauma symptoms and substance use, the DUI and related substance behavior is mitigated. However, stealing another Soldier's credit card and making purchases is not mitigated by the noted BH conditions. Moreover, there is no indication the applicant was intoxicated at the time of the offenses, so they do not fall under substance related behavior. Finally, there is no evidence the applicant was experiencing cognitive deficits, i.e. TBI, at the time of the misconduct. Rather, the unmitigated misconduct requires intact cognitive processes.

(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 available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety Disorder NOS, Mood Disorder, Alcohol Dependence, Antisocial Personality Disorder, and TBI outweighed the applicant's medically unmitigated larceny offenses.

b. Response to Contention(s):

(1) The applicant contends after returning home from Afghanistan, they were having emotional problems. They could not adjust and started to self-medicate via drinking and substance abuse. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety Disorder NOS, Mood Disorder, Alcohol Dependence, Antisocial Personality Disorder, and TBI outweighed the medically unmitigated larceny offenses.

(2) The applicant contends being told by the company they would not be entitled to any benefits, which the applicant recently discovered was not true. The applicant believes they were done wrong by the company. The Board considered this contention and found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the assertion that the applicant was treated unfairly by the company. Further, the applicant's 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.

(3) The applicant contends being treated at VA Medical Center for TBI and PTSD and being completely clean and sober for over a year. The Board considered the applicant's post-service accomplishments and determined that they do not outweigh the applicant's medically unmitigated larceny offenses.

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, despite applying liberal consideration to all evidence before the Board, the applicant's Adjustment Disorder, Anxiety Disorder NOS, Mood Disorder, Alcohol Dependence, Antisocial Personality Disorder, and Traumatic Brain Injury did not outweigh the medically unmitigated larceny offenses that served as part of the basis of separation. The Board also considered the applicant's contentions regarding mistreatment by the command and achieving sobriety 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 Honorable characterization.

(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 due to the behavioral health conditions. 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:

9/11/2024

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