

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, during the time of the pattern of misconduct, the applicant was suffering from many mental issues. If the chain of command was concerned, they would have realized the applicant was depressed and suffering from PTSD symptoms, also coping with horrible anxiety issues, mood disorder and chronic adjustment disorder before being discharged from the Army. The command based their decision on the applicant having a personality disorder from issues prior to the military. The applicant believes the discharge was unfair and happened because of a racially driven commander and 1SG. The applicant is now at the lowest point of their life and is now an unemployed veteran and homeless with no family or friends to turn to and wants a chance to be successful in transitioning back into civilian life.

b. **Board Type and Decision:** In a records review conducted on 17 September 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 details 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, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 21 May 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 5 March 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons:

On or about 20 November 2011, the applicant was detained by the Tacoma Police Department for driving under the influence;

On or about 23 January 2012, the applicant failed to report the loss of the fuel keys and vehicle keys for HQ-35;

On or about 26 January 2012, the applicant failed to maintain accountability for their weapon;

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On or about 18 February 2012, the applicant made derogatory racial comments towards a Hispanic person, resulting in the local police being dispatched to their apartment;

On or about 14 May 2012, the applicant failed to maintain accountability for their ID card;

On or about 15 May 2012, the applicant was cited by JBLM police for talking on the cell phone while driving;

On or about 1 September 2012, the applicant failed to go to the appointed place of duty, extra duty at battalion staff duty;

On or about 2 September 2012, the applicant failed to go to the appointed place of duty, extra duty at battalion staff duty: and,

On or about 3 September 2012, the applicant failed to go to the appointed place of duty, extra duty at battalion staff duty.

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

(4) Legal Consultation Date: On 20 March 2013, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 3 May 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 27 April 2011 / 3 years

b. Age at Enlistment / Education / GT Score: 21 / High School Graduate / 105

c. Highest Grade Achieved / MOS / Total Service: E-3 / 25U10, Signal Support System Specialist / 4 years, 9 months, 18 days

d. Prior Service / Characterizations: ARNG, 4 August 2008 – 26 April 2011 / HD
IADT, 31 March 2009 – 11 February 2010) HD
(Concurrent Service)

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 22 August 2012, for failing to obey a lawful order on or about 31 January 2012; on or about 26 January 2012 was derelict in the performance of duties x3 by failing to maintain accountability of fuel keys, failing to maintain accountability of vehicle keys for HQ-35, and left a M249 unattended. The punishment consisted of a reduction to E-2; extra duty and restriction for 14 days; and oral reprimand.

CG Article 15, 9 January 2013, for without authority, failed to go at the time prescribed to the appointed place of duty on 1, 2 and 3 September 2012. The punishment consisted extra duty for 14 days; restriction for 7 days; oral reprimand.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: VA Progress notes, 20 September 2013, reflect a diagnosis.

(2) AMHRR Listed: Report of Medical History, 21 September 2012, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation (MSE), 24 September 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 MSE 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; self-authored statement; two Certificates of Release or Discharge from Active Duty; social security card; identification card; certificate of live birth; VA identification card; three third-party statements; medical records.

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) 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 14-12b, 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends during the pattern of misconduct, they were suffering from many mental issues. If the chain of command was concerned, they would have realized the applicant was depressed and suffering from PTSD symptoms, and coping with horrible anxiety issues, mood disorder and chronic adjustment disorder before being discharged from the Army. The command based their decision on the applicant having a personality disorder from issues prior to the military. The applicant provided a third-party letter from their sibling which described how the applicant had changed physically and mentally and was a different individual when the sibling arrived at the duty station. Another statement from a fellow Soldier describes a dramatic change in the applicant. They stated the applicant went from being motivated about school,

becoming an engineer, and wanting to become airborne and air assault for the Army to having no desire to accomplish the goals set for oneself. The VA Progress notes, 20 September 2013, reflect a diagnosis. The AMHRR contains a Report of Medical History, 21 September 2012, reflecting 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 24 September 2012, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis. All medical documentation in the AMHRR was considered by the separation authority.

The applicant contends harassment and discrimination by members of the chain of command. The third-party statement provided with the application is from the applicant's previous first line supervisor which states they attended a meeting and witnessed two senior NCO's plot on different ways they could successfully have the applicant discharged with a dishonorable discharge. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

The applicant contends current homelessness and the need for help. Eligibility for housing support program benefits for Veterans 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. Moreover, all veterans at risk for homelessness or attempting to exit homelessness can request immediate assistance by calling the National Call Center for Homeless Veterans hotline at 1-877-424-3838 for free and confidential assistance.

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

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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses: Adjustment Disorder with Mixed Emotional Features and Adjustment Disorder with Depressed Mood. The applicant is not service connected and was diagnosed post-service for an Unspecified Personality Disorder. Although the applicant asserts PTSD, the applicant has not been diagnosed with the condition.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder with Mixed Emotional Features and Adjustment Disorder with Depressed Mood. The applicant is post-service diagnosed with Unspecified Personality Disorder which, by nature of the criteria, originates in adolescence, i.e. present in-service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the Adjustment Disorder was diagnosed more than 6 months after the DUI and the majority of the misconduct was secondary to psychosocial stressors at that time with no indication it originated prior to. Although symptoms secondary to Adjustment Disorder can, at times, impact daily actions, documentation does not suggest the Adjustment Disorder impacted the applicant's decision to not attend extra duty over the holiday weekend. The Unspecified Personality Disorder more likely than not underlies the misconduct.

And although the diagnosis provides context, it does not impact an individual's ability to make conscious choices, knowing right from wrong and related consequences.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opinion, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Personality Disorder, and/or self-asserted Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offenses of DUI, failure to report the loss of fuel and vehicle keys, failure to maintain accountability of a weapon, making derogatory racial remarks, failure to maintain accountability of a CAC, using a cell phone while driving, and FTRs.

b. Response to Contention(s):

(1) The applicant contends the pattern of misconduct, they were suffering from many mental issues. If the chain of command was concerned, they would have realized the applicant was depressed and suffering from PTSD symptoms, and coping with horrible anxiety issues, mood disorder and chronic adjustment disorder before being discharged from the Army. The command based their decision on the applicant having a personality disorder from issues prior to the military. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Personality Disorder, and self-asserted Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offenses of DUI, failure to report the loss of fuel and vehicle keys, failure to maintain accountability of a weapon, making derogatory racial remarks, failure to maintain accountability of a CAC, using a cell phone while driving, and FTRs.

(2) The applicant contends harassment and discrimination by members of the chain of command. 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 experienced harassment or discrimination from command. The evidentiary record did note the applicant's own misconduct of making racial comments (also part of the basis of separation).

(3) The applicant contends homelessness and the need for help. The Board considered this contention and determined that it does not mitigate the applicant's medically unmitigated offenses of DUI, failure to report the loss of fuel and vehicle keys, failure to maintain accountability of a weapon, making derogatory racial remarks, failure to maintain accountability of a CAC, using a cell phone while driving, and FTRs.

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

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, Personality Disorder, and/or self-asserted Post Traumatic Stress Disorder did not outweigh the medically unmitigated offenses of DUI, failure to report the loss of fuel and

vehicle keys, failure to maintain accountability of a weapon, making derogatory racial remarks, failure to maintain accountability of a CAC, using a cell phone while driving, and FTRs. The Board also considered the applicant's contentions of homelessness and harassment from the chain of command 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:

9/19/2024

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