

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, suffering from Post Traumatic Stress Disorder (PTSD) due to four deployments. The applicant has since sought treatment from the Veterans Administration (VA) and is currently receiving treatment for their issues. The applicant states they are enrolled in a culinary arts school and would like their discharge upgraded upon graduation so they can continue to receive VA benefits, find work, and live a fulfilling life.

b. **Board Type and Decision:** In a records review conducted on 29 August 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 section 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:** 31 March 2010

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 16 November 2009 and 26 January 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: despite the rehabilitative measures taken by the applicant's NCO's and this command, the applicant has continued a pattern of misconduct since March 2009. The pattern of misconduct includes failure to pay just debts, driving under the influence of alcohol, resisting apprehension, driving under suspension twice, domestic abuse, non-support of dependents, and bogus check writing.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions / On 16 March 2010, the company commander recommended a general (under honorable discharge).

(4) **Legal Consultation Date:** 24 November 2009 and 25 February 2010

(5) **Administrative Separation Board:** On 25 February 2010, the applicant conditionally waived consideration of the case before an administrative separation board,

contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

On 23 March 2010, the applicant's conditional waiver was approved.

(6) Separation Decision Date / Characterization: 23 March 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 February 2008 / Indefinite

b. Age at Enlistment / Education / GT Score: 31 / High School Graduate / 121

c. Highest Grade Achieved / MOS / Total Service: E-6 / 92G30, Food Service Operation / 14 years, 8 months, 25 days

d. Prior Service / Characterizations: RA, 6 July 1995 – 16 December 1997 / HD
RA, 17 December 1997 – 9 March 2003 / HD
RA, 10 March 2003 – 9 March 2004 / HD
RA, 10 March 2004 – 27 February 2008 / HD

e. Overseas Service / Combat Service: Germany, Korea, SWA / Afghanistan (23 December 2001 – 12 July 2002); Iraq (7 April 2003 – 6 April 2004; 24 January 2005 – 19 December 2005; 31 August 2006 – 14 November 2007)

f. Awards and Decorations: ARCOM-7, AAM-3, AGCM-4, NDSM-2, ACM-2CS, GWOTEM, GWOTSM, KDSM, NCOPDR-2, ASR, OSR-4

g. Performance Ratings: 1 September 2007 – 11 July 2008 / Among the Best
12 July 2008 – 11 September 2009 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Memorandum for the applicant, no contact order, 21 May 2009, reflects, the applicant was ordered to have no contact with A. B. until released from this order.

A printout reflecting the applicant had a county warrant for writing bogus checks and six previous offenses for driving under the influence; resisting a police officer; driving under suspension; careless driving, no insurance and domestic abuse.

General Officer Memorandum of Reprimand, 1 July 2009, reflects on 11 April 2009, a Lawton City Police Officer responded to a call of the applicant's recklessly driving. The Officer questioned the applicant and detected a strong odor of alcohol emitting from yourself. The applicant was apprehended and transported to the Lawton City Police Station where the applicant was read the Oklahoma Implied Consent Test Request, to which the applicant agreed, and provided a breath sample which indicated a blood alcohol concentration (BAC) of 0.15 percent. It is illegal to operate a motor vehicle in Oklahoma or on Fort Sill with a BAC of .08 percent or higher.

Army Substance Abuse Program (ASAP) Memorandum, 2 July 2009, reflects, the applicant was command referred to ASAP on 20 April 2009, due to Driving Under the Influence (DUI). The applicant has attended five group and two individual counseling sessions. The applicant has completed 16 hours of education prevention training in substance abuse. However, the

applicant has missed six scheduled appointments since 23 April 2009. The applicant has had other negative situations while enrolled in ASAP which indicates the applicant should continue with treatment. The applicant only has a fair progress assessment.

Memorandum for Commander, 14 July 2009, reflects on 20 April 2009, the service member attended an initial screening/evaluation appointment to complete the initial intake forms. The commander was notified of the enrollment at the Army Substance Abuse Program (ASAP) clinic to include the dates of the two-day (16-hour) Army Drug and Alcohol Prevention Training (ADAPT) course and/or other appointments. The Command reported on 16 May 2009, the applicant was apprehended for domestic abuse where alcohol was involved. It is obvious the treatment plan was not followed. From the initial information, the applicant's alcohol involvement meets DSM-IV criteria. The applicant's behavior toward changes and failure to accept responsibility has resulted in unsatisfactory participation in rehabilitation treatment. The applicant was afforded many opportunities to receive/obtain help. This lack of motivation and continued aberrant behavior were indicative of commitment failure to treatment issues.

FG Article 15, 10 January 2010, for disobeying a lawful order on 12 December 2009. On or about 12 December 2009, unlawfully strike A. B., by punching them multiple times in the face and mouth with their fist. The punishment consisted of a reduction to E-5; forfeiture of \$1,361 pay per month for two months (suspended).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 26 February 2010, 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 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

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment from the VA, for their mental health and currently enrolled in a culinary arts school.

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 suffering from PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR includes a Report of Mental Status Evaluation, 26 February 2010, reflecting 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 separation authority considered the mental status evaluation.

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

The applicant contends seeking treatment from the VA, for their mental health and currently enrolled in a culinary arts school. 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 has the following potentially mitigating diagnoses/experiences: Post Traumatic Stress Disorder (PTSD), Dysthymic Disorder, and Major Depressive Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with PTSD, Major Depressive Disorder, and Dysthymic Disorder, and the VA has service connected the PTSD and Major Depressive Disorder.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of behavioral health conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with PTSD, Major Depressive Disorder, and Dysthymic Disorder, and the VA has service connected the PTSD and Major Depressive Disorder. Given the nexus between PTSD, Major Depressive Disorder, and self-medicating with substances, driving under the influence of alcohol is mitigated. However, there is no natural sequela between PTSD, Major Depressive Disorder, or Dysthymic Disorder and failing to pay debts, bogus check writing, non-support of dependents, driving under suspension, domestic abuse, or resisting arrest since none of these conditions interfere with money management or the ability to distinguish between right and wrong and act in accordance with the right. Accordingly, none of this misconduct is mitigated.

(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 PTSD, Dysthymic Disorder, and Major Depressive Disorder outweighed the basis for applicant's separation for failing to pay debts, bogus check writing, non-support of dependents, driving under suspension, domestic abuse, and resisting arrest.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention and found it supported by the medical record. However, the condition did not outweigh the entirety of the misconduct that served as the basis of separation.

(2) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board liberally considered this contention and determined that 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.

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

(4) The applicant contends seeking treatment from the VA for their mental health and being enrolled in a culinary arts school. The Board liberally considered the applicant's treatment and post-service accomplishments and determined that (although commendable) they did not outweigh the entirety of the serious and medically unmitigated misconduct that served as the basis of separation.

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 further 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 of all the evidence before the Board, the behavioral health conditions did not excuse or mitigate the entirety of the basis of separation misconduct (failing to pay debts, bogus check writing, non-support of dependents, driving under suspension, domestic abuse, and resisting arrest). The Board considered the entirety of the evidentiary record, including treatment and post-service accomplishments, but determined these factors did not outweigh the severity of the medically unmitigated basis of separation misconduct. 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 rationale. 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:

9/8/2024

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