

1. Applicant's Name: [REDACTED]

- 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 the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being young and acting stupid. The applicant did not realize the seriousness of the consequences and states it has been a very hard lesson to learn. The applicant realizes what they lost and the importance of an honorable discharge. The applicant was kept close all their life; a young, small town, country person who went to church every Sunday and Wednesday night. The applicant may have experienced more than enough freedom. It was a terrible mistake, and the applicant is remorseful for breaking any rules or any bad language or disrespect shown by the applicant.

b. **Board Type and Decision:** In a records review conducted on 3 September 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service and the discharge having served its purpose in the years since separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 8 June 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 25 April 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 21 January 2012, the applicant was drinking underage and assaulted J. J. M. R., a sentinel on duty when the applicant violently resisted arrest; on 12 June 2011, the applicant was pulled over and arrested for driving under the influence of alcohol; and finally proceeded to lie to the chain of command claiming the applicant's friend was driving the vehicle when the applicant was pulled over on 12 June 2011.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 9 March 2012

(5) Administrative Separation Board: On 9 March 2012, the applicant unconditionally waived consideration of the case before an administrative separation board pursuant to a pretrial agreement (offer to plead).

(6) Separation Decision Date / Characterization: 30 May 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 12 July 2010 / 3 years, 17 weeks
- b. **Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 102
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 19K10, M1 Armor Crewman / 1 year, 10 months, 27 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 12 June 2011, reflects the applicant was apprehended for: driving under the influence, alcohol, under 21; loud music; no proof of insurance; and open container (on post). Investigation revealed a patrol officer observed a vehicle parked with loud music. Upon contact the applicant was unable to provide proof of insurance. The applicant was administered a standardized field sobriety test, which the applicant failed. The applicant was apprehended and transported to the Military Police Station where the applicant was administered a breath analysis, with a result of .211 grams blood alcohol content (BAC).

General Officer Memorandum of Reprimand, 30 June 2011, reflects the applicant was driving while the influence. The applicant submitted to a breathalyzer with a result of .211 grams BAC.

Military Police Report (Blotter Report), 24 July 2011, reflects the applicant was arrested by civil authorities for being disorderly while intoxicated.

Company Grade Article 15, 8 August 2011, for with intent to deceive, make to Captain J. D., an official false statement, to wit: Private First Class J. C. was driving the vehicle when the applicant was arrested for driving under the influence (12 June 2011). The AMHRR is void of the punishment page.

Bar to Reenlistment Certificate, 22 September 2011, reflects the commander initiated a bar to reenlistment for various acts of misconduct.

Pretrial Agreement (Offer to Plead Guilty), 9 March 2012, reflects the applicant offered to plead guilty to Charge I and its specification and Charge II and its specification; accept an other than honorable discharge in the action initiated to separate the applicant pursuant to AR 635-200, Chapter 14-12 and to waive the right to demand a separation board. In exchange, the convening authority agreed to try the case by a summary court-martial.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 11 April 2012. The applicant was charged with two specifications. The summary of offenses, pleas, and findings:

Violation of Article 92, UCMJ: On 21 January 2012, failed to obey a lawful general regulation by drinking alcohol underage: guilty, consistent with the plea.

Violation of Article 128, UCMJ: On 21 January 2012, assaulted J. J. M. R., who was then known by the applicant to be a sentinel in the execution of the duty by violently resisting arrest: guilty, consistent with the plea.

Sentence: Reduction to E-1 and confinement for 28 days.

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

From Present for Duty (PDY) to Military Confinement, effective 11 April 2012; and
From Military Confinement to Present for Duty, effective 7 May 2012.

Commander's Report, 25 April 2012, reflects the applicant received a CG Article 15, 8 August 2011, for making a false official statement. The punishment consisted of a reduction to E-2; forfeiture of \$383 pay (suspended); and extra duty and restriction for 14 days.

Five Developmental Counseling Forms, for being arrested for underage drinking, public intoxication, resisting arrest, and assault on a military police officer; being drunk and disorderly; and being barred to reenlistment.

i. Lost Time / Mode of Return: 27 days (Military Confinement, 11 April 2012 – 7 May 2012) / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 7 March 2012, reflects the applicant was cleared for chapter proceedings. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with alcohol abuse.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; and four third party character references.

6. POST SERVICE ACCOMPLISHMENTS: The applicant maintained employment and demonstrated great leadership qualities.

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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

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

(6) Paragraph 14-3, 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.

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into

the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age. The applicant underwent a mental status evaluation (MSE) on 7 March 2012, which indicates the applicant was able to recognize right from wrong. The applicant was diagnosed with alcohol abuse. The MSE was considered by the separation authority.

The applicant contends maintaining employment and demonstrating great leadership qualities. 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.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good conduct after leaving the Army.

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? **No.** 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/experiences: None. A review of the records reflects the applicant does not have a BH condition that could potentially mitigate the misconduct. The applicant has in-service diagnoses of Substance Use Disorder, Alcohol Abuse, and Alcohol Intoxication, none of which are afforded relief under liberal guidance in the absence of a non-substance related BH condition.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention and gave partial credit to the applicant's immaturity and the applicant's ownership of mistakes made at the time of separation. Therefore, the Board determined that an upgrade to General characterization of service is warranted.

(2) The applicant contends maintaining employment and demonstrating great leadership qualities. The Board considered this contention but found that further upgrade to the applicant's discharge is not warranted.

c. The Board determined that the characterization of service was inequitable based on the applicant's length of service and the discharge having served its purpose in the years since separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to General because of the applicant's length of service and the discharge having served its purpose in the years since separation. Thus, the prior characterization is no longer appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, as 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: General
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

9/10/2024



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