

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 and a change to the narrative reason for separation.

The applicant seeks relief contending, in effect, while deployed, the applicant was awarded Combat Spurs, the highest award for Cavalry. During the first tour, the applicant also received their first Article 15 for falling asleep on guard. They had not slept in four days and had just come back from patrol. The applicant was honest with the NCO and warned the NCO, they may not make it. The NCO assured the applicant they had their back and would keep checking on the applicant. Instead, the NCO went to sleep and so did the applicant. The applicant accepted responsibility for their weakness and never once cried about losing rank. After the deployment, the applicant was sent back to Germany for eight months before heading to the next unit. Initially the applicant had orders to Fort Hood and found out they were to redeploy. The NCO called branch to help the applicant and the orders were changed to a unit which would not be deploying anytime soon. The next unit was at Selfridge Air National Guard Base in Michigan. By the time the applicant arrived at the new unit, their drinking was out of control they were informed the unit would be deploying in a couple of months. Not only was the applicant being redeployed; they had no job and was an outcast. The applicant went from a unit of 300 plus to a unit of 23, who all knew each other from school including the chain of command, but none of them had experienced combat. The applicant's drinking became worse to cope with the PTSD issues and anxiety of redeploying. Shortly after arriving at the new duty station, the applicant's parent was in a motorcycle accident and the applicant was on emergency leave. The applicant had no money to travel home; however, had a government credit card and used it for gas and food to go home. The applicant intended to pay the card off and made no excuses and fully accepted the punishment they deserved. When time came for deployment, the applicant's problems became worse. The applicant went from a being a valued asset and lead driver of a combat platoon to a janitor in Kuwait. The applicant was asked to give a briefing on internet security and created a power point on the office computer and transferred it to a portable flash drive. The flash drive was full of pornographic pictures and the applicant saved the pictures to their computer so they could put the power point on the flash drive. After the presentation, the applicant was told they would be going to Camp Buehring for a few days. The applicant never removed the pornography and when they returned, received another Article 15. After the applicant served their punishment, the applicant was informed the commander was pursuing a discharge with a general (under honorable conditions) characterization. The applicant does not deny making bad decisions; however, believes they served the country with honor. The applicant has not been in trouble with the law. After six months of unemployment, the applicant has been gainfully employed, has received a Class A CDL and advanced in the company where they work. The applicant wants an upgrade to go back to college and obtain a degree in software development to provide a better life for their family. The applicant has applied for disability for PTSD and is working on going to counseling.

b. Board Type and Decision: In a records review conducted on 30 July 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 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, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 14 July 2006

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 2 June 2006

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant had been counseled for:

Speeding on post;

Dereliction of duty;

Disobeying a noncommissioned officer;

Damage of government property;

Drunk and disorderly conduct;

Misuse of the government credit card; and

Had been counseled on several occasions for failure to report.

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

(4) Legal Consultation Date: 3 June 2006

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 9 June 2006 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 12 September 2002 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Letter / 107

c. Highest Grade Achieved / MOS / Total Service: E-4 / 25U10, Signal Support System Specialist / 3 years, 10 months, 3 days

- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Germany, SWA / Kuwait (NIF)
- f. **Awards and Decorations:** ARCOM, USA/USAF PUC, NDSM, ASR, OSR
- g. **Performance Ratings:** NA

h. Disciplinary Action(s) / Evidentiary Record: The Commander's Report reflects the applicant received a CG Article 15, imposed on 11 October 2005, for violating a lawful general order by using the government purchase card for personal use. The punishment consisted of a reduction to E-3. The report also reflects the applicant received several Developmental Counseling Forms, for various acts of misconduct.

Memorandum for Commander, Forwarding of Negative Information, 6 April 2006, reflects a recent scan of government computers by the CFLCC C-6 identified several users which apparently have evidence of pornographic video files on the computers they use at work. If this is correct, it may violate the Joint Ethics Regulation, General Order 1A/1B and the punitive CFLCC policy regarding the use of computer media. Many of the users identified by the run are affiliated with the Command.

FG Article 15, 1 May 2006, on or about 10 April 2006, violating a lawful general order, by possessing pornography on government computers; and on or about 10 April 2006, fail to obey a lawful general regulation, by using the government computer in a manner which adversely reflects on the Department of Defense. The punishment consisted of a reduction to E-3; forfeiture of \$846 pay; and extra duty and restriction for 45 days.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation (MSE), 18 May 2006, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; and was mentally responsible. The evaluation does not contain a diagnosis.

Report of Medical History, 28 May 2006, the examining medical physician noted in the comments section: Trouble sleeping during OIF.

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; four third-party letters; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has not been in trouble with the law. After six months of unemployment, the applicant has been gainfully employed, has received a Class A CDL and advanced in the company where they work.

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 waivable. 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 the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends good service, including two combat tours and being awarded the Combat Spurs, the highest award for Cavalry.

The applicant contends after deployment and by the time the applicant arrived at the new duty station, their drinking was out of control. The applicant accepts full responsibility for their mistakes. The applicant was suffering from PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 18 May 2006, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; and was mentally responsible. The evaluation does not contain a diagnosis. A Report of Medical History, 28 May 2006, reflects the examining medical physician noted in the comments section: Trouble sleeping during OIF. All of the medical documents contained in the AMHRR were considered by the separation authority.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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 third-party statements provided with the application reflect the applicant hard work, and good conduct while serving and since being discharged.

Since the discharge, the applicant has not been in trouble with the law. After six months of unemployment, the applicant has been gainfully employed, has received a Class A CDL and advanced in the company where they work. 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent SC for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's BH condition partially mitigates the misconduct. Given the nexus between PTSD and reckless behavior, avoidance, problems with authority, and the use of substances to self-medicate, the speeding on post, disobeying an NCO, and FTR offenses are mitigated. However, the damage of government property offense, wrongful use of government credit card, and the associated misconduct of violating lawful general orders is not mitigated as they are not natural sequela of PTSD. The applicant did not have a condition that rendered the applicant unable to differentiate between right and wrong and adhere to the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offenses of damage of government property, wrongful use of government credit card, and violating lawful general orders.

b. Response to Contention(s):

(1) The applicant contends after deployment and by the time the applicant arrived at the new duty station, the drinking was out of control. The applicant accepts full responsibility for their mistakes and was suffering from PTSD. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offenses of damage of government property, wrongful use of government credit card, and violating lawful general orders.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but found that the applicant's Pattern of Misconduct narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of damage of government property, wrongful use of government credit card, and violating lawful general orders.

(3) The applicant contends good service, including two combat tours and being awarded the Combat Spurs, the highest award for Cavalry. The Board considered the applicant's three years of service, including overseas tours in Germany and Kuwait, but

determined that the applicant's record does not outweigh the applicant's medically unmitigated misconduct.

(4) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that 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.

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

(6) The applicant has not been in trouble with the law. After six months of unemployment, the applicant has been gainfully employed, has received a Class A CDL and advanced in the company where they work. The Board considered the applicant's post-service accomplishments but did not find the applicant's achievements rose to a level to overcome the applicant's medically unmitigated misconduct.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 Post Traumatic Stress Disorder did not outweigh the medically unmitigated offenses of damage of government property, wrongful use of government credit card, and violating lawful general orders. The Board also considered the applicant's contentions regarding good service and post-service accomplishments 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:

8/12/2024

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