

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, the discharge is inequitable because it was based on one isolated incident in over five years of excellent service with no other adverse action. The applicant was intoxicated at the time and having flashbacks, and believed a middle eastern cab driver was a terrorist. The applicant suffered from post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI), and the applicant was separated without treatment or consideration of their battlefield injuries. The applicant has been in prison for the last 10 years, and 8 months. The applicant further details the contentions in a self-authored statement and medical documents submitted with the application, describing experiences in Afghanistan and Iraq; good duty performance; an assault against a cab driver; being separated because a senior commander's promotion concerns; and serving 10 years in prison for bank robbery.

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:** Misconduct (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 28 July 2010

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 3 June 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully assaulted Sergeant (SGT) B. C. and T. B. with a deadly weapon. The Notification, subject line, indicates AR 635-200, paragraph 14-12c(2), Commission of Serious Offense. AR 635-200, paragraph 14-12c(2) is under Commission of Serious Offense; however, paragraph 14-12c(2) is based on abuse of illegal drugs. The separation packet is void of any evidence of illegal drug use.

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

(4) **Legal Consultation Date:** 5 June 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 June 2010 / General (Under Honorable Conditions) / The separation authority approved the applicant's separation under the provisions of AR 635-200, paragraph 14-12c, Misconduct (Serious Offense).

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 12 February 2007 / 6 years

b. Age at Enlistment / Education / GT Score: 22 / HS Graduate / 112

c. Highest Grade Achieved / MOS / Total Service: E-5 / 68W2P, Health Care Specialist / 6 years, 6 days, which includes 2 months, 12 days of inactive duty in the Delayed Entry Program.

d. Prior Service / Characterizations: RA, 5 October 2004 – 11 February 2007 / HD

e. Overseas Service / Combat Service: Alaska, SWA / Afghanistan (1 March 2009– 1 March 2010); Iraq (8 October 2006 – 16 November 2007)

f. Awards and Decorations: ACM-CS, ARCOM-VD-2, ARCOM, AAM, AGCM, NDSM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR-3, NATOMDL / The applicant's AMHRR reflects award of the CMB, however, the award is not reflected on the applicant's DD Form 214.

g. Performance Ratings: 1 December 2007 – 30 November 2008 / Among the Best
1 December 2008 – 30 November 2009 / Among the Best

h. Disciplinary Action(s) / Evidentiary Record: Fort Richardson Military Police Narrative, 24 November 2007, reflects a patrol officer was in the downtown area searching for alcohol violations and noticed a suspicious vehicle stopped next to the rear entrance of the bar. The applicant exited the driver's seat of the vehicle and motioned for the front passenger to exit the vehicle, who had urinated in their pants. The officer observed signs of intoxication from the applicant and administered a Standard Field Sobriety Test, which the applicant performed poorly. The applicant admitted to having five shots at the bar. The officer located a loaded 45 caliber handgun in a concealment holster attached to the applicant's right hip. The applicant was apprehended and transported to the police station.

General Officer Memorandum of Reprimand (GOMOR), 6 December 2007, reflects the applicant was driving under the influence of alcohol and had a weapon. After a traffic stop was initiated for driving under the influence, a police officer discovered a .45 caliber semi-automatic pistol concealed in the applicant's beltline, which the applicant did not previously disclose. The applicant failed a series of Standardized Field Sobriety Tests and submitted to a breathalyzer Test resulting in a Breath Alcohol Content (BrAC) of .216 percent.

Memorandum, subject: Letter of Rebuttal for GOMOR, 19 February 2008, the applicant explained the events which led to the driving under the influence and concealed weapon's charges.

Military Police Report, 22 May 2010, reflects the applicant was apprehended for: aggravated assault with a deadly weapon (on post). Investigation revealed the applicant brandished a knife on SGT C. and T. B., a yellow cab driver while approaching the main gate. The applicant

touched SGT C. on the left leg with the knife. The applicant fled the cab SGT C., SGT L., and the applicant were in. The applicant was later located by SGT G., the applicant's platoon sergeant, transported to the Military Police Station, and administered a data master test, which resulted in a breath alcohol content of .192 percent.

Report of Behavioral Health Evaluation, 11 June 2010, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

Commander's Report, 17 June 2010, reflects the applicant was pending a Field Grade Article 15, for assault with a deadly weapon, under Article 128, Uniform Code of Military Justice (UCMJ), and being drunk and disorderly, under Article 134, UCMJ.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Progress Note, 28 June 2022, reflecting the applicant's treatment was focused on ongoing anxiety and mood-based symptoms associated with PTSD. The applicant experienced deaths, trauma, near misses, explosions, improvised explosive devices, and head injuries.

(2) AMHRR Listed: None

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 Correction of Military Record; Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; self-authored statement; The American Legion Card; RCS Client Information Record; Intake Assessment Information; Visit Information; Military History Information; and Progress Note Information.

6. POST SERVICE ACCOMPLISHMENTS: The applicant taught mathematics in prison, helped the Warden write the COVID protocol, created the Chain of Events card, which is carried by medics, and published a book on Amazon.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of

characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(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 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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

The applicant requests an upgrade to honorable.

The applicant contends suffering from PTSD and TBI, and the conditions affected behavior which led to the discharge, and further ruined their post-service life. The applicant provided several medical documents indicating the applicant was treated for anxiety and mood-based

symptoms associated with PTSD, and experienced head injuries. The AMHRR shows the applicant underwent a behavioral health evaluation (BHE) on 11 June 2010, which indicates the applicant was mentally responsible and recognized right from wrong. The BHE does not indicate any diagnosis.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends being separated because of possibly jeopardizing the promotion of an officer in the chain of command, and the applicant's mental health conditions were not considered. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including two combat tours.

The applicant contends teaching mathematics in prison, helping the Warden write the COVID protocol, creating the Chain of Events card, and publishing a book on Amazon. 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, Depressive Disorder NOS, MDD.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's BH conditions do not mitigate the discharge. Assault with a deadly weapon is not mitigated by either BH condition as the behavior is not natural sequela of Post Traumatic Stress Disorder or Major Depressive Disorder.

(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 or Major Depressive Disorder outweighed the applicant's medically unmitigated offense of assault with a deadly weapon.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD and TBI, and the conditions affected behavior which led to the discharge, and further ruined their post-service life. 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 or Major Depressive Disorder outweighed the applicant's medically unmitigated offense of assault with a deadly weapon.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but determined that the separation was proper and equitable given the severity of the applicant's medically unmitigated offense of assault with a deadly weapon.

(3) The applicant contends being separated because of possibly jeopardizing the promotion of an officer in the chain of command, and the applicant's mental health conditions were not considered. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the assertion that the applicant's separation was done in order to preserve the promotion officer in the applicant's chain of command.

(4) The applicant contends good service, including two combat tours. The Board considered the applicant's six years of service, including combat tours in Iraq and Afghanistan, but found that the applicant's record does not outweigh the applicant's medically unmitigated offense of assault with a deadly weapon.

(5) The applicant contends teaching mathematics in prison, helping the Warden write the COVID protocol, creating the Chain of Events card, and publishing a book on Amazon. The Board considered the applicant's post-service accomplishments but found that the applicant's record does not outweigh the applicant's medically unmitigated offense of assault with a deadly weapon.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the 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 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 or Major Depressive Disorder did not outweigh the medically unmitigated offense of assault with a deadly weapon. The Board also considered the applicant's contentions that the misconduct was an isolated incident, that the applicant was a good Soldier, and that the applicant has strong 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000997

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, 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:** 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