

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, upon returning from deployment during Operation Iraqi Freedom (OIF), having difficulty adjusting and was having marital problems because of post-traumatic stress disorder (PTSD). Instead of receiving treatment, the applicant was chaptered out of the military and denied benefits the applicant paid into.

b. **Board Type and Decision:** In a records review conducted on 16 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 / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 6 May 2004

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 13 April 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 22 September 2003, the applicant was arrested by the Virginia Beach Police for assault and battery on a family member, resisting arrest, and illegal possession of alcohol. On or about 17 September and 1 December 2003, and 4 and 10 February 2004, the applicant failed to report to the appointed place of duty. On or about 18 February 2004, the applicant willfully disobeyed and disrespected a noncommissioned officer (NCO).

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

(4) **Legal Consultation Date:** 13 April 2004

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 19 April 2004 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 June 2002 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 101

c. Highest Grade Achieved / MOS / Total Service: E-3 / 88M10, Motor Transport Operator / 1 year, 11 months, 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Kuwait (13 January 2003 – 26 July 2003)

f. Awards and Decorations: ARCOM, ASR, GWOTEM, GWOTSM / The applicant's AMHRR reflects award of the NDSM, however, the award is not reflected on the DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Warrant of Arrest – Misdemeanor (State), 22 September 2003, reflects a warrant was issued for the applicant's arrest for assault and battery on F. G., who was a family or household member.

Military Police Report, 26 September 2003, reflects the applicant was apprehended by civil authorities for civil charge: assault and battery; resisting arrest; and illegal possession of alcohol (off post). On 22 September 2003, the Virginia Beach Police reported to the Military Police, the applicant had been arrested for offenses.

Memorandum, subject: Report of Mental Status Evaluation on [Applicant], 29 March 2004, reflects the applicant was psychiatrically cleared for any administrative action deemed appropriate by the command.

Five Developmental Counseling Forms, for failing to report to place of duty on multiple occasions; lacking motivation; being late for formation; and being derelict in the performance of duties.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs (VA), Vet Center letter, 10 March 2014, reflecting a licensed clinical social worker (LCSW) and trauma specialist indicated the applicant had been treated since August 2013, for signs and symptoms associated with PTSD from the applicant's experiences during the war in Iraq. Given the parameters of the applicant's mental health condition, the LCSW requested the applicant receive an honorable discharge in the interests of fairness and accuracy.

Department of Veterans Affairs letter, second page, reflecting the VA rated the applicant 70 percent service-connected disabled for PTSD.

(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: DD Form 214; DD Form 293; VA Vet Center letter; and VA letter.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable

characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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

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

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

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

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends PTSD and marital issues affected behavior which ultimately led to the discharge. The applicant provided medical documents from the VA reflecting the VA rated the applicant 70 percent disabled for PTSD. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 29 March 2004, which indicates the applicant was psychiatrically cleared for any administrative action deemed appropriate by the command. The MSE was considered by the separation authority.

The applicant contends the command chaptered the applicant instead of providing the applicant treatment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being denied benefits the applicant paid for. 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.

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, MDD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 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 behavioral health conditions partially mitigate the misconduct. Given the nexus between PTSD and substance use, and PTSD and problems with authority figures, the illegal possession of alcohol is mitigated assuming it was for personal use, as is the minor misconduct characterized by disobeying and disrespecting an NCO. However, the assault and battery and resisting arrest offenses are not mitigated by PTSD or MDD as assault and battery is not normal

sequela of either condition, and resisting arrest subsequent to assault and battery is serious misconduct that is not mitigated by the nexus between PTSD and problems with authority figures, that typically mitigates minor misconduct. Additionally, resisting arrest is also not natural sequela of MDD.

(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 and Depression outweighed the applicant's medically unmitigated offenses of assault and battery and resisting arrest.

b. Response to Contention(s):

(1) The applicant contends PTSD and marital issues affected behavior which ultimately led to the discharge. 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 and Depression outweighed the applicant's medically unmitigated offenses of assault and battery and resisting arrest.

(2) The applicant contends the command chaptered the applicant instead of providing the applicant treatment. The Board considered this contention but determined that the applicant's offenses of assault and battery and resisting arrest were not the consequence of the applicant's behavioral health conditions.

(3) The applicant contends being denied benefits the applicant paid for. 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.

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 of all the evidence before the Board, the applicant's Post Traumatic Stress Disorder and Depression did not outweigh the medically unmitigated offenses of assault and battery and resisting arrest. The Board also considered the applicant's contentions regarding treatment for the applicant's behavioral health conditions and 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.

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(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:

7/25/2024

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