

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, their discharge was due to new leadership not understanding or considering the major issues they were having with PTSD, anxiety, and depression at the time of the discharge. The applicant's medical conditions and injuries sustained in an accident while in Iraq had a very negative impact on them, causing a great amount of pain and reduced their ability to perform their duties as a Soldier. The applicant's leadership did not deploy with them or realize what was going on. The applicant contends an upgrade to their discharge would give them access to medical care.

b. **Board Type and Decision:** In a records review conducted on 11 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:** 7 August 2008

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 27 June 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant has failed to report to their appointed place of duty on 13 different occasions. The applicant has disrespected and disobeyed their leadership on 21 different occasions. The applicant also failed to pay debts on divers' occasions.

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

(4) **Legal Consultation Date:** On 3 July 2008, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 25 July 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 21 April 2005 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 20 / High School Graduate / 107
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 21E10, Construction Equipment Operator / 3 years, 10 months, 22 days
- d. **Prior Service / Characterizations:** ARNG, 27 June 2002 – 1 February 2003 / UNC
- e. **Overseas Service / Combat Service:** SWA / Iraq (31 October 2006 – 24 November 2007)
- f. **Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM-CS, ASR, OSR
- g. **Performance Ratings:** None
- h. **Disciplinary Action(s) / Evidentiary Record:** DD Form 2624, undated, reflects the applicant tested positive for THC (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 13 July 2006.

Command Incident Report, 31 October 2006, reflects the applicant was charged with failure to obey a lawful order, resisting apprehension, disrespecting an NCO, drunken and disorderly conduct, and underage drinking.

Numerous Developmental Counseling Forms, for various acts of misconduct.

- i. **Lost Time / Mode of Return:** None

- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Chronological Record of Medical Care, 1 May 2008, reflects a medical diagnosis.

Department of Veterans Affairs Rating Decision, 31 October 2008, reflects an evaluation of 30 percent service-connected disability for a medical condition.

Department of Veterans Affairs Rating Decision, 7 March 2012, reflects an evaluation of 40 percent service-connected disability for a medical condition.

(2) **AMHRR Listed:** Chronological Record of Medical Care as described in previous paragraph 4j(1).

Report of Medical History, 24 April 2008, the examining medical physician noted the applicant's medical conditions in the comments section and reflects a medical diagnosis.

Report of Mental Status Evaluation, 1 May 2008, reflects the applicant was not psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements.

Memorandum for Clarification of Psychiatric Clearance, 22 July 2008, after the review of S.F., clinical note, and documentation on the DA Form 3822-R, 1 May 2008, and after review of the applicant's record, the applicant has been psychiatrically cleared by two mental health providers to understand and participate in Chapter 14 proceedings.

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; letter of support; two Department of Veterans Affairs Rating Decisions, 7 March 2012 and 31 October 2008; medical records; two DA Forms 2823; letter from Senator F.; ARBA letter to Senator F.; Authorization to release information.

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 suffering from PTSD, anxiety, and depression at the time of discharge. The applicant provided a Chronological Record of Medical Care, 1 May 2008, reflecting a medical diagnosis; and a Department of Veterans Affairs Rating Decision, 7 March 2012, reflecting an evaluation of 40 percent disabled for a medical condition. The AMHRR includes a Memorandum for Clarification of Psychiatric Clearance, 22 July 2008, reflecting after the review of S.F., clinical note, and documentation on the DA Form 3822-R, 1 May 2008, and after review of the applicant's record, the applicant had been psychiatrically cleared by two mental health providers to understand and participate in Chapter 14 proceedings. All the medical documents in the AMHRR were considered by the separation authority.

The applicant contends their medical condition and injuries sustained in an accident while in Iraq had a very negative impact on them, causing a great amount of pain and reduced their ability to perform their duties as a Soldier. The applicant's leadership did not deploy with them or realize what was going on. The applicant provided a third-party letter from Sergeant R. W., which described the way the applicant was injured while in Iraq. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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: Adjustment Disorder, Dysthymia, Unspecified Anxiety Disorder. Additionally, the applicant asserts

Depression and PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Dysthymia. The applicant is service connected by the VA for Unspecified Anxiety Disorder. The applicant also self-asserts Depression and PTSD during military service.

(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 was diagnosed in service with an Adjustment Disorder and Dysthymia. The applicant is service connected by the VA for Unspecified Anxiety Disorder. The applicant also self-asserts Depression and PTSD. The applicant's self-asserted Depression is supported by the active duty medical record that reveals treatment for depressive symptoms and a diagnosis of Dysthymia. Given the nexus between Depression, avoidance, and low motivation, the FTR's are mitigated by the applicant's asserted Depression. However, there is no natural sequela between an Adjustment Disorder, Dysthymia, Unspecified Anxiety Disorder, or asserted Depression and disrespect, disobeying orders, or failing to pay debts since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant's asserted PTSD was considered since there is a nexus with PTSD and difficulty with authority. However, there is no medical evidence to substantiate the asserted PTSD. The applicant was found not to be diagnosed with PTSD during military service, and the VA has not diagnosed or service connected the applicant for PTSD. Finally, the applicant did not submit any medical documentation substantiating the asserted PTSD. As such, the asserted PTSD does not provide any mitigation. Disrespect, disobeying orders, and failing to pay debts are not mitigated by any of the applicant's BH conditions.

(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: Adjustment Disorder, Dysthymia, Unspecified Anxiety Disorder, Depression and PTSD outweighed the basis for applicant's separation – disrespected and disobeyed leadership on 21 different occasions, and failure to pay debts.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD, anxiety, and depression at the time of discharge. The Board considered this contention and determined the applicant's PTSD, anxiety, and depression do not excuse or mitigate the applicant's disrespect, disobeying orders, and failing to pay debts basis for separation. Thus, the discharge is proper and equitable.

(2) The applicant contends their medical condition and injuries sustained in an accident while in Iraq had a very negative impact on them, causing a great amount of pain and reduced their ability to perform their duties as a Soldier. The applicant's leadership did not deploy with them or realize what was going on. The Board considered this contention and determined the applicant's pattern of misconduct began prior to deployment to Iraq and continued after applicant returned. The applicant's medical conditions do not mitigate or excuse the applicant's disrespect, disobeying orders, and failing to pay debts basis for separation.

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 their 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

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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 Adjustment Disorder, Dysthymia, Unspecified Anxiety Disorder, Depression and PTSD did not excuse or mitigate the offenses of failure to report to their appointed place of duty on 13 different occasions, disrespectful on 21 different occasions, and failure to pay debts on divers' occasions. 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:

1/13/2025

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