

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, according to Kennedy vs. McCarthy, the applicant qualifies for a discharge upgrade due to untreated post-traumatic stress disorder (PTSD) and other related mental health conditions. The applicant deployed between the periods of 7 October 2001 to 26 April 2021, receiving a general discharge and having a diagnosis of PTSD or PTSD-related conditions which are service-connected. The applicant was previously denied a discharge upgrade in 2018, but later in 2019, they were diagnosed with PTSD. The applicant contends their untreated PTSD caused their misbehavior. The applicant was diagnosed with PTSD, major depressive disorder, mood disorder which is associated with kleptomania and alcohol use disorder. This diagnosis is associated with impaired judgment and impaired impulse control. According to Kennedy vs. McCarthy, the applicant's discharge must be considered with liberal consideration for their misconduct because of untreated service-connected PTSD. The applicant contends the systematic failure of the Army Discharge Review Board to adequately consider mental health conditions with their discharge status upgrade was unjust and has imposed a lifetime stigma and denied the applicant access to critical government services, including the GI Bill education benefits which they earned.

b. **Board Type and Decision:** In a records review conducted on 9 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, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 9 November 2010

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 14 October 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant stole two video games, a cologne set, a digital camera, and one package of computer software of a value of about \$375.70 from the property of the Army and Airforce Exchange Service (AAFES).

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

(4) **Legal Consultation Date:** 15 October 2010

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

(6) **Separation Decision Date / Characterization:** 26 October 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 28 May 2008 / 3 years, 18 weeks

b. **Age at Enlistment / Education / GT Score:** 21 / High School Graduate / 98

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 88M10, Motor Transport Operator / 2 years, 5 months, 12 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** SWA / Afghanistan (15 April 2009 – 5 April 2010)

f. **Awards and Decorations:** ACM-CS, AAM-2, NDSM, GWOTSM, ASR, OSR, NATOMDL, CAB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 4 August 2010, reflects the applicant was apprehended for: larceny of the Army and Airforce Exchange Service property \$100 and over (on post).

Report of Incident, 26 October 2010, on 31 July 2010, a video review, identified the applicant placing the empty Xbox 360, on the shelf on 30 July 2010, at 12:25. Further review showed the applicant buying an Xbox at 1200 on 30 July 2010, exiting the store, going to their vehicle, and then reentering the store at 12:25, with the empty box. The applicant walked back to the power zone where the empty box was swapped for a new unopened Xbox. The applicant then went to customer service where the new Xbox was refunded with the receipt from the purchase at 1200. The applicant then exited the store with \$299.99 in AAFES cash.

Developmental Counseling Form, for shop lifting.

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

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

(1) **Applicant provided:** Department of Veterans Affairs Payment Summary reflects a rating of 100 percent and a medical diagnosis.

(2) **AMHRR Listed:** Report of Behavioral Health Evaluation (BHE), 28 September 2010, reflects the applicant meets the retention requirements of chapter 3, AR 40-501. The applicant was cleared for any administrative actions deemed appropriate by command.

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: Online application; DD Form 149; two DD Forms 214; DD Form 293; medical records; Bachelor of Business Administration Diploma; Department of Veterans Affairs Payment Summary; Certificate of Excellence; Haggler Issues guidance for veteran's discharge request letter; Risk assessment group employment screening and information services; application summary; deployment periods.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought help for their mental health from the VA and completed a bachelor's degree in business administration.

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 14-12c 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends being diagnosed with PTSD, major depressive disorder, mood disorder which is associated with kleptomania and alcohol use disorder. The applicant provided a Department of Veterans Affairs Payment Summary reflecting a rating of 100 percent and a medical diagnosis. The AMHRR includes a Report of Behavioral Health Evaluation (BHE), 28 September 2010, reflecting the applicant met the retention requirements of chapter 3, AR 40-501. The applicant was cleared for any administrative actions deemed appropriate by command. The BHE was considered by the separation authority.

The applicant contends according to Kennedy vs. McCarthy, the applicant qualifies for a discharge upgrade due to untreated PTSD and other related mental health conditions. The applicant deployed between the periods of 7 October 2001 to 26 April 2021, receiving a general discharge and having a diagnosis of PTSD or PTSD-related conditions which are service-connected. The applicant was previously denied a discharge upgrade in 2018, but later in 2019, they were diagnosed with PTSD. The applicant contends the systematic failure of the Army Discharge Review Board to adequately consider mental health conditions with their discharge status upgrade was unjust and has imposed a lifetime stigma and denied the applicant access to critical government service, including GI Bill education benefits which they earned. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The Kennedy vs. McCarthy agreement states the ADRB will automatically reconsider its decisions which meet all the following three criteria: (a) special cases (b) issued on or after 17 April 2017 until the effective date of settlement (c) whose grant state indicates the applicant did not receive the full relief they requested. If the Board concludes there is insufficient evidence per the four factors in paragraph two (2) of the Kurta Memo ("Kurta Factors"), including the evidence in mitigation does not outweigh the severity of misconduct, so as to grant a full upgrade to honorable in any special case, the Board must, in the decision document sent to the veteran (a) respond to each of the applicant's contentions; (b) describe the evidence on which it relied on consideration of each of the applicable Kurta Factors; (c) explain why it decided against the veteran with respect to each applicable Kurta Factor; (d) ensure it draws a rational connection between facts found and conclusions drawn; and, (e) distinguish any prior Board decisions cited by the applicant in accordance with applicable law and regulations.

The applicant contends an upgrade of the discharge would allow veterans benefits. 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 seeking help for their mental health from the VA and completing a bachelor's degree in business administration. 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, MDD with Anxious Distress, Mood Disorder NOS.

(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? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate or excuse the discharge. Larceny is not a natural sequela of Post Traumatic Stress Disorder or Major Depressive Disorder. Regarding the applicant's contention that the mood disorder was associated with Kleptomania, a review of the records reflects the applicant did endorse impulses to steal while in service, however the description of stealing as thrill seeking to get an adrenaline rush and having no fear of apprehension, is not consistent with DSM-5 for Kleptomania, wherein the individual attempts to resist the urge to steal, recognizes it is wrong, fears being caught, and recurrently steals things that are not needed for personal use or monetary value. Kleptomania is a specific DSM diagnosis and if the applicant met criteria for the disorder, one expects the applicant would have been diagnosed as such.

(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, Major Depressive Disorder, or Mood Disorder outweighed the applicant's medically unmitigated larceny offense.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD, major depressive disorder, mood disorder which is associated with kleptomania and alcohol use disorder. 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, Major Depressive Disorder, or Mood Disorder outweighed the applicant's medically unmitigated larceny offense.

(2) The applicant contends according to Kennedy vs. McCarthy, the applicant qualifies for a discharge upgrade due to untreated post-traumatic stress disorder (PTSD) and other related mental health conditions. 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, Major Depressive Disorder, or Mood Disorder outweighed the applicant's medically unmitigated larceny offense.

(3) The applicant contends an upgrade of the discharge would allow veterans benefits. 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.

(4) The applicant contends seeking help for their mental health from the VA and completing a bachelor's degree business administration. The Board considered the applicant's post-service accomplishments but found that they do not outweigh the applicant's medically unmitigated larceny offense.

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 of all the evidence before the Board, the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, and Mood Disorder did not outweigh the medically unmitigated larceny offense. The Board considered the totality of the applicant's service record but found that it 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:

7/24/2024

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