

1. Applicant's Name: [REDACTED]**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 the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, a general officer's reprimand prompted the separation authority to exercise their authority and separate the applicant. The applicant was charged with failure to maintain lane and driving under the influence (DUI); however, the DUI was dropped. The applicant contends since their DUI case was dismissed, their discharge should be upgraded to honorable as there was no UCMJ action.

b. Board Type and Decision: In a records review conducted on 25 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and MST outweighing the applicant's public intoxication, loitering, prowling, obstructing and DUI basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

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: 18 July 2014**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 18 June 2014

(2) Basis for Separation: The applicant was informed of the following reasons: On 13 October 2013, the applicant was publicly intoxicated, loitering, prowling, and obstructing. On 21 April 2014 the applicant drove while drunk.

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

(4) Legal Consultation Date: 18 June 2014

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 1 July 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 21 February 2012 / 3 years, 18 weeks
- b. Age at Enlistment / Education / GT Score:** 24 / some college / 96
- c. Highest Grade Achieved / MOS / Total Service:** E-3 / 19D10, Cavalry Scout / 2 years, 4 months, 28 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** SWA / Afghanistan (29 August 2012 – 15 May 2013)
- f. Awards and Decorations:** ACM-CS, ARCOM, NDSM, ASR, OSR, NATOMDL
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** Tybee Island Police Department, Incident Report, 13 October 2013, reflects, the applicant was charged with public intoxication, loitering, prowling, and obstruction.

General Officer Memorandum Of Reprimand, 5 June 2014, reflects on 21 April 2014, in Midway, Georgia, a Georgia State Patrol Officer observed the applicant operating a vehicle while intoxicated. After being read the Georgia implied consent law, the applicant refused to submit to a breathalyzer test. As a result, the applicant was cited with driving under the influence. In accordance with Army Regulation 27-10, paragraph 3-3b and Army Regulation 190-5, paragraph 2-7a(2).

Developmental Counseling Forms, for drinking and driving.

The applicant provided a Criminal Action Report, 10 September 2014, reflecting the applicant was charged with Driving Under the Influence (DUI), failure to maintain lane and no proof of insurance. The applicant was found not guilty of DUI; Nolle Prosequi for failure to maintain lane and no proof of insurance and guilty of included offense of failure to exercise due care. The applicant was ordered to do 40 hours of community service or a 300-dollar fine and driver's school within 120 days.

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

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

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 10 June 2014, reflects the applicant was 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. The evaluation included a diagnosis.

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 149; DD Form 214; Criminal Action Report.

6. POST SERVICE ACCOMPLISHMENTS: None were 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 14-12c 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.

(7) Paragraph 14-5a prescribes a Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings. A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended. The sentence by civil authorities includes confinement for 6 months or

more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

(8) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 their DUI case was dismissed and therefore their discharge should be upgraded to honorable as there was no UCMJ action. The applicant provided a Criminal Action Report, 10 September 2014, reflecting the applicant was charged with failure to maintain lane and no proof of insurance. The applicant was found not guilty for the DUI; Nolle Prosequi for failure to maintain lane and no proof of insurance and guilty of included offense of failure to exercise due care. The applicant was ordered to do 40 hours of community service or a 300-dollar fine and driver's school within 120 days. The AMHRR includes a Tybee Island Police Department Incident Report, 13 October 2013, which reflects, the applicant was charged with public intoxication, loitering, prowling, and obstruction. A General Officer Memorandum Of Reprimand, 5 June 2014, reflects on 21 April 2014, in Midway, Georgia, a Georgia State Patrol Officer observed the applicant operating a vehicle while intoxicated. After being read the Georgia Implied Consent Law, the applicant refused to submit to a breathalyzer test. As a result, the applicant was cited with driving under the influence. Army Regulation 635-200, Paragraph 14-5a prescribes a Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings. A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended. The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation.

The AMHRR includes a Report of Mental Status Evaluation, 10 June 2014, reflecting the applicant was 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. The evaluation included a diagnosis. The mental status evaluation was considered by the separation authority.

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, Paranoid Schizophrenia, Unspecified Schizophrenia Spectrum and Other Psychotic Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected (SC) for PTSD secondary to combat and MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has BH conditions that mitigate the misconduct as outlined in the basis for separation. The applicant is 70% SC for PTSD secondary to combat and MST and has potentially mitigating diagnoses of MDD, Unspecified Schizophrenia Spectrum and Other Psychotic Disorder, and Paranoid Schizophrenia. As there is a nexus between PTSD/MST and the use of substances to self-medicate, the applicant misconduct in 2013 characterized by public intoxication and the residual misconduct associated with public intoxication (e.g., loitering, prowling, etc.) is mitigated. Applicant's misconduct characterized by DUI in 2014 is also mitigated given the nexus between PTSD/MST and comorbid substance use.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD and MST outweighed the public intoxication, loitering, prowling, obstructing and DUI basis for separation.

b. Response to Contention(s): The applicant contends their DUI case was dismissed, therefore the discharge should be upgraded to honorable as there was no UCMJ action.

c. The Board determined the discharge is inequitable based on the applicant's PTSD and MST outweighing the applicant's public intoxication, loitering, prowling, obstructing and DUI basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

d. Rationale for Decision:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001038

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD and MST outweigh the applicant's misconduct of public intoxication, loitering, prowling, obstructing and DUI. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: No Change
- a. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:

11/13/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs