

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, suffering from post-traumatic stress disorder (PTSD) because of seeing members of their squad members killed by an IED. The applicant believes they were not given the support they required to cope with the tragedy by their chain of command, less than 30 days after the attack the applicant attempted suicide. During a psychiatric debriefing, the applicant states they were recommended for a medical discharge, but they did not receive the assistance they required. The applicant claims their attempt at self-medication in Iraq with alcohol led to their discharge. The applicant contends being rated by the VA for the PTSD stemming from the event in Iraq.

b. **Board Type and Decision:** In a records review conducted on 25 June 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:** 24 November 2004

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 24 October 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant received a Summary Court-Martial on 15 September 2004, for being derelict in the performance of their duties.

The applicant failed to wear a proper military uniform while driving a military vehicle, along with violating General Order Number one by wrongfully consuming some amount of alcohol.

The applicant made to CSM D., an official statement, to wit: "My name is R.," or words to that effect, which statement was totally false.

The applicant received a Field Grade Article 15 on 27 May 2003, for wrongfully using cocaine, a controlled substance.

The applicant received a Field Grade Article 15, for disobeying a commissioned officer by not wearing their OTV and Kevlar while on duty at the observation point (OP) and sleeping while posted as a lookout at OP two Tower one.

The applicant failed to go at the time prescribed to their appointed place of duty, to wit: 0630 hours PT Formation on 26 November 2003.

(3) Recommended Characterization: General (Under Honorable Conditions) / The intermediate commanders recommended an under other than honorable conditions discharge.

(4) Legal Consultation Date: On 27 October 2004, the applicant waived legal counsel.

(5) Administrative Separation Board: On 27 October 2004, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 7 May 2002 / 3 years

b. **Age at Enlistment / Education / GT Score:** 21 / GED / 100

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 14J10, Early Warning System Operator / 2 years, 5 months, 18 days

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

e. **Overseas Service / Combat Service:** SWA / Iraq (8 March 2004 – 13 November 2004)

f. **Awards and Decorations:** GWOTEM, GWOTSM, NDSM

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 27 May 2003, for wrongfully using cocaine (between 4 January and 4 February 2003). The punishment consisted of a reduction to E-1; forfeiture of \$575 (suspended); and extra duty and restriction for 45 days. The continuation sheet is not in file.

FG Article 15, 14 July 2004, for disobeying a lawful order. The punishment consisted of a reduction to E-2; forfeiture of \$500 pay per month for two months (suspended). The continuation sheet is not in file.

Confinement Order, 15 September 2004, the applicant was charged with violating Article 92, violation of a general order and dereliction of duty, and Article 107, making false official statements. Adjudged on 15 September 2004, and sentenced to confinement for 30 days, forfeiture of \$796, and reduction to E-1.

Two Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Confined by Military Authorities (CMA), effective 16 September 2004; and

From CMA to PDY, effective 11 October 2004.

Two Developmental Counseling Forms, for unauthorized pass and mileage pass and recommendation for Chapter 14-12b.

i. Lost Time / Mode of Return: 29 days (CMA, 15 September 2004 – 14 October 2004) / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs Summary of Benefits letter, 19 September 2014, reflects a combined service-connected evaluation of 70 percent.

(2) AMHRR Listed: Report of Mental Status Evaluation, 12 October 2007, 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 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; Veterans Affairs Summary of Benefits letter.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment from the VA for their mental health.

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 contends suffering from PTSD. The applicant provided a Department of Veterans Affairs Summary of Benefits letter, 19 September 2014, reflecting a combined service-connected evaluation of 70 percent. The AMHRR included a Report of Mental Status Evaluation, 12 October 2007, 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 mental status evaluation was considered by the separation authority.

The applicant contends they were not given the support they required to cope with the tragedy by their chain of command. The applicant claims their attempt at self-medication led to their discharge; less than 30 days after the attack the applicant attempted suicide. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends during a psychiatric debriefing, they were recommended for a medical discharge, but they did not receive the assistance they required. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. Army Regulation 635-200, in pertinent part, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends seeking treatment from the VA for their mental health. 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.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board 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 a review of the available information reflects the applicant has a BH condition that partially mitigates his misconduct as outlined in the BoS. The applicant is 70 percent SC for PTSD and as there is a nexus between PTSD and abuse of substances to self-medicate and, PTSD and problems with authority, and PTSD with sleep problems, the applicant's misconduct characterized by disobeying a direct order, wrongfully consuming sum amount of alcohol, and sleeping while posted on lookout are mitigated. However, misconduct characterized by FTR and wrongful use of cocaine in 2003 are not mitigated given the misconduct occurred prior to the purported trauma. His misconduct characterized by providing a false official statement is also not mitigated as the misconduct is not natural sequela of PTSD.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's VA service connected PTSD outweighed the following parts of the basis of separation: AWOL – failure to wear proper military uniform while driving a military vehicle; violating General Order #1 by wrongfully consuming some amount of alcohol; disobeying a commissioned officer by not wearing OTV and Kevlar while on duty at an OP; and sleeping while posted as a lookout at an OP. However, the following parts of the basis for separation are not outweighed by the applicant's PTSD: making a false official statement; wrongfully using cocaine; and FTR (26 0630 November 2003).

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board considered this contention and determined the applicant's PTSD did not fully outweigh the applicant's discharge as the applicant's PTSD did not mitigate the applicant's making a false official statement, wrongful use of cocaine and FTR 26 NOV 2003 basis for separation.

(2) The applicant contends they were not given the support they required to cope with the tragedy by their chain of command. The applicant claims their attempt at self-medication led to their discharge. The Board considered this contention and determined the applicant's BH condition of PTSD partially mitigates the applicant's basis for separation. The applicant's claim of self-medication by wrongfully using cocaine is not mitigated by the applicant's PTSD as it occurred prior to the trauma event.

(3) The applicant contends during a psychiatric debriefing, they were recommended for a medical discharge, but they did not receive the assistance they required. The Board considered this contention and determined 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

(4) The applicant contends seeking treatment from the VA for their mental health. The Board liberally considered all of the applicant's medical conditions but found those potentially mitigating behavioral health conditions did not outweigh the basis for applicant's 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 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 PTSD did not excuse or mitigate the offenses making a false official statement, wrongful use of cocaine and FTR 26 NOV 2003. 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001040

- 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:

11/13/2024

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