

**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, the commander did not try to rehabilitate or provide the applicant with another opportunity. The applicant was seen by a doctor for a mental health evaluation, which indicated there was no evidence of a mental disorder which would require disposition through medical channels, and the doctor further opined the applicant had the mental capacity to understand and participate in proceeding and was mentally responsible. However, on 8 August 2008, the applicant was diagnosed with post-traumatic stress disorder (PTSD) by the VA, with a 50 percent disability.

b. **Board Type and Decision:** In a records review conducted on 18 July 2024, and by a 4-1 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 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 16 February 2005

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 15 December 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 19 October 2004, 13 October 2004, 23 September 2004, 17 September 2004, 9 September 2004 and 1 September 2004, the applicant failed to report for work. On 14 November 2004, the applicant recklessly operated a vehicle at a high rate of speed while under the influence of alcohol.

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

(4) **Legal Consultation Date:** 25 January 2005

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

**(6) Separation Decision Date / Characterization:** undated / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 4 January 2001 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 22 / High School Graduate / 96
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 14S10, Avenger Crewmember / 4 years, 1 month, 13 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Korea, SWA / Iraq (25 April 2003 – 11 July 2004)
- f. **Awards and Decorations:** ARCOM, AAM, NDSM, GWOTEM, GWOTSM, ASR, OSR, KDSM
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 14 November 2004, reflects the applicant was charged with reckless operation of a vehicle; exhibition of speed (racing of a public road); aggravated flight from an officer; operating a vehicle while intoxicated. The applicant's previous offense reflects the applicant went AWOL on 22 November 2002 and surrendered to military/civilian authorities on 22 November 2002, and was charged with an unregistered weapon on 24 August 2004.

General Officer Memorandum Of Reprimand, 16 November 2004, reflects on 14 November 2004, a Military Police Officer observed the applicant operating a vehicle in a reckless manner and speeding (62 MPH in a 35 MPH zone). A traffic stop was attempted, but the applicant fled at a high rate of speed, refusing to stop. The vehicle finally came to a stop, and the officer detected an odor of an alcoholic beverage emitting from the applicant's breath. Thereafter, the applicant performed poorly on a field sobriety test, and a chemical test for intoxication indicated a blood alcohol content of .122g/100ml.

CG Article 15, 16 November 2004, on six occasions between 1 September and 19 October 2004, without authority, fail to go at the time prescribed to their appointed place of duty. The punishment phase is NIF.

Memorandum for Commander, undated, reflects the applicant on 19 October 2004; 13 October 2004; 23 September 2004, 17 September 2004, 9 September 2004 and 1 September 2004, the applicant failed to report to work. On 14 November 2004, the applicant recklessly operated a vehicle at a high rate of speed while under the influence of alcohol. The applicant was recommended for an under other than honorable discharge.

Numerous Developmental Counseling Forms, for reporting late to formation; failing to shave; insubordination; lost identification card; and leaving from appointed place of duty without authority.

- i. **Lost Time / Mode of Return:** AWOL for 1 day, 22 November 2002. This period is not annotated on the DD Form 214 block 29.

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

**(1) Applicant provided:** Department of Veterans Affairs Rating Decision, 1 May 2009, reflects an evaluation of 50 percent with a medical diagnosis.

Department of Veterans Affairs Rating Decision, 6 May 2009, reflects an evaluation of 70 percent with a medical diagnosis.

Department of Veterans Affairs Rating Decision, 7 February 2013, reflects an evaluation of 70 percent with a medical diagnosis.

**(2) AMHRR Listed:** Memorandum for Mental Health Evaluation, 8 November 2004, 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; Army Review Board Agency (ARBA) Memorandum For Record and ARBA Case Report and Directive (CRD); letter of support; three Department of Veterans Affairs Rating Decisions, 1 May 2009; 6 May 2009 and 7 February 2013.

**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 1-16, provides counseling and rehabilitative requirements, may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality, Soldier.

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

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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 the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the commander did not try to rehabilitate or provide the applicant with another opportunity. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. 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. Army Regulation 635-200, paragraph 1-16d(2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality, Soldier.

The applicant contends being seen by a doctor for a mental health evaluation, which indicated there was no evidence of a mental disorder which would require disposition through medical channels, and the doctor further opined the applicant had the mental capacity to understand and participate in proceeding and was mentally responsible. However, on 7 February 2013, the applicant was diagnosed with post-traumatic stress disorder (PTSD) by the VA, with a 70 percent disability. The applicant provided a third-party letter from their parent which described the applicant's change in behavior after returning from combat. The AMHRR includes a Memorandum for Mental Health Evaluation, 8 November 2004, 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. All the medical documents in the AMHRR were 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: Post Traumatic Stress Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed and service connected by the VA for Post Traumatic Stress Disorder. Service connection establishes that the applicant's Post Traumatic Stress Disorder existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed and service connected by the VA for PTSD which provides partial mitigation for the basis of separation. Given the nexus between PTSD and avoidance, the applicant's PTSD mitigates the Failure to Report. And while PTSD typically mitigates driving under the influence of alcohol due to the nexus between PTSD and self-medicating with substances, this applicant's incident of driving under the influence of alcohol also includes drag racing another vehicle at excessive speed and fleeing from a police officer. Drag racing another vehicle at excessive speed and fleeing from a police officer reflect motivation and choice and therefore, are not mitigated by PTSD.

(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 although the applicant's PTSD mitigates the Failure to Report. And while PTSD typically mitigates driving under the influence of alcohol due to the nexus between PTSD and self-medicating with substances, this applicant's incident of driving under the influence of alcohol also includes drag racing another vehicle at excessive speed and fleeing from a police officer. Drag racing another vehicle at excessive

speed and fleeing from a police officer reflect motivation and choice and therefore, are not mitigated by PTSD.

**b. Response to Contention(s):**

(1) The applicant contends the narrative reason for the discharge needs changed. The Board liberally considered this contention but found an upgrade to Honorable is not supported by the evidence of record. The Honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of accept conduct and performance of duty or is otherwise meritorious that the nature of the misconduct, including the applicant's incident of driving under the influence of alcohol which included drag racing another vehicle at excessive speed and fleeing from a police officer, was not sufficiently meritorious to warrant an honorable discharge.

(2) The applicant contends the commander did not try to rehabilitate or provide the applicant with another opportunity. The Board liberally considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(3) The applicant contends being seen by a doctor for a mental health evaluation, which indicated there was no evidence of a mental disorder which would require disposition through medical channels, and the doctor further opined the applicant had the mental capacity to understand and participate in proceeding and was mentally responsible. However, on 8 August 2008, the applicant was diagnosed with post-traumatic stress disorder (PTSD) by the VA, with a 50 percent disability. The Board liberally considered this contention and determined that the criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. After liberally considering all the evidence, including the VA determination, the Board found that the applicant had unmitigated 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 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, and although the applicant is service connected for PTSD by the VA which provides partial mitigation for the basis of separation. Given the nexus between PTSD and avoidance, the applicant's PTSD mitigates the Failure to Report. And while PTSD typically mitigates driving under the influence of alcohol due to the nexus between PTSD and self-medicating with substances, this applicant's incident of driving under the influence of alcohol also includes drag racing another vehicle at excessive speed and fleeing from a police officer. Drag racing another vehicle at excessive speed and fleeing from a police officer reflect motivation and choice and therefore, are not mitigated by PTSD. The Board also considered the applicant's contention regarding the applicant's contention that the commander did not try to rehabilitate or provide the applicant with another opportunity and found that totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001050**

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:**

7/26/2024

**X**

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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