

**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 administrative separation board did not consider the applicant's chain of command recommendation for a General (under Honorable conditions) discharge with no further action; the applicant's civil conviction was a misdemeanor and not a felony offense. The applicant received their second Army Good Conduct Medal (AGCM); they reenlisted during this period; served in combat, and had a related an injury/illness; they were pending a Medical Evaluation Board (MEB) at the time of chapter proceedings and promoted to sergeant. The applicant had prior periods of honorable service and their post-traumatic stress disorder (PTSD) may have contributed to their misdemeanor offense. If the applicant had not been found guilty of a misdemeanor in civil court, they would have been medically retired through MEB processes with full retiree benefits. The applicant requests their rank be changed from E-1 to E-5 and Veteran's benefits.

b. **Board Type and Decision:** In a records review conducted on 18 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 (Civil Conviction) / AR 635-200, Chapter 14, Sec II / JKB / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 25 February 2011

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file. However, the applicant provided a document which is described below in 3c (6).

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** NIF

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

**(6) Separation Decision Date / Characterization:** 1 September 2010 / General  
(Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 16 April 2009 / 6 years

**b. Age at Enlistment / Education / GT Score:** 44 / High School Graduate / NIF

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 88M20, Motor Transport  
Operator / 13 years, 10 months, 27 days

**d. Prior Service / Characterizations:** RA, 22 July 1982 – 2 October 1986 / GD  
(Break in Service)  
ARNG, 24 March 1990 – 30 April 1992 / NA  
AD, 1 May 1992 – 9 May 1992 / HD  
ARNG, 10 May 1992 – 26 August 1993 / UNC  
(Break in Service)  
ARNG, 19 August 2005 – 29 April 2006 / NA  
AD, 30 April 2006 – 25 July 2007 / HD

**e. Overseas Service / Combat Service:** Germany, SWA / Iraq (21 August 2007 –  
1 December 2008)

**f. Awards and Decorations:** AAM-2, AGCM-2, NDSM-BS, GWOTSM, ICM-CS,  
NCOPDR, ASR, OSR-2, AFRMMD, CAB

**g. Performance Ratings:** 1 November 2008 – 31 October 2009 / Fully Capable  
1 November 2009 – 31 October 2010 / Marginal  
1 November 2010 – 18 February 2011 / Marginal

**h. Disciplinary Action(s) / Evidentiary Record:** Physical Evaluation Board (PEB)  
17 September 2008, reflects the applicant had been found fit for duty.

Orders 054-0022, 23 February 2011, reflect the applicant was to be reassigned to the U.S.  
Army Transition Point and discharged on 25 February 2011, from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the  
applicant had completed the first full term of service. The applicant was discharged under the  
authority of AR 635-200, paragraph 14 SEC II, with a narrative reason of Misconduct (Civil  
Conviction). The DD Form 214 was not authenticated with the applicant's electronic signature.

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

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

**(1) Applicant provided:** Third-party letter, 7 July 2015, reflects the applicant was  
evaluated on 15 December 2015, which included a medical diagnosis.

**(2) AMHRR Listed:** None

*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:** Three DD Forms 214; two DD Forms 293; two letters of support; separation authority memorandum; Permanent Order 017-041; Honorable Discharge Certificate; Orders 294-95; VA problems list.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

**a.** Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

**b.** Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

**(1)** Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

**(2)** Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases

in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

**c.** Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

**d.** Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

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

**(2)** Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

**(3)** Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

**(4)** Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

**(5)** Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

**(6)** Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. 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: 1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended; 2) 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; Initiation of separation action is not mandatory. Although the conditions established in a (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate

action. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction.

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 "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, section II, misconduct (civil conviction).

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's Army Military Human Resources Record (AMHRR) includes partial facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, SEC II, by reason of Misconduct (Civil Conviction), with a characterization of service of general (under honorable conditions).

The applicant contends their post-traumatic stress disorder (PTSD) may have contributed to the misdemeanor offense. The applicant provided a third-party letter, 7 July 2015, reflecting the applicant was evaluated on 15 December 2015, and included a medical diagnosis. The AMHRR is void of a mental status evaluation.

The applicant contends the civil conviction was a misdemeanor and not a felony offense. Army Regulation 635-200, Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken tantamount to a finding of guilty, if a punitive discharge authorized for the same or a closely related offense under the Manual for Courts Martial or the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation. A Soldier convicted by a civil court will be reduced or considered for reduction.

The applicant contends if they had not been found guilty of a misdemeanor in civil court, they would have been medically retired through MEB processes with full retiree benefits. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits 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 requests their rank be changed from E-1 to E-5. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The third-party statements provided with the application reflect the applicant was undergoing an MEB and requesting the applicant be separated from the Army through the MEB process.

#### **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, Obsessive Compulsive Disorder, Acute Stress Disorder, Anxiety Disorder NOS, Adjustment Disorder with Anxiety and Depressed Mood, Depression, Dysthymic Disorder, MDD.

**(2)** Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant 50% Service Connected (SC) for PTSD.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor could not opine, even with liberal consideration of all the evidence, whether or not the applicant's service related PTSD, or other medical condition is a mitigating factor for the applicant's basis for separation without knowing the actual basis of separation.

**(4)** Does the condition or experience outweigh the discharge? **N/A.**

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

**(1)** The applicant contends their post-traumatic stress disorder (PTSD) may have contributed to their misdemeanor offense. While Board acknowledges the PTSD diagnosis, from the records and available evidence the Board was unable to determine whether the applicant's PTSD actually outweighed the applicant's discharge without the Board Medical Advisor determination on medical mitigation. Without knowing the facts and circumstances relating to the applicant's discharge, the Board is unable to determine if the applicant's PTSD outweighs the applicant's discharge.

**(2)** The applicant contends the civil conviction was a misdemeanor and not a felony offense. The Board considered this contention and determined the Board could not determine whether the applicant's contention outweighs the discharge without knowing the basis for separation.

(3) The applicant contends good service, including a combat tour. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record. However,

(4) 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.

(5) The applicant contends if they had not been found guilty of a misdemeanor in civil court, they would have been medically retired through MEB process with full retiree benefits and requests their rank be changed from E-1 to E-5. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

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 PTSD, Obsessive Compulsive Disorder, Acute Stress Disorder, Anxiety Disorder NOS, Adjustment Disorder with Anxiety and Depressed Mood, Depression, Dysthymic Disorder, and MDD did not excuse or mitigate the applicant's discharge due to an unknown basis for separation. 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.

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001056

## 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:

10/8/2024

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