

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 the under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, having served honorably in the military from 2006 to 2012, and never had problems prior to the discharge; the discharge was unjustified. Shortly after serving in combat in Iraq from 2007 to 2009, the applicant began experiencing post-deployment concerns such as depression, anger issues, and family problems. When the applicant approached an unmarked open area which served as a private fire range, the applicant was charged with a felony crime and petty theft for carrying a firearm and some empty brass found on the ground. The owner of the fire range opted to press charges despite the applicant's apology for trespassing and promising to pay for the mistake. The applicant received no UCMJ action, but a separation counseling statement. At the time of the separation, the applicant was suffering from a severe depression, anxiety, and a possible TBI, which were not considered. The applicant received no negative statements throughout the career, but received three Army Commendation Medals, two Army Achievement Medals, and two Army Good Conduct Medals, Combat Infantry Badge, National Defense Service Medal, Global War on Terrorism Medal, and Iraq Campaign Medal with two Campaign Stars. The applicant felt betrayed and fell into depression and anxiety, and had vocational, medical, and family problems. The applicant was diagnosed with a Severe Anxiety Disorder and PTSD by the Department of Veterans Affairs. The applicant began receiving assistance, started college, and began the process of reuniting with the family. Currently, the applicant is attending college and attempting to improve their life; nevertheless, the lack of an honorable discharge would have a significant impact on the future, particularly after completing the education phase and when applying for employment. The applicant desires reconsideration of the case and admits to making a mistake. The applicant served the country with integrity and respect and should be given the opportunity to earn the discharge the applicant deserves. The applicant sought help for the problems produced by being in combat. The applicant is currently attempting to live their life of a responsible and honorable citizen.

b. **Board Type and Decision:** In a records review conducted on 9 May 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. *Please see Section 9 of this document for more detail regarding the Board's decision.*

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 9 May 2012

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 29 March 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons:

On 20 January 2012, the applicant was charged with burglary and larceny in the first degree.

On December 2011, the applicant provided a false statement to a law enforcement officer.

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

(4) **Legal Consultation Date:** 5 April 2012

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

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

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 5 October 2009 / 3 years

b. **Age at Enlistment / Education / GT Score:** 21 / High School Graduate / 87

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 5 years, 10 months, 10 days

d. **Prior Service / Characterizations:** RA, 30 June 2006 – 4 October 2009 / HD

e. **Overseas Service / Combat Service:** Germany, SWA / Iraq (1 April 2008 – 27 May 2009)

f. **Awards and Decorations:** ICM-2CS, ARCOM-3, AAM-2, MUC, AGCM-2, NDSM, GWOTSM, ASR, OSR-2, CIB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Two Developmental Counseling Forms for being arrested and detained by county police for removing spent shell casings from a gun range and administrative separation.

Florida Traffic Citations, 3 December 2011, reflect the applicant was charged with providing false information at crash scene requiring court appearance and careless driving.

Alcohol and Drug Abuse Prevention and Treatment (ADAPT) memorandum, 15 December 2011, indicates the applicant successfully completed the ADAPT program.

Eglin Mental Health Flight memorandum, 19 December 2011, verifies the applicant with the spouse were seeking individual and marital therapeutic services at the Family Advocacy, Mental Health Clinic and were assessed on 12 and 13 December 2011.

Okaloosa County Sheriff's Office Arrest Report, 20 January 2012, reflects the applicant was arrested for one count of felony, first degree and one count misdemeanor, first degree and scheduled to return to the Crestview Courthouse, Circuit Court: Felony, on 21 February 2012.

Florida Okaloosa County Circuit Court Plea and Sentencing Agreement reflects the applicant was charged with Count 1: Burglary, Unoccupied Structure and Count 2: Petty Theft. The sentence agreed upon were: Count 1, 36 months of probation "COS" waived, 50 hours community service, perform job searches, and to not sell unowned scrap metal; and Count, 12 months of probation "COS" waived, concurrent.

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

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

(1) Applicant provided: Arecibo Vet Center letter, 24 September 2014, reflects the applicant had been receiving treatment for PTSD and other readjustment issues.

San Juan VAMC Progress Notes, 20 December 2013, reflect diagnostic impression: Cannabis induced anxiety disorder, psychotic disorder, and disorder, and unspecified Depressive disorder; 2 April 2015, reflect diagnoses as "309.81 PTSD" and "311 Unspecified Depressive Disorder"; 31 March 2015, reflect a DSM-5 diagnosis as "300.09 Other Specified Anxiety Disorder"; and 15 June 2015, reflect diagnoses of 309.81 Posttraumatic Stress Disorder, and 311 Unspecified Depressive Disorder.

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), undated, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was diagnosed with an Adjustment Disorder with Depressed Mood.

Report of Medical Examination, 25 January 2012, the examining medical physician noted the applicant's diagnosis of Depression in the Medical Condition/Diagnosis section, and further notes in the Summary of Defects and Diagnoses section.

Report of Medical History, 6 February 2012, the applicant noted behavioral health issues and the examining medical physician noted the applicant's medical conditions in the comments section.

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 293; DD Form 214; and Arecibo Vet Center letter. Additional Evidence: Progress Notes and medical record.

6. POST SERVICE ACCOMPLISHMENTS: The applicant states having sought and receiving treatment, attending college, and attempting to improve the life and reuniting with the family.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(7) 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.

(8) 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 contends serving honorably in the military from 2006 to 2012 and never having any problems prior to the discharge, including receiving several awards and serving a combat tour.

The applicant contends being diagnosed with a Severe Anxiety Disorder and PTSD by the VA and experiencing post-deployment concerns such as depression, anger issues, and family problems, including suffering from a severe depression, anxiety, and a possible TBI when separated. The applicant provided several medical documents indicating behavioral health diagnoses and treatments. The applicant's AMHRR contains documentation which supports an in-service diagnosis of an adjustment disorder with depressed mood. The record shows the applicant underwent a behavioral health evaluation (BHE), which indicates the applicant was mentally responsible and was able to recognize right from wrong. The BHE was considered by the separation authority.

The applicant contends having family problems after returning from a combat tour. The applicant's AMHRR reflects the applicant having sought assistance for individual and marital therapeutic services at the Family Advocacy, Mental Health Clinic.

The applicant contends the discharge was unjustified because of not receiving a UCMJ action but a counseling statement for the felony crime and petty theft which were the basis for the separation and having served the country with integrity and respect, and never receiving any negative counseling statements during the service. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends seeking and receiving treatment, attending college, and attempting to improve the life and reuniting with the family. 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: Adjustment Disorder, Major Depression, IPV, Unspecified Anxiety Disorder, PTSD. Additionally, the

applicant asserts TBI, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Major Depression and there is evidence of IPV. The applicant is diagnosed and service connected by the VA for Unspecified Anxiety Disorder related to combat, and the VA has also diagnosed the applicant with PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is no natural sequela between an Adjustment Disorder, Major Depression, IPV, Unspecified Anxiety Disorder, or PTSD and being charged with burglary and larceny or making a false statement to a law enforcement officer. None of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant also asserts a possible TBI during military service, which is not substantiated by any medical documentation. Furthermore, a TBI has no natural sequela between burglary, larceny, or making a false statement. On the contrary, the medical record clearly documents the applicant's own admission that the misconduct was premeditated, conscious, and deliberate, so there is no mitigation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Major Depression, Intimate Partner Violence victimization, Unspecified Anxiety Disorder, and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offenses of burglary, larceny, and making a false official statement.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with a Severe Anxiety Disorder and PTSD by the VA and experiencing post-deployment concerns such as depression, anger issues, and family problems, including suffering from a severe depression, anxiety, and a possible TBI when separated. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Major Depression, Intimate Partner Violence victimization, Unspecified Anxiety Disorder, and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offenses of burglary, larceny, and making a false official statement.

(2) The applicant contends serving honorably in the military from 2006 to 2012 and never having any problems prior to the discharge, including receiving several awards and serving a combat tour. The Board considered the totality of the applicant's record, including almost six years of service and a combat tour in Iraq, but determined that the applicant's record does not outweigh the applicant's medically unmitigated offenses of burglary, larceny, and making a false official statement.

(3) The applicant contends having family problems after returning from a combat tour. The Board considered this contention but determined that the applicant's family problems do not mitigate the applicant's medically unmitigated offenses of burglary, larceny, and making a false official statement as the Army affords many avenues to Soldiers including seeking separation for hardship.

(4) The applicant contends the discharge was unjustified because of not receiving a UCMJ action but a counseling statement for the felony crime and petty theft which were the

basis for the separation and having served the country with integrity and respect, and never receiving any negative counseling statements during the service. The Board considered this contention but determined that the applicant's medically unmitigated offenses amounted to the commission of a serious offense. Therefore, the administrative separation was proper and equitable.

(5) The applicant contends seeking and receiving treatment, attending college, and attempting to improve the life and reuniting with the family. The Board considered the applicant's post-service accomplishments but determined that they do not outweigh the applicant's medically unmitigated misconduct.

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 Adjustment Disorder, Major Depression, Intimate Partner Violence victimization, Unspecified Anxiety Disorder, and Post Traumatic Stress Disorder did not outweigh the medically unmitigated offenses of burglary, larceny, and making a false official statement. The Board also considered the applicant's contentions regarding good service and post-service accomplishments and found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

6/11/2024

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