

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

The applicant seeks relief contending, in effect, after serving honorably twice in Iraq, and the first combat tour in 2006, the applicant developed PTSD. The mental state being compromised, it led to a general (under honorable conditions) discharge. The applicant is receiving therapy for the PTSD, which was not diagnosed until after the discharge. An upgrade to honorable would let the applicant use the GI Bill to further the education and live a normal civilian life with a solid career. Following the 2008 combat tour in Iraq and around the end of five years of military service, the PTSD symptoms became prevalent, which led to the discharge. The PTSD is currently rated as a 70 percent service-connected disability.

b. **Board Type and Decision:** In a records review conducted on 14 March 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:** 14 January 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 1 December 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 7 November 2008, at COB Adder, Iraq, the applicant:

violated a lawful general order, to wit: paragraph 3c, General Order No. 1, 14 February 2008, by wrongfully consuming alcohol;

assaulted SPC C. G. by wrongfully grabbing SPC C. G.; and

wrongfully and recklessly engaged in conduct, to wit: locking and loading the weapon, conduct likely to cause death or grievous bodily harm to SPC C. G. and SGT M. R. W.

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

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

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

(6) **Separation Decision Date / Characterization:** 12 December 2008 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 29 January 2004 / 5 years (NIF) / The AMHRR is void of an enlistment contract; however, ERB, 15 October 2007, reflects an ETS date: 28 January 2009.

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 102

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 13B20, Cannon Crewmember / 4 years, 10 months, 17 days

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

e. **Overseas Service / Combat Service:** SWA / Iraq (12 December 2005 – 30 November 2006; 29 January 2008 – 3 January 2009)

f. **Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM-CS, ASR, OSR-2, CAB

g. **Performance Ratings:** None

h. **Disciplinary Action(s) / Evidentiary Record:** Seven Developmental Counseling Forms for various acts of misconduct.

Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Enrollment form, undated, reflects the applicant was command-referred into the program.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 1 August 2005, and
From AWOL to PDY, effective 29 August 2005.

Charge Sheet reflects on 12 October 2005, the following Charge was preferred and referred to a Summary Court-Martial: The Charge, Violation of the UCMJ, Article 86, for the applicant, without authority absented oneself from the unit on 1 August 2005 and remained absent until 29 August 2005.

Military Police Report, 11 October 2007, reflects the applicant was apprehended for: Drunken Driving Under the Influence of Alcohol (on post).

General Officer Memorandum Of Reprimand, 18 October 2007, reflects the applicant was driving under the influence of alcohol. After being stopped for driving left of center and a strong odor emitting from the applicant on 11 October 2007, a breath sample indicated a BAC of .19 percent.

Military Police Report, 7 November 2008, reflects the applicant was apprehended for: Assault Consummated by a Battery, Conduct Unbecoming a Member of the Military Service – Drunk and Disorderly (on post).

FG Article 15, 21 November 2008, for violating a general regulation by consuming alcohol on 7 November 2008; assault by wrongfully grabbing SPC C. G. on 7 November 2008; and wrongfully and recklessly engaging in a conduct likely to produce bodily harm to SPC C. G. and SGT M. R. W. on 7 November 2008. The punishment consisted of a reduction to E-4; forfeiture of \$1,023 pay per month for two months; and extra duty for 45 days.

i. Lost Time / Mode of Return: 29 days (AWOL, 1 August 2005 – 29 August 2005) / Surrendered to Military Authorities

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs disability rating decision, 10 September 2012, reflecting the applicant was rated 70 percent disabled.

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), 8 November 2008, 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 cleared for any administrative actions deemed appropriate by command.

Report of Medical History, 25 November 2008, 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 and VA letter.

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 14-2c, 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.

(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 contends serving honorably, including two combat tours.

The applicant contends developing PTSD after the first combat tour in 2006, and is currently receiving therapy for the PTSD, which was not diagnosed until after the discharge. The applicant provided a VA letter indicating a diagnosis. The applicant's AMHRR shows the applicant underwent a behavioral health evaluation (BHE) on 8 November 2008, which indicates the applicant was mentally responsible and recognized right from wrong. The BHE does not indicate any diagnosis.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veterans' benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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 contends an upgrade would provide for normal living as a civilian and a solid career. The Board does not grant relief to gain employment or enhance employment opportunities.

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: Generalized Anxiety Disorder, Alcohol Dependence, PTSD.

(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 Generalized Anxiety Disorder and is diagnosed and service connected by the VA for combat-related PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of BH conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with Generalized Anxiety Disorder and is diagnosed and service connected by the VA for combat-related PTSD. Given the nexus between PTSD and self-medicating with substances, the wrongful use of alcohol while in Iraq is mitigated. While the Board may wish to consider that the applicant was intoxicated at the time of the remaining misconduct that led to separation, there is no evidence to suggest that the applicant's PTSD directly contributed to the assault or locking and loading a weapon, which appears to have been related to the applicant's long-standing anger management difficulties that preceded military service. Also, there is no natural sequela between Generalized Anxiety Disorder and perpetrating assault or locking and loading a weapon. Therefore, this misconduct is not mitigated.

(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 applicant's PTSD partially outweighed the alcohol use while deployed; however, the applicant's adjustment disorder and PTSD did not outweigh the applicant's remaining misconduct of assault and locking/loading a weapon with intent to cause harm basis for separation.

b. Response to Contention(s):

(1) The applicant contends serving honorably, including two combat tours. The Board considered the applicant's 4 years of service, including 2 combat tours in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's assault and locking/loading a weapon with intent to cause harm.

(2) The applicant contends developing PTSD after the first combat tour in 2006, and is currently receiving therapy for the PTSD, which was not diagnosed until after the discharge. The Board considered this contention and determined the applicant's PTSD mitigates the applicant's alcohol use while deployed, however the applicant's PTSD and Adjustment disorder do not mitigate or excuse the remaining misconduct of assault and locking/loading a weapon with intent to cause harm basis for separation.

(3) The applicant contends an upgrade would allow educational benefits through the GI Bill. 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.

(4) The applicant contends an upgrade would provide for normal living as a civilian and a solid career. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

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 Generalized Anxiety Disorder, Alcohol Dependence, and PTSD did not excuse or mitigate the offenses of assault and locking/loading a weapon with intent to cause harm. 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:

5/2/2024

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