

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, making several mistakes which significantly hurt the applicant's case. The evidence against the applicant at the separation board was insufficient and based on hearsay and an incomplete police report. A state court exonerated the applicant of the allegations. The applicant's former first sergeant provided new evidence which is exculpatory for the applicant. The basis for the discharge were allegations the applicant assaulted A., and participated in a criminal activity associated with a street gang, and had fled the scene of the crime. The applicant requests the following, retirement in the rank of E-7; in the alternative and if necessary, constructive service credit sufficient to allow for retirement; all back pay and allowances and the return of their property in the possession of CID.

b. **Board Type and Decision:** In a records review conducted on 4 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 (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 2 March 2012

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 August 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 25 April 2011, the applicant assaulted, A., participated in criminal activity associated with a street gang, and fled the scene of a crime.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 10 August 2011

**(5) Administrative Separation Board:** On 30 August 2011, the applicant was notified to appear before an administrative separation board and advised of rights.

On 27 September 2011, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the reasons listed in the notification memorandum were supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of under other than honorable condition.

On 8 February 2012, the separation authority approved the findings and recommendations of the administrative separation board.

**(6) Separation Decision Date / Characterization:** 8 February 2012 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 8 April 2005 / Indefinite

b. **Age at Enlistment / Education / GT Score:** 33 / some college / 108

c. **Highest Grade Achieved / MOS / Total Service:** E-7 / 91X40, Maintenance Supervisor / 20 years, 29 days

d. **Prior Service / Characterizations:** RA, 13 August 1991 – 26 December 1995 / HD  
RA, 27 December 1995 – 17 March 1998 / HD  
RA, 18 March 1998 – 21 March 2000 / HD  
RA, 22 March 2000 – 26 March 2003 / HD  
RA, 27 March 2003 – 7 April 2005 / HD

e. **Overseas Service / Combat Service:** Hawaii, Korea, SWA / Iraq (18 January 2005 – 9 January 2006; 15 October 2007 – 6 January 2009)

f. **Awards and Decorations:** BSM, ARCOM-6, JSAM, AAM-7, AGCM-6, NDSM-BS, AFEM, GWOTEM, GWOTSM, KDSM, HSM, ICM-CS, NCOPDR-3, ASR, OSR-4, KCM-BS, NATOMDL, CAB

g. **Performance Ratings:** October 2004 – 31 December 2006 / Among the Best  
1 January 2007 – 31 May 2009 / Among the Best  
1 June 2009 – 31 May 2010 / Among the Best  
1 June 2010 – 28 February 2011 / Among the Best.

h. **Disciplinary Action(s) / Evidentiary Record:** Barstow Police Department report and a CID report, 25 and 26 April 2011, reflects the applicant was charged with attempted murder.

Personnel Action forms, reflect the applicant's duty status changed as follows from PDY to CCA, effective 25 April 2011.

The applicant provided a letter from First Sergeant (1SG) H., undated, which reflects they met in the summer of 2009. They both had Harley Davidson motorcycles in common and would go riding together. Around December 2010, the 1SG introduced the applicant to CPT M., after a period CPT M., asked them to join their motorcycle club. Once the applicant found out what the club was about, the applicant turned in their vest and wanted nothing to do with the club. The

1SG states the patches found at the applicant's house did not belong to the applicant. They belong to the 1SG and another member. The 1SG states if they were not deployed at the time they would have testified on the applicant's behalf.

**i. Lost Time / Mode of Return:** 5 months, 20 days (CCA, 25 April 2011 – 15 October 2011) / Released from Confinement

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Mental Status Evaluation Report, 14 December 2011 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. The command was advised to consider the influence of these conditions. The evaluation included a diagnosis.

Report of Medical History, 14 December 2011, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a diagnosis.

Report of Medical Examination, 14 December 2011, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a diagnosis.

*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:** Online application; lawyers brief; self-authored letter; separation file; 24 letters of support.

**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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(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 waivable and nonwaivable 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 waivable. 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 under other than 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 making several mistakes which significantly hurt the applicant's case. The evidence against the applicant at the separation board was insufficient and based on hearsay and an incomplete police report. A state court exonerated the applicant of the allegations. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends their former first sergeant provided new evidence which is exculpatory for the applicant. The applicant provided a letter from 1SG H., undated, which reflects meeting the applicant in the summer of 2009. They both had Harley Davidson motorcycles in common and would go riding together. Around December 2010, the 1SG introduced the applicant to CPT M., after a period CPT M., asked them to join their motorcycle club. Once the applicant found out what the club was about, the applicant turned in their vest and wanted nothing to do with the club. The 1SG states the patches found at the applicant's house did not belong to the applicant. They belonged to the 1SG and another member. The 1SG states if they had not been deployed at the time, they would have testified on the applicant's behalf. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant requests the following, retirement in the rank of E-7; in the alternative and if necessary, constructive service credit sufficient to allow for retirement; all back pay and allowances; and a return their property in the possession of CID. The applicant's requests do 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 applicant contends good service, including two combat tours. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The third-party statements provided with the application reflect the applicant's hard work and dedication to the Army.

The AMHRR includes a Report of Medical Assessment, 5 December 2011, wherein the examining medical physician noted the applicant's medical conditions in the comments section and included a diagnosis. A Report of Mental Status Evaluation, 14 December 2011, 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. The command was advised to consider the influence of these conditions. The evaluation included a diagnosis. Also, a Report of Medical History, and Examination, 14 December 2011, the examining medical physician noted the applicant's medical conditions in the comments section and included a diagnosis. 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 found that, based on the Board's Medical Advisor's opine, a review of the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, Depressive Disorder, Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that, based on the Board's Medical Advisor's opine, the applicant is 50 percent SC for 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 the applicant's behavioral health conditions do not mitigate the misconduct. The applicant's misconduct is not mitigated by any of the three above diagnoses because participating in criminal activity associated with a gang, and fleeing the scene of a crime are not natural sequela to either PTSD Depressive Disorder, or Anxiety Disorder. As such no medical mitigation can be offered.

(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 Post Traumatic Stress Disorder, Depressive Disorder, and Anxiety Disorder outweighed the applicant's medically unmitigated offenses of participating in criminal activity associated with a gang, and fleeing the scene of a crime.

b. Response to Contention(s):

(1) The applicant contends making several mistakes which significantly hurt the applicant's case. The evidence against the applicant at the separation board was insufficient and based on hearsay and an incomplete police report. A state court exonerated the applicant of the allegations. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to outweigh the applicant's separation. The Board held that the Not Guilty finding at civilian trial does not preclude a preponderance finding at a separation board.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention but determined that the applicant's Misconduct (Serious Offense) narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of participating in criminal activity associated with a gang and fleeing the scene of a crime.

(3) The applicant contends a former First Sergeant provided new evidence which is exculpatory for the applicant. The Board considered the statement from the former 1SG regarding the possession of the patches in relation to the offenses of participating in criminal activity associated with a gang and fleeing the scene of a crime. However, based-on a majority of the information presented, it was evident that both the applicant and the 1SG were engaging in unlawful conduct.

(4) The applicant requests the following, retirement in the rank of E-7; in the alternative and if necessary, constructive service credit sufficient to allow for retirement; all back pay and allowances; and a return of their property in the possession of CID. The Board determined that the applicant's requests for retirement, back pay, and the return of property 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 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization

(5) The applicant contends good service, including two combat tours. The Board considered the totality of the applicant's record, including 18 years of service with two combat tours in Iraq and numerous awards received, but determined that the applicant's service does not outweigh the medically unmitigated offenses of participating in criminal activity associated with a gang, and fleeing the scene of a crime.

c. The Board determined that the discharge is, at this time, proper and equitable, considering 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 to all the evidence before the Board, the applicant's Post Traumatic Stress Disorder, Depressive Disorder, and Anxiety Disorder did not outweigh the applicant's medically unmitigated offenses of participating in criminal activity associated with a gang, and fleeing the scene of a crime. The Board also considered the applicant's contentions regarding good service, the finding of Not Guilty at a civilian trial, and an exculpatory statement from one of the involved individuals but 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or 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



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

**AR20210001226**

**d. Change RE Code to:** No Change

**e. Change Authority to:** No Change

**Authenticating Official:**

9/4/2024

**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