

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

The applicant seeks relief contending, in effect, the applicant would not be in civilian imprisonment if their physical or mental health conditions had received appropriate treatment. On 18 November 2011, the applicant attempted suicide, and inflicted harm on someone else. Except for this one unusual instance, the applicant served with distinction and planned to make the Army as a career.

b. **Board Type and Decision:** In a records review conducted on 29 February 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-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 19 March 2014

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 December 2013.

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was informed of the following reasons: The applicant was convicted of aggravated assault with a deadly weapon and received a sentence of more than six months in a civilian confinement facility.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions / The intermediate commander recommended a General (Under Honorable Conditions) discharge.

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

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

**(6) Separation Decision Date / Characterization:** 12 March 2014 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 8 December 2011 / 6 years

**b. Age at Enlistment / Education / GT Score:** 28 / GED / 95

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 92G10, Food Service Specialist / 6 years, 8 months, 29 days

**d. Prior Service / Characterizations:** RA, 16 July 2007 – 10 December 2008 / HD

**e. Overseas Service / Combat Service:** Korea / None

**f. Awards and Decorations:** AAM-4, AGCM, NDSM, GWOTSM, KDSM, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** General Officer Memorandum of Reprimand, 2 September 2010, reflects on the morning of 22 August 2010, the applicant was stopped at a checkpoint in Saint Robert. After being told several times to stop, the officer noticed the applicant's eyes were watery, bloodshot, and glassy. The applicant was administered a series of field sobriety tests which indicated impairment. The applicant submitted to a chemical breath test which indicated a blood alcohol content level of .152. The applicant was cited for driving while intoxicated.

Commander's Report, 12 March 2014, reflects a record of other disciplinary action, including non-judicial punishment: 23 September 2010, for failure to go to appointed place of duty. Punishment: Reduction to E-3; forfeiture of \$961 pay per month for two months; extra duty for 45 days; and restriction for 45 days.

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

From PDY to AWOL, effective 23 September 2010;  
From AWOL to PDY, effective 28 September 2010;  
From PDY to AWOL, effective 21 May 2011;  
From AWOL to DFR, effective 20 June 2011; and  
From DFR to CCA, effective 19 February 2013.

**i. Lost Time / Mode of Return:** 1 year, 1 month, 7 days:

AWOL, 23 September 2010 – 27 September 2010) / Apprehended by Civil Authorities  
CCA, 21 May 2011 – 19 March 2014 / Confined Civil Authorities

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

**(1) Applicant provided:** Copy of medical records, 6 October 2010, reflecting a medical diagnosis.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; two DD Forms 293; Power of Attorney; medical records;

**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 3-5c, 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 14-3, 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)** 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-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**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.

Army Regulation 635-200, paragraph 4-5 states a Soldier may be separated 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. At the time of the applicant's discharge, the applicant had been confined by civilian authorities for 2 years, 9 months and 26 days.

The applicant contends they would not be in civilian imprisonment if the applicant's physical or mental health conditions had received appropriate treatment. On 18 November 2011, the applicant attempted suicide, and inflicted harm on someone else. The applicant provided medical records 6 October 2010, reflecting a medical diagnosis. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command. The AMHRR is void of a medical diagnosis.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5c states there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends good service.

**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 determined that, based on the Board Medical Advisor opine and the applicant's official medical and service records, the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder and Major Depressive Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board determined that, based on the Board Medical Advisor opine and the applicant's official medical and service records, the applicant was diagnosed in service with an Adjustment Disorder and Major Depressive Disorder.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board applied liberal consideration and determined that, based on the Board Medical Advisor opine and the applicant's official medical and service records, the applicant's Adjustment Disorder and Major Depressive Disorder do not mitigate the applicant's civilian conviction for aggravated assault with a deadly weapon since neither condition is associated with violence or impacts the ability to distinguish between right and wrong and act in accordance with the right.

(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 Adjustment Disorder and Major Depressive Disorder do not outweigh the applicant's medically unmitigated civilian conviction for aggravated assault with a deadly weapon.

b. Response to Contention(s):

(1) The applicant contends the applicant would not be in civilian imprisonment if the applicant's physical or mental health conditions had received appropriate treatment. The Board considered this contention and determined the totality of the applicant's record, including the applicant's Adjustment Disorder and Major Depressive Disorder diagnoses do not outweigh the applicant's civilian conviction for aggravated assault with a deadly weapon because of the seriousness of the misconduct.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention and determined that the applicant's contention of an isolated incident does not mitigate or excuse the applicant's civilian conviction for aggravated assault with a deadly weapon due to the seriousness of the applicant's offense. The discharge is proper and equitable.

(3) The applicant contends good service. The Board considered the applicant's six years of service and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's civilian conviction for aggravated assault with a deadly weapon due to the seriousness of the applicant's offense.

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 of all the evidence before the Board, the applicant's Adjustment Disorder and Major Depressive Disorder did not excuse or mitigate the applicant's medically unmitigated civilian conviction for aggravated assault with a deadly weapon. The Board also considered the applicant's contention regarding the lack of appropriate treatment for physical and mental health conditions and found that totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the 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:**

5/23/2024

**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