

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

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

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

The applicant seeks relief contending, in effect, being rated 90 percent by the VA and the disabilities the applicant sustained while in the service caused many of the applicant's in service issues. The applicant served in Iraq from 2009 to 2010 and served five years in active duty as an Infantryman. The applicant believes the discharge should be upgraded because the incidents which the applicant had in the Army were after Iraq and related to the PTSD condition. The applicant sought help while serving on active duty and attended ASAP and Behavioral Health for a period. The applicant enjoyed being in the Army and reenlisted in 2011. The applicant had one Article 15 while serving for a failed drug test, which was an isolated incident; the applicant never made the same mistake twice and received help through ASAP. The applicant completed all the punishments from the incident, which was a learning experience for the applicant. The applicant continued to better oneself and show the chain of command they could be trusted to train and lead Soldiers. The applicant was discharged for a pattern of misconduct. The applicant had run-ins with law enforcement and received citations of trespassing and disorderly conduct which were the result of a domestic situation with the spouse. The applicant was struck by the spouse and was charged with disorderly conduct due to a false statement given to the police. The spouse later called the 1SG and District Attorney's office after the incident and confessed to lying and provided a letter in writing to the District Attorney's office; however, it was too late. The applicant has learned from the mistakes, which has made the applicant a better person. The applicant now has two children and wants to give them the life they deserve. The applicant wants to put the past behind them and provide the future the children deserve; however, the discharge is hindering the applicant's ability to secure better job opportunities. The applicant states it was an honor and a privilege to be able to serve this country with some of the best people they have ever known, and only regrets not being able to still do so.

b. **Board Type and Decision:** In a records review conducted on 15 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 17 June 2013

c. **Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 21 March 2013

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant was arrested on 12 March 2012 and charged with 2nd Degree Criminal Trespassing; again, on 11 February 2012 and charged with 4th Degree Criminal Mischief, and on 19 November for Domestic Violence.

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

**(4) Legal Consultation Date:** 2 April 2013

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

**(6) Separation Decision Date / Characterization:** 23 April 2013 / General (Under Honorable Conditions)

#### **4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 28 April 2011 / NIF / DD Form 4 for this period is not in the applicant's AMHRR.

**b. Age at Enlistment / Education / GT Score:** 23 / GED / 116

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 5 years, 1 month, 20 days

**d. Prior Service / Characterizations:** RA, 28 April 2008 – 27 April 2011 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (15 October 2009 – 27 June 2010)

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

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** MPR Number 00383-2012-MPC552, 11 February 2012, reflects the applicant was apprehended and charged with Criminal Mischief 4th Degree NYPL 145.00(1) (Civil) (Off Post).

MPR Number 00521-2012-MPC552, 13 March 2012, reflects the applicant was apprehended and charged with Criminal Trespassing in the 2nd Degree NYPL 140.15 (Civil) (Off Post).

MPR Number 02927-2012-MPC552, 19 November 2012, reflects the applicant was apprehended and charged with Strangulation 2nd degree NYPL 121.12 (Civil) (Off Post) and Spouse Abuse – Civilian Victim (Off Post).

Several Developmental Counseling Forms, for various acts of misconduct.

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

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

**(1) Applicant provided:** VA Rating Decision Letter, 21 January 2015, reflects the applicant was granted 70 percent service-connection and a combined service-connection evaluation of 90 percent.

**(2) AMHRR Listed:** Report of Medical Examination, 13 January 2010, the examining medical physician noted in the comments section the applicant's conditions.

Report of Medical History, 11 December 2012, the examining medical physician noted in the comments section the applicant's conditions.

Report of Mental Status Evaluation, 17 January 2013, 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; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The applicant received 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:** DD Form 293; DD Form 214; VA Benefit Letter.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has learned from their mistakes which has made them a better person. The applicant now has two children and would wants to give them the life they deserve.

**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) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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.

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.

The applicant contends good service, including a combat tour.

The applicant contends suffering from PTSD and sought help while serving on active duty and attended ASAP and Behavioral Health. The applicant provided VA Rating Decision Letter, 21 January 2015, reflecting the applicant was granted 70 percent service-connection. The applicant's AMHRR contains Report of Medical Examination, 13 January 2010, wherein the examining medical physician noted the applicant's medical condition. A Report of Medical History, 11 December 2012, also shows the examining medical physician noted the applicant's medical conditions. A Report of Mental Status Evaluation, 17 January 2013, 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; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The applicant received a diagnosis. The Report of Medical Examination, Report of Medical History, and Report of Mental Status Evaluation were considered by the separation authority.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, stipulates 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 family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant desires to rejoin the Military Service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant has learned from their mistakes which has made them a better person. The applicant now has two children and wants to give them the life they deserve. 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, Anxiety, Post Traumatic Stress Disorder.

(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 Anxiety. The applicant is also diagnosed and service connected by the VA for 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 the applicant's Adjustment Disorder, Anxiety, and PTSD partially mitigate the applicant's pattern of misconduct. Given the circumstances of the trespassing charge, specifically that the applicant was so intoxicated that the applicant believed the applicant was in the applicant's own home after a night of drinking, the PTSD likely contributed to the trespassing given the nexus with self-medicating with substances. Therefore, the arrest for criminal trespassing is mitigated. Alcohol was also involved during the applicant's arrest for criminal mischief, but this incident involved evidence of rational thought and motivation since the applicant confronted a homeowner and damaged property after seeing the applicant's children trying to obtain access to the home. The arrest for criminal mischief is not mitigated since PTSD, Anxiety, nor an Adjustment Disorder impact the ability to distinguish between right and wrong and act in accordance with the right. Finally, there is no natural sequela between PTSD, Anxiety, or an Adjustment Disorder and domestic violence since domestic violence involves a specific victim reflecting choice and motivation. Therefore, the domestic violence 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 available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety, Post Traumatic Stress Disorder outweighed the medically unmitigated criminal mischief and domestic violence offenses.

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

(1) The applicant contends suffering from PTSD and sought help while serving on active duty and attended ASAP and Behavioral Health. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety, Post Traumatic Stress Disorder outweighed the medically unmitigated criminal mischief and domestic violence offenses.

(2) The applicant contends good service, including a combat tour. The Board considered this contention, including the applicant's 5 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 criminal mischief and domestic violence.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but found multiple incidents of misconduct over a period of months, showing that the misconduct was not isolated.

(4) The applicant contends that the applicant was falsely accused of disorderly conduct after the applicant's spouse gave a false statement to police. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant was falsely accused.

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(6) The applicant contends wanting to rejoin the Military Service. The Board considered this contention but the applicant's current RE Code of RE-3 allows rejoining military service through the regulatory waiver process.

(7) The applicant has learned from mistakes which has made them a better person. The applicant now has two children and wants to give them the life they deserve. The Board considered the applicant's post-service accomplishments but determined that they do not outweigh the medically unmitigated offenses of criminal mischief and domestic violence.

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, Anxiety, Post Traumatic Stress Disorder did not outweigh the medically unmitigated offenses of criminal mischief and domestic violence. The Board also considered the applicant's contentions regarding good service and being falsely accused 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 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:**

4/5/2024

X

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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