

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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being a combat veteran who served honorably for three years in service to the country. The applicant made one bad choice in January 2013. The applicant has made drastic changes in their character as they have become a new parent, a mentor to troubled inner city youth and countless dedicated hours to coaching the game of basketball. The applicant has bettered oneself since their abrupt departure from the military. The applicant requests an upgrade to continue their education and raise their child without struggle and the child can look at the applicant as the hero the applicant once was. An upgrade would help the applicant better their career and allow them to receive the needed service-connected medical attention. The applicant has not been in trouble since being discharged and received multiple awards and recognition throughout their career.

b. **Board Type and Decision:** In a records review conducted on 28 March 2024, and by a 3-2 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:** 24 April 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 20 February 2013

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

Failed to report for duty between on or 6 October 2012 to on or about 16 January 2012;

On divers occasions, disrespectful to commissioned and noncommissioned officers;

Disobeyed orders of commissioned and noncommissioned officers on divers occasions; and,

Assaulted B. T. by stabbing them multiple times with a knife on or about 26 January 2013.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 27 February 2013 and 4 April 2013

(5) Administrative Separation Board: On 27 February 2013, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

On 20 March 2013, the applicant's conditional waiver was denied.

On 4 April 2013, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 8 April 2013 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 28 July 2010 / 3 years, 25 weeks

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 97

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 92F10, Petroleum Supply Specialist / 2 years, 7 months, 27 days

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

e. **Overseas Service / Combat Service:** SWA / Afghanistan (8 April 2011 – 27 July 2011)

f. **Awards and Decorations:** NDSM, ACM-2CS, GWOTSM, ASR, NATOMDL

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 13 December 2012, failed to go at the time prescribed to the appointed place of duty on or about 15 October 2012 and 16 October 2012; without authority and with intent to avoid field exercises, absent oneself from the place of duty on or about 6 October 2012 and 10 October 2012; was disrespectful in language toward SGT J. S. on or about 16 October 2012; willfully disobeyed a lawful order from 1SG G. B. on or about 12 October 2012; and disobeyed a lawful order from SGT J. S. on or about 11 October 2012. The punishment consisted of a reduction to E-1; forfeiture of \$758 pay per month for two months; extra duty for 45 days; and restriction for 60 days, suspended.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 17 December 2012;

From AWOL to PDY, effective 18 December 2012;

From Present for Duty (PDY) to Confined by Civilian Authority Authorities (CCA) effective 26 January 2013;

From CCA to PDY, effective 9 February 2013; and

From PDY to CCA, effective 9 April 2013.

Incident Report, 26 January 2013, reflects the applicant was being investigated for Aggravated Assault.

Arrest Warrant, 26 January 2013, reflects the applicant was being charged with Aggravated Assault and the bail was set at 25,000 dollars.

Several Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: 29 days:

AWOL, 17 December 2012 – 17 December 2012 / Returned to Military Control
CCA, 26 January 2013 – 8 February 2013 / Released from Confinement
CCA, 9 April 2013 – 24 April 2013 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 1 November 2012, 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 form reflects a diagnosis.

Report of Medical History, 20 November 2012, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Medical Examination, 20 November 2012, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation, 15 March 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 conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The form does not reflect 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 149; DD Form 214; three self-authored statements.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has made drastic changes in their character as they have become a new parent, a mentor to troubled inner city youth and countless dedicated hours to coaching the game of basketball. The applicant has bettered oneself since their abrupt departure from the military.

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 14-3 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 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 good service, including a combat tour. The applicant received multiple awards and recognition throughout their career. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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 contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits 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 has made drastic changes in their character as they have become a new parent, a mentor to troubled inner city youth and countless dedicated hours to coaching the game of basketball. The applicant has bettered oneself since their abrupt departure from the military. The third-party statements provided with the application reflects the applicant's good conduct since being discharged and speaks of how the applicant has turned their life around and the volunteer work the applicant has done. 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, Depressive Disorder NOS, Anxiety, and 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 an Adjustment Disorder, Depressive Disorder NOS, and Anxiety. The applicant was diagnosed post-service by the VA with combat-related PTSD.

(3) Does the condition or experience 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 an Adjustment Disorder, Depressive Disorder NOS, and Anxiety. The applicant was diagnosed post-service by the VA with combat-related PTSD. Given the nexus between PTSD, Depressive Disorder, and avoidance, the FTRs are mitigated. There is also a nexus between PTSD and difficulty with authority, so the disrespect and disobeying orders are also mitigated. There is no natural sequela between an Adjustment Disorder, Depressive Disorder NOS, Anxiety, or PTSD and assaulting someone by stabbing them multiple times with a knife since none of these conditions have a nexus with extreme acts of violence. The medical record reveals a history of anger management difficulties and antisocial personality traits.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depressive Disorder NOS, Anxiety, and PTSD outweighed the totality of the misconduct serving as the basis of separation.

b. Response to Contention(s):

(1) The applicant contends good service, including a combat tour. The applicant received multiple awards and recognition throughout their career. The Board considered the applicant's total service, including a combat tour in Afghanistan/awards received, and determined that these factors did not outweigh the applicant's assault misconduct.

(2) 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.

(3) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits 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.

(4) The applicant has made drastic changes in their character as they have become a new parent, a mentor to troubled inner city youth, and has dedicated hours to coaching the game of basketball. The applicant has bettered oneself since their abrupt departure from the military. The Board considered the noteworthy post-service accomplishments and determined they do not outweigh the severity of the applicant's assault misconduct.

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 issues before a 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 the evidentiary record, the applicant's Adjustment Disorder, Depressive Disorder NOS, Anxiety, and PTSD did not excuse or mitigate the assault offense that was part of the basis of separation. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001265

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/meritorious service warranting a General or Honorable discharge characterization.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts. 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:

5/18/2024

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