

**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, the discharge was inequitable because it was based on an isolated incident which took place during 12 years of service with no adverse action. The applicant states having a clinical diagnosis of PTSD which has plagued the applicant for many years since a combat tour in Iraq. For many years, the applicant used alcohol to self-medicate the serious mental issues the applicant was having. Unfortunately, PTSD coupled with alcohol abuse led directly to the outburst and poor judgment the applicant demonstrated which cost the applicant their Army career. The applicant requests the Board to fully consider their entire military record. The applicant earned many awards and citations in over a decade of service. The applicant was always evaluated as among the best leaders in the Army. This discharge has brought great shame to the applicant and family. The applicant lives every day with struggles from battle; however, the applicant has learned to cope without turning to alcohol. The applicant has become a role model citizen with zero infractions with the law. The applicant volunteers much of their time working with the youth at both the place of worship and the city park league coaching and mentoring. Last year the applicant went on their first mission trip abroad to the Dominican Republic. The applicant also participates in many other local missions from food drives, helping the elderly, and many other things for the betterment of the community. The applicant has held a steady career and has excelled in many ways. The applicant is a true combat veteran which was more than willing to lay down their life in defense of the nation. The applicant served for multiple honorable terms and the weakness was letting the demons of battle effect the applicant's judgement. What the applicant did was not right, and the applicant accepts full responsibility for their actions; however, the applicant was not in a good mental state during the time, and it directly led to the incident.

b. **Board Type and Decision:** In a records review conducted on 21 March 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

- a. **Reason / Authority / Codes / Characterization:** Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / General (Under Honorable Conditions)
- b. **Date of Discharge:** 22 November 2013
- c. **Separation Facts:**

**(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge:** As announced by Special Court-Martial Order Number 6, 27 March 2012, the applicant was found guilty of the following:

Charge III, in violation of Article 128:

Specification 1: The applicant did on or about 22 April 2011, unlawfully strike PFC N. F. in the face with a closed fist. Plea: Guilty. Finding: Guilty.

Specification 2: The applicant did on or about 22 April 2011, unlawfully strike PFC C. M. in the face multiple times with closed fists and knees. Plea: Guilty. Finding: Guilty.

Specification 3: The applicant did on or about 22 April 2011, unlawfully strike PFC N. F. in the face multiple times with closed fists and knees. Plea: Guilty. Finding: Guilty.

Additional Charge II, in violation of Article 128. The Specification: The applicant did on or about 13 August 2011, unlawfully push SSG J. N. M. in the chest with the hands. Plea: Guilty. Finding: Guilty.

**(2) Adjudged Sentence:** Reduction to E-1; to be confined for six months, and to be discharged from the service with a Bad Conduct discharge.

**(3) Date / Sentence Approved:** 19 September 2011 / Only so much of the sentence, a reduction E-1, confinement for five months, and a bad conduct discharge was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed. The automatic forfeiture of two-thirds pay per month was deferred effective 3 October 2011 and the deferment was terminated on this date. The part of the sentence extending to confinement had been served.

**(4) Appellate Reviews:** The record of trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

**(5) Date Sentence of BCD Ordered Executed:** NIF

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 1 October 2009 / 3 years

b. **Age at Enlistment / Education / GT Score:** 27 / Associate Degree / 121

c. **Highest Grade Achieved / MOS / Total Service:** E-6 / 13M34, Multiple Launch Rocket System / HIMARS Crewmember / 12 years, 4 months, 10 days

d. **Prior Service / Characterizations:** RA, 31 January 2001 – 7 June 2005 / HD  
RA, 8 June 2005 – 30 September 2009 / HD

e. **Overseas Service / Combat Service:** Korea, SWA / Iraq (28 January 2005 – 10 January 2006)

f. **Awards and Decorations:** ARCOM-3, AAM-4, MUC, AGCM-3, NDSM, GWOTSM, KDSM, NCOPDR-2, ASR, OSR

- g. Performance Ratings:** 21 April 2009 – 20 April 2010 / Among the Best  
7 July 2010 – 31 October 2010 / Among the Best

**h. Disciplinary Action(s) / Evidentiary Record:** Orders 267-0041, 21 November 2013, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 22 November 2013 from the Regular Army.

The applicant's DD Form 214 reflects the applicant had completed the first full term of service. The applicant was discharged under the authority of AR 635-200, chapter 3, with a narrative reason of Court-Martial, Other. The DD Form 214 was not authenticated with the applicant's electronic signature. The applicant had lost time for the period 19 September 2011 to 21 February 2012.

Special Court-Martial Order Number 6 as described in previous paragraph 3c(1).

- i. Lost Time / Mode of Return:** 155 days (Confinement, 19 September 2011 – 21 February 2012) / Released from Confinement

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

- (1) Applicant provided:** VA Progress Notes, 10 April 2014, reflects diagnoses.

VA Benefits Letter, 27 May 2014, reflects the applicant was granted a combined rating of 40 percent.

- (2) AMHRR Listed:** None

*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:** Two DD Forms 293; self-authored statement; DD Form 214; VA Benefit letter; VA Progress Notes; Wellness Center Referral letter; Special Court-Martial Order Number 6; third-party letter.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has become a role model citizen with zero infractions with the law. The applicant volunteers much of their time working with the youth at both the place of worship and the city park league coaching and mentoring. Last year the applicant went on their first mission trip abroad to the Dominican Republic. The applicant also participates in many other local missions from food drives, helping the elderly, and many other things for the betterment of the community. The applicant has held a steady career and has excelled in many ways.

**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), dated 25 September 2019, 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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 non-waiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a non-waiverable 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's Army Military Human Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends the event which led to the discharge from the Army was an isolated incident in 12 years of service with no adverse action. Army Regulation 635-200, paragraph 3-5 in pertinent part, 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 good service, including a combat tour. The applicant earned many awards and citations in over a decade of service and was always evaluated as among the best leaders in the Army. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends using alcohol to self-medicate from PTSD issues. The PTSD coupled with alcohol abuse led directly to the outburst and poor judgment the applicant demonstrated. A third-party statement provided with the application from the applicant's previous first line supervisor who served on multiple assignments, in part, addressed the difficult situations the unit faced in combat which changed the applicant; however, the applicant did not want to seek professional help because as a leader the applicant believed it would show signs of weakness. The applicant provided VA Progress Notes, 10 April 2014, which reflect diagnoses. Also provided, a VA Benefits letter, 27 May 2014, reflecting the applicant was granted a combined rating of 40 percent. The applicant's AMHRR contains no documentation of PTSD diagnosis. The AMHRR does not contain a mental status evaluation.

The applicant has become a role model citizen with zero infractions with the law. The applicant volunteers much of their time working with the youth at both the place of worship and the city park league coaching and mentoring. Last year the applicant went on their first mission trip abroad to the Dominican Republic. The applicant also participates in many other local missions from food drives, helping the elderly, and many other things for the betterment of the community. The applicant has held a steady career and has excelled in many ways. 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, Generalized Anxiety Disorder, Post Traumatic Stress Disorder, and Major Depressive 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 Generalized Anxiety Disorder. The applicant is also diagnosed and service connected by the VA for combat-related PTSD and Major Depressive Disorder. Service connection establishes that the applicant's PTSD and MDD also existed during military service.

(3) Does the condition or experience 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 or excuse the discharge. The applicant was diagnosed in service with an Adjustment Disorder and Generalized Anxiety Disorder. The applicant is also diagnosed and service connected by the VA for combat-related PTSD and Major Depressive

Disorder. However, none of the applicant's conditions to include PTSD, MDD, Generalized Anxiety Disorder, or an Adjustment Disorder, have a natural sequela with assault.

(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, Generalized Anxiety Disorder, Post Traumatic Stress Disorder, or Major Depressive Disorder outweighed the medically unmitigated assault offenses.

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

(1) The applicant contends using alcohol to self-medicate from PTSD issues. The PTSD coupled with alcohol abuse led directly to the outburst and poor judgment the applicant demonstrated. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Generalized Anxiety Disorder, Post Traumatic Stress Disorder, or Major Depressive Disorder outweighed the medically unmitigated assault offenses. Therefore, an upgrade is not warranted.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident in 12 years of service with no adverse action. The Board considered this contention but determined that the applicant's otherwise clean record did not outweigh the seriousness of the applicant's assault offenses, especially considering that the applicant committed a fourth assault months after the original incident.

(3) The applicant contends good service, including a combat tour. The applicant earned many awards and citations in over a decade of service and was always evaluated as among the best leaders in the Army. The Board considered the totality of the applicant's service record, including 12 years of service and a combat tour in Iraq, but determined that the applicant's record did not outweigh the seriousness of the applicant's four medically unmitigated assault offenses.

(4) The applicant has become a role model citizen with zero infractions with the law. The applicant volunteers much of their time working with the youth at both the place of worship and the city park league coaching and mentoring. Last year the applicant went on the applicant's first mission trip abroad to the Dominican Republic. The applicant also participates in many other local missions from food drives, helping the elderly, and many other things for the betterment of the community. The applicant has held a steady career and has excelled in many ways. The Board considered the applicant's post-service accomplishments but found that they do not outweigh the applicant's four medically unmitigated assault offenses.

**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, Generalized Anxiety Disorder, Post Traumatic Stress Disorder, or Major Depressive Disorder did not outweigh the applicant's four medically unmitigated offenses of assault. The Board also considered the applicant's contentions regarding the misconduct being

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an isolated incident, the applicant's post-service accomplishments, and good service 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:**

4/3/2024

**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