

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

The applicant seeks relief contending, in effect, although the applicant was involved in a domestic violence offense, an upgrade is requested. When the applicant returned home, the applicant discovered the spouse of two and a half years living with another person. The applicant recognizes the actions were decisive and did not elicit the desired responses. The applicant has since been diagnosed by the VA with combat-related PTSD at 70 percent. The applicant believes if not for the head injury resulting in being hospitalized with a concussion while actively serving and the PTSD, the applicant would have been able to respond differently when confronted with the unfortunate domestic issue.

b. **Board Type and Decision:** In a records review conducted on 18 January 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-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 9 November 2007

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 26 October 2007

(2) **Basis for Separation:** The applicant was informed of the following reasons: The Olympia Municipal Court judgment, 2 May 2007, for violation of a no-contact order and the Thurston County Superior Court judgment, 12 April 2007, for domestic violence and harassment.

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

(4) **Legal Consultation Date:** 29 October 2007

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

(6) **88mSeparation Decision Date / Characterization:** 31 October 2007 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 8 June 2005 / 5 years
- b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 105
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 88M10, Motor Transport Operator / 1 year, 7 months, 11 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Iraq (5 July 2006 – 28 December 2006)
- f. **Awards and Decorations:** NDSM, GWOTSM, ICM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Eight Developmental Counseling Forms for complying with the valid family care program; failing to go at the time prescribed to the appointed place of duty on three separate occasions; emphasizing the no-contact order; harassing and conveying a threat; violating a no-contact order; and being recommended for separation.

Military Police Report Blotter and Tumwater Police Department Incident Report, 11 February 2007, reflect the applicant was apprehended for: harassment (off post) by the Tumwater Police Department on 10 February 2007.

I Corps & Fort Lewis Commander's Report, 15 March 2007, reflects the applicant was reported to have assaulted the squad leader while the squad leader was escorting the applicant to scheduled appointments on 15 March 2007.

Military Police Traffic Accident Report, 16 March 2007, reflects the applicant was apprehended for: aggravated assault and hit and run with injury.

Pierce County Sheriff Department Arrest Report, 26 March 2007, reflects the applicant was arrested for violation of Court Order – Protection/Restraining/No Contact on 25 March 2007.

Superior Court of Washington, Judgment and Sentence, 12 April 2007, reflects the applicant was charged with "Harassment/Domestic Violence" on 10 February 2007, and received a sentence of 365 days of jail time, of which 358 days were suspended, a period of seven-day jail time, and the total monetary fine assessed was \$800. The additional sentence was to enroll and complete a Certified Domestic Violence Program within 12 months and a no-contact order was imposed.

Olympia Police Department Incident Report, 25 April 2007, reflects the applicant was arrested for domestic violence on 25 April 2007, and violating a no-contact order.

Memorandum for Record, 11 May 2007, reflects the applicant had been sentenced to nine months civilian confinement in Benton County Correctional Facility, and would not be able to be mentally evaluated and recommended the separation proceedings completed on the applicant.

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

From "Present for Duty (PDY)" to "Confined by Civil Authorities (CCA)," effective 11 February 2007

- From "CCA" to "PDY," effective 12 February 2007;
- From "PDY" to "CCA," effective 14 February 2007;
- From "CCA" to "PDY," effective 15 February 2007;
- From "PDY" to "Absent Without Leave (AWOL)," effective 19 March 2007;
- From "AWOL" to "CCA," effective 25 March 2007;
- From "CCA" to "AWOL," effective 26 March 2007;
- From "AWOL" to "CCA," effective 26 March 2007;
- From "CCA" to "AWOL," effective 12 April 2007;
- From "AWOL" to "PDY," effective 24 April 2007;
- From "PDY" to "AWOL," effective 24 April 2007;
- From "AWOL" to "CCA," effective 25 April 2007; and
- From "CCA" to "PDY," effective 26 October 2007.

**i. Lost Time / Mode of Return: 294 days:**

NIF, 15 October 2005 – 20 November 2005, for 37 days / NIF  
 CCA, 11 February 2007 – 12 February 2007, for 2 days / Released from Confinement  
 CCA, 14 February 2007 – 26 October 2007, for 255 days / Released from Confinement

Note, there are additional period of absences which are not reflected on the DD Form 214.

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

**(1) Applicant provided:** Initial Post Traumatic Stress Disorder (PTSD), Disability Benefits Questionnaire, 22 May 2012, reflects the applicant was diagnosed with: Post-Traumatic Stress Disorder; Depression NOS; Intermittent Explosive Behavior, and was being treated for traumatic brain injuries, mild in 2006 and severe in November 2007, with cognitive disorder.

Department of Veterans Affairs disability rating decision, 25 June 2012, reflects the applicant was rated 70 percent disability for PTSD, depression, and intermittent explosive disorder (previous evaluated as adjustment disorder with mixed anxiety and depressed mood).

Department of Veterans Affairs service-connected compensation letter, 27 June 2012, reflects the applicant was rated 100 percent disability for PTSD, depression, and intermittent explosive disorder (previous evaluated as adjustment disorder with mixed anxiety and depressed mood).

**(2) AMHRR Listed: None**

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 214; VA Examination Notes; VA Rating Decision; VA compensation letter.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

**a.** Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder

(PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

**b.** Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

**(1)** Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

**(2)** Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

**c.** Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10, United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) 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.

(5) 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.

(6) 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-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.

Army Regulation 635-200, in pertinent part, stipulates 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 257 days.

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 contends being diagnosed by the VA with combat-related PTSD at 70 percent and believes that if not for the head injury for which the applicant was hospitalized with a concussion and the PTSD, the applicant would have been able to respond differently when confronted with the unfortunate domestic issue. The applicant provided several medical documents indicating diagnoses of PTSD, depression, and intermittent explosive disorder (previous evaluated as adjustment disorder with mixed anxiety and depressed mood). The applicant's AMHRR contains no documentation of the PTSD diagnosis.

#### **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 Disorder NOS, TBI, PTSD, Depression NOS, Intermittent Explosive 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, Anxiety Disorder NOS, and TBI. The applicant is also service connected by the VA for PTSD, Depression NOS, and Intermittent Explosive Disorder. Service connection establishes that these conditions also existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple potentially mitigating BH conditions. The applicant was diagnosed in service with an Adjustment Disorder, Anxiety Disorder NOS, and TBI. The applicant is also service connected by the VA for PTSD, Depression NOS, and Intermittent Explosive Disorder. However, none of the applicant's BH conditions mitigate the basis of separation. Violating a no-contact order is a willful act of defiance and it is less likely than not that the applicant's BH conditions contributed to this misconduct since none of the conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. And while a TBI has a nexus with

difficulties with impulse control, domestic violence and harassment involves a specific victim suggesting targeted motivation and rationalization rendering it less likely than not that the applicant's TBI, PTSD, or any of the other BH conditions contributed to this misconduct.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's Adjustment Disorder, Anxiety Disorder NOS, TBI, PTSD, Depression NOS, and Intermittent Explosive Disorder did not outweigh the basis of separation - violation of a no-contact order and domestic violence and harassment.

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

(1) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention and determined that the applicant's family issues does not mitigate the applicant's violation of a no-contact order, domestic violence, and harassment as the Army affords many avenues to Soldier's including seeking separation for hardship.

(2) The applicant contends being diagnosed by the VA with combat-related PTSD at 70 percent and believes that if not for the head injury for which the applicant was hospitalized with a concussion and the PTSD, the applicant would have been able to respond differently when confronted with the unfortunate domestic issue. The Board liberally considered this contention and determined applicant's Adjustment Disorder, Anxiety Disorder NOS, TBI, PTSD, Depression NOS, Intermittent Explosive Disorder do not mitigate or outweigh applicant's violation of a no-contact order, domestic violence, and harassment. The Board also considered the totality of the applicant's record, including the applicant's BH condition and determined that a discharge upgrade is not warranted based on the seriousness of the applicant's misconduct.

**c.** The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 Disorder NOS, TBI, PTSD, Depression NOS, Intermittent Explosive Disorder did not excuse or mitigate the offenses of violation of a no-contact order, domestic violence, and harassment. 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:**

4/30/2024

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