

**1. Applicant's Name:** [REDACTED]

- 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 period under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, prior to leaving the Army, the applicant was diagnosed with PTSD and TBI after serving two combat deployments. The applicant is undergoing therapy and believes the discharge should be upgraded because of the altered mental capacity. The applicant was an outstanding Soldier who received an AGCM.

b. **Board Type and Decision:** In a records review conducted on 25 January 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the totality of the applicant's record, including the applicant's significant combat service, the receipt of a Purple Heart, the length of service, the high quality of service, the resulting significant behavioral health conditions, and the proximity in time that the applicant committed these offenses after returning from deployment. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

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

*Board member names available upon request.*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Misconduct (Civil Conviction) / AR 635-200, Chapter 14, Sec II / JKB / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 21 February 2013

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 19 September 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 24 August 2012, the applicant was found guilty of Malicious Wounding, Abduction, and Reckless Driving.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 11 December 2012

**(5) Administrative Separation Board:** On 11 December 2012, the applicant unconditionally waived consideration of the case before an administrative separation board.

**(6) Separation Decision Date / Characterization:** 11 January 2013 / Under Other Than Honorable Conditions

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

**a. Date / Period of Enlistment:** 6 November 2008 / 5 years

**b. Age at Enlistment / Education / GT Score:** 19 / GED / 100

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 19D20, D3 Calvary Scout / 4 years, 15 days

**d. Prior Service / Characterizations:** RA, 8 March 2007 – 5 November 2008 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (5 May 2008 – 22 May 2009); Afghanistan (30 July 2010 – 26 February 2011)

**f. Awards and Decorations:** ARCOM, PH, AAM, NATOMDL, AGCM, NDSM, ACM-2CS, GWOTEM, ICM-CS, ASR, OSR-2, CAB

**g. Performance Ratings:** 1 June 2010 – 28 February 2011 / Fully Capable

**h. Disciplinary Action(s) / Evidentiary Record:** Personnel Action form reflects the applicant's duty status changed as follows: From "Present for Duty (PDY)" to "Confined by Civil Authorities (CCA)," effective 23 March 2011.

Orders 044-0260, 13 February 2013, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 21 February 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 14, Section II, with a narrative reason of Misconduct (Civil Conviction). The DD Form 214 was not authenticated with the applicant's electronic signature. The applicant had lost time for the period 23 March 2011 to 21 February 2013.

**i. Lost Time / Mode of Return:** 1 year, 10 months, 21 days (701 days) (Confined by Civil Authorities, 23 March 2011 – 21 February 2013) / The applicant was discharged from active service under Chapter 14, Section II for Misconduct (Civil Conviction) on 21 February 2013.

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

**(1) Applicant provided:** Psychological Evaluation, 13 March 2015, rendered by a Florida Licensed School Psychologist, reports the evaluation of the applicant clearly indicated having met the criteria for a diagnosis of Posttraumatic Stress Disorder (PTSD 309.81) with Dissociative Symptoms of Depersonalization and Derealization.

History and Physical medical records (pages 40, 42, and 60), 18 March 2011, indicate while the applicant was admitted to the Lewis-Gale Behavioral Health Center, the diagnostic impression of Axis I diagnoses were Opiate dependence, PTSD provisional, and History of traumatic brain injury (TBI).

**(2) AMHRR Listed: None**

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 214; Orders; Purple Heart certificate; and medical and medication administration records. Additional Evidence: Psychological Evaluation.

**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)** 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)** Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings: 1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended;

2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender; Initiation of separation action is not mandatory. Although the conditions established in a (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, section II, misconduct (civil conviction).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

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 701 days and remained in confinement when discharged.

The applicant contends prior to the discharge, the applicant was diagnosed with PTSD and TBI after serving two combat deployments and deserves an upgrade for the altered mental capacity. The applicant provided several medical documents indicating diagnoses and treatment for the PTSD and TBI, and prescribed medication. The applicant provided a third-party letter from a psychologist, describing the applicant's psychological evaluation which clearly met the diagnosis of Posttraumatic Stress Disorder with Dissociative Symptoms of Depersonalization and Derealization and supported the applicant's PTSD contention. The applicant's AMHRR contains no documentation of the PTSD or TBI diagnoses.

The applicant contends being a stellar Soldier, who received an AGCM. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

**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 Medical Advisor (a voting member) reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and determined that the applicant has the following potentially mitigating diagnoses/experiences: TBI, PTSD, Acute Stress Disorder, and Panic Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor, a voting member, determined the applicant was diagnosed in service with TBI, PTSD, Acute Stress Disorder and Panic Disorder. The VA has also service connected the applicant's PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board applied liberal consideration and concurred with the the Board Medical Advisor's opine. There is no natural sequela between PTSD, TBI, Acute Stress Disorder, or Panic Disorder and malicious wounding, abduction, or reckless driving since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's TBI, PTSD, Acute Stress Disorder, and Panic Disorder did not outweigh the severity of the misconduct that served as the basis of separation (malicious wounding, abduction, and reckless driving).

b. Response to Contention(s):

(1) The applicant contends prior to the discharge, the applicant was diagnosed with PTSD and TBI after serving two combat deployments and deserves an upgrade for the altered mental capacity. The Board liberally considered this contention and determined that the applicant's TBI, PTSD, Acute Stress Disorder, and Panic Disorder outweighed the offenses of malicious wounding, abduction, and reckless driving. The Board acknowledged that the applicant's misconduct took place shortly after a significant combat tour where the applicant was wounded. The Board also credited the totality of the service record in its decision to upgrade the characterization of service to General. Further upgrade is not warranted due to the severity of the offenses.

(2) The applicant contends being a stellar Soldier, who received an AGCM. The Board considered the totality of the service record in its decision to upgrade the applicant's characterization of service as discussed in par 9(b)1.

c. The Board determined that the characterization of service was inequitable based on the totality of the applicant's record, including: significant combat service, receipt of a Purple Heart, length of service, quality of service, behavioral health conditions, and the proximity in time that the applicant committed these offenses vice returning from deployment. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them. However, the applicant may request a personal appearance hearing to address further 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 to change the applicant's characterization of service to General based on the totality of the applicant's record as outlined in par 9c. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. A General discharge is proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, as the reason the applicant was discharged was both proper and equitable.

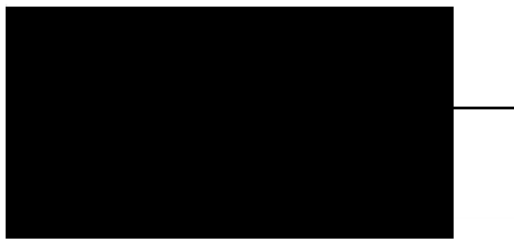
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- 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



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