

**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, when the applicant appeared before the review board, the discharge was upgraded to Honorable, and received by mail a new DD Form 214 and a DD Form 256A reflecting the Honorable Discharge. However, neither the DD Form 214 nor the military records were ever corrected. Following additional review, the applicant discovered the ARCOM award was not recorded on the DD Form 214 but was reflected in the military records. When the applicant wrote the previous unit, the applicant was informed all the review board documentation had been lost. The applicant was removed from school with only 22 credits remaining for a BA degree, and as a result, the applicant is unable to complete the education.

The applicant contends, after the first offense in the service, the applicant was discharged. While confined in Kuwait, the applicant was examined by an Army psychologist. The psychologist discovered evidence of PTSD and recommended the applicant to be discharged through the medical process. The unit presumably never received the recommendation. Ten years later, having been diagnosed with PTSD by the VA in Milwaukee, the applicant has been receiving treatment for the medical condition even while awaiting discharge proceedings. The VA awarded the applicant a 70 percent disability rating for PTSD. The applicant believes the impact and stress of having PTSD at the time of deployment were not understood and were overlooked during the discharge proceedings.

The applicant contends the discharge is hindering promotions in current employment as the applicant has been turned down for multiple promotions. The applicant has strived to do the best by being law-abiding; maintaining current employment for over seven years; being promoted three times and nationally recognized; volunteers at a homeless shelter; is a VFW and American Legion member; attends the University of Phoenix with only 22 credits from attaining a BA degree; and is receiving treatment for PTSD from VA. The applicant has been in trouble only once during the entire military career and was recognized as a model Soldier by the first sergeant. The applicant contends the missing information from Kuwait, missing DD Form 215, and the review of the discharge prior to being discharged should be located. The applicant further details the contentions in an allied self-authored statement provided with the application.

b. **Board Type and Decision:** In a records review conducted on 9 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 / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 22 February 2005

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 29 November 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant received a Summarized (sic) Court-Martial for malingering in a combat zone.

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

(4) **Legal Consultation Date:** 3 December 2004

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

(6) **Separation Decision Date / Characterization:** 2 February 2005 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 4 September 2001 / 4 years / The DD Form 214 reflects the applicant has completed the first full term of service; however, the applicant's AMHRR is void of an additional reenlistment period.

b. **Age at Enlistment / Education / GT Score:** 22 / some college / 116

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 3 years, 5 months, 19 days

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

e. **Overseas Service / Combat Service:** Alaska, SWA / Afghanistan/Kuwait (NIF) / The applicant's AMHRR containing an ARCOM certificate, 16 May 2004, reflects meritorious service while serving in support of Task Force Bronco during OEF in Afghanistan from 31 October 2003 to 31 July 2004.

f. **Awards and Decorations:** GWOTSM, NDSM, ASR, OSR, CIB / The applicant's AMHRR reflects award of an ARCOM, however, the award is not reflected on the DD Form 214.

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Developmental Counseling Form for communicating a verbal and written threat to harm others and oneself.

Report of Mental Status Evaluation, 6 June 2004, reflects the applicant could understand and participate in administrative proceedings; was mentally responsible; could distinguish right from wrong; and met medical retention requirements. The recommendations were, in effect from 6 June 2004 until terminated in agreement with the Command: the Command should assign someone for constant monitoring from first formation until lights out and must not sleep in a room alone during nights; no access to alcohol, weapons, and potential self-injurious objects.

The evaluation determined the applicant did not meet the criteria for an MEB; no evidence of emotional or mental condition of sufficient severity to warrant disposition through medical channels. The unit Commander referred the applicant for a mental health consultation because the applicant was unstable and potentially dangerous to oneself and others.

Charge Sheet, 25 June 2004, reflects the applicant was charged with: Violation of the UCMJ, Article 115, for [malingering], at Forward Operating Base Salerno, Afghanistan, in a hostile fire pay zone, between 6 and 12 June 2004, for the purpose of avoiding maneuvers feign mental inability. The Charge was referred to a Summary Court-Martial on 30 June 2004.

Record of Trial by Summary Court-Martial, reflects the trial proceedings were held on 30 June 2004, and the applicant was found guilty, inconsistent with the plea, of the following charge: The Charge: Violation of Article 115: Malingering between 6 and 12 June 2004. The sentence adjudged: Forfeiture \$796 pay; reduction to E-1; and confinement for 30 days.

Report of Mental Status Evaluation, 18 October 2004, reflects the applicant was psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. There was no evidence of mental disorder which would affect judgment and reasoning, or which would require disposition through medical channels.

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

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

(1) **Applicant provided:** Department of Veterans Affairs letter, 19 August 2015, certifies the applicant was receiving a service-connected disability compensation for 70 percent combined evaluation. The letter does not delineate the disabilities.

(2) **AMHRR Listed:** Report of Medical History, 24 November 2004, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Depression all of life; not treated prior to incident in Afghanistan requiring full evaluation; and was evaluated by a psychological health NCO in Afghanistan.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 149; DD Form 214; VA letter; third-party statement; two self-authored statements; ARBA letter; ACTS data sheet; Honorable Discharge (DD Form 256A) and ARCOM certificates; TDS letter; and Battalion Commander memorandum.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has strived to do the best by being law-abiding; maintaining current employment for over seven years; being promoted three times and nationally recognized; volunteers at a homeless shelter; is a VFW and American Legion member; attends the University of Phoenix with only 22 credits from attaining a BA degree; and is receiving treatment for PTSD from VA.

**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) 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 waiverable. 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 contends the narrative reason for the discharge needs changed to medical PTSD. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends having appeared before a review board, the discharge was upgraded to honorable and received a new DD Form 214 and DD Form 256A; however, the DD Form 214, nor the military records were ever corrected. The applicant did not submit any evidence of the review board the applicant referred to, other than the applicant's statement, to support the contention.

The applicant contends an ARCOM award was not recorded on the DD Form 214. The requested change to the DD Form 214 does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The applicant contends being 22 credits from attaining a BA degree and being unable to complete the education. Eligibility for veterans' benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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 contends having been in trouble once during the entire military career and was discharged for the first offense. 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 an examination by an Army psychologist revealed evidence of PTSD while serving and the VA has diagnosed and awarded a 50 percent disability rating for the PTSD. The applicant provided a VA letter certifying the applicant was awarded 70 percent disability rating, but the letter did not delineate the disability for which the applicant was rated. The applicant's AMHRR contains documentation which supports a diagnosis of depression. The record shows the applicant underwent two separate mental status evaluations (MSE) on 6 June and 18 October 2004, which indicate the applicant was mentally responsible and was able to recognize right from wrong. Both MSEs were considered by the separation authority.

The applicant contends the Army psychologist who examined the applicant while in Kuwait confinement had recommended the applicant be medically discharged, and the discharge should have been for medical reasons. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

The applicant contends the impact and stress of having PTSD during deployment were not understood and were overlooked during the discharge proceedings. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the discharge is hindering promotions in the current employment and was turned down for multiple promotions. The Board does not grant relief to gain employment or enhance employment opportunities, including promotions.

The applicant contends having strived to do the best by being law-abiding; maintaining current employment for over seven years; being promoted three times and nationally recognized; volunteers at a homeless shelter; is a VFW and American Legion member; attends the University of Phoenix with only 22 credits from attaining a BA degree; and is receiving treatment for PTSD from VA. 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.

The applicant contends good service and being recognized as a model Soldier.

The applicant contends the missing information from Kuwait, missing DD Form 215, and the review of the discharge prior to being discharged should be located. The applicant's request does not fall within this board's purview.

#### 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: PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 50 percent service connected (SC) for PTSD by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is 50 percent SC for PTSD, by the VA, and has a basis of separation of malingering. A review of the evidence supports the applicant intentionally altered and email and communicated threats to harm self or others with the expressed purpose of convincing the CoC to redeploy the applicant from theatre so applicant could go home to the applicant's spouse. While PTSD would mitigate behavior related to attempting to leave theatre for fear of further trauma-related exposure, the applicant's own communications were void of any expressed fear of being in the deployed environment, rather a desire to get home to support applicant's spouse and a willingness to say or do whatever in order to be redeployed. The evidence suggest that the applicant made the decision with clear forethought and intention and was able to differentiate between right and wrong and adhere to the right. Given the above, and given malingering is not natural sequela of PTSD, the applicant misconduct characterized by malingering in a combat zone is not mitigated by the disorder.

(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 VA service connected PTSD did not outweigh the basis of separation - malingering.

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

(1) The applicant contends an ARCOM award was not recorded on the DD Form 214. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

(2) The applicant contends good service and being recognized as a model Soldier but having been in trouble once during the entire military career, the applicant was discharged for the first offense. The Board considered this contention and determined that the applicant's recognized as a model Soldier but having been in trouble once did not outweigh the seriousness of the applicant's malingering in a combat zone. The Board also determined that there is insufficient evidence in the applicant's official record or provided by the applicant that the applicant was not provided sufficient access to BH resources. Therefore, no change is warranted.

(3) The applicant contends the impact and stress of having PTSD during deployment were not understood and were overlooked during the discharge proceedings. An examination by an Army psychologist revealed evidence of PTSD while serving and the VA has diagnosed and awarded a disability rating for the PTSD. The Board considered this contention and determined the applicant's PTSD diagnosis does not mitigate or excuse the applicant's misconduct of malingering in a combat zone as there is not a natural sequela of PTSD.

(4) The applicant contends the Army psychologist who examined the applicant while in Kuwait confinement had recommended the applicant be medically discharged, and the discharge should have been for medical reasons. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

(5) The applicant contends the discharge is hindering promotions in the current employment and was turned down for multiple promotions. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(6) The applicant contends having strived to do the best by being law-abiding; maintaining current employment for over seven years; being promoted three times and nationally recognized; volunteers at a homeless shelter; is a VFW and American Legion member; attends the University of Phoenix with only 22 credits from attaining a BA degree; and is receiving treatment for PTSD from VA. The Board considered this contention and determined that the applicant's employment for over seven years, three promoted three, national recognition, volunteers at a homeless shelter; a VFW and American Legion member and attending the University of Phoenix with only 22 credits from attaining a BA degree do not outweigh the misconduct of malingering in a combat zone.

**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 VA service connected PTSD did not outweigh or mitigate the offenses of malingering in a combat zone. 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:**

4/26/2024

**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