

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being injured in Iraq and the sole survivor of a traumatic event. The applicant was diagnosed with post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). The applicant contends after returning from deployment, they were not given the treatment needed for their diagnoses, and they were unable to adapt to life in the Army. The applicant states they are receiving treatment from the Department of Veterans Affairs (VA) and doing much better. The applicant states being a good Soldier and an upgrade will help with additional benefits.

b. **Board Type and Decision:** In a records review conducted on 8 February 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:** Condition, Not a Disability / AR 635-200, Chapter 5-17 / JFV / RE-3 / Honorable

b. **Date of Discharge:** 23 December 2003

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 4 December 2003

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant's mental health and had been absent without leave.

(3) **Recommended Characterization:** Honorable / The intermediate commander recommended a general (under honorable conditions).

(4) **Legal Consultation Date:** 3 December 2003

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

(6) **Separation Decision Date / Characterization:** undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 30 May 2002 / 3 years
- b. **Age at Enlistment / Education / GT Score:** 24 / High School Graduate / 98
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 13B10, Cannon Crewmember / 1 year, 5 months, 12 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Iraq (23 January 2003 – 25 May 2003)
- f. **Awards and Decorations:** PH, ARCOM, PUC, AGCM, NDSM, ASR, GWOTSM, GWOTEM, ICM-2BS
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 18 November 2003, for on or about 12 September 2003, without authority, absent oneself from their unit and did remain so absent until apprehended on or about 23 October 2003. The punishment consisted of a reduction to E-1; forfeiture of \$575 pay per month for two months and extra duty and restriction for 30 days.

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

From "PDY" to "AWOL," effective 12 September 2003;
From "AWOL" to "DFR," effective 12 October 2003; and
From "DFR" to "PDY," effective 23 October 2003.

Three Developmental Counseling Forms for, career and performance, mental health, and separation from the Army.

- i. **Lost Time / Mode of Return:** 41 days (AWOL, 12 September 2003 – 23 October 2003) / NIF

j. Behavioral Health Condition(s):

(1) **Applicant provided:** Department of Veterans Affairs Benefits letter, 29 June 2005, reflects an evaluation of 50 percent for PTSD.

The applicant provided a letter reflecting the applicant had survived an attack just outside the Bagdad Airport during the invasion of Iraq. During an attack, the applicant's tracked vehicle was up ended by an enemy mortar causing a weight difference. The shift in weight caused the applicant's vehicle to roll over an embankment into a water-filled canal. The vehicle sank to the bottom and the applicant, along with their crewmembers were trapped. Despite the applicant's leg being crushed and pinned down, the applicant was able to keep their mouth and nose above the water as it filled the vehicle. The applicant was rescued, but the crewmembers perished. Today, the applicant suffers from post-traumatic stress disorder, traumatic brain injury, left leg nerve damage, and hearing loss.

(2) **AMHRR Listed:** Memorandum for Record Certificate of Psychiatric Examination, 31 July 2003, the applicant was seen at Winn Army Community Hospital for comprehensive

psychiatric evaluation. The applicant had no withdrawal symptoms. The applicant displayed no suicidal behavior and participated cooperatively. The applicant was not regarded as a danger to self or others. The applicant was diagnosed with Axis I Adjustment disorder. The applicant met the retention standards prescribed in Chapter 3, AR 40-501, and there was no psychiatric disease or defect which warranted disposition through medical channels. The applicant did not need a medical board. The applicant was mentally sound and able to appreciate any wrongfulness in their conduct and to conform their conduct to the requirements of the law. The applicant had the mental capacity to understand and participate in a board or other administrative proceedings. The applicant's condition and the problems presented by the provider were not amenable to further treatment, manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe which the applicant's ability to effectively perform military duties were significantly impaired. It was recommended the applicant be administratively separated expeditiously under Chapter 5-17. The applicant would receive follow up through OPS WACH groups and should be counseled to attend all scheduled follow ups. The applicant should be restricted from arms, munitions, and machinery indefinitely.

5. APPLICANT-PROVIDED EVIDENCE: Online application; DD Form 214; Resolution Number 2003-44; Purple Heart Certificate; DA form 2-1; Newsletter; ERB; Orders 350-0001; DA Form 2648 and SGLV 8286.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment from the Department of Veterans Affairs and is doing much better.

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) Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government.

(4) Paragraph 5-1 states a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. A general (under honorable conditions) discharge is normally inappropriate for individuals separated under the provisions of paragraph 5-14 (previously paragraph 5-17) unless properly notified of the specific factors in the service that warrant such characterization.

(5) Paragraph 5-14 (previously paragraph 5-17) specifically provides that a Soldier may be separated for other physical or mental conditions not amounting to a disability, which interferes with assignment to or performance of duty and requires that the diagnosis be so severe that the Soldier's ability to function in the military environment is significantly impaired.

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 "JFV" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-14 (previously Chapter 5-17), Condition, Not a Disability.

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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends being diagnosed with post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). The applicant contends after returning from deployment, they were not given the treatment needed for their diagnoses, and they were unable to adapt to life in the Army. The applicant provided a Department of Veterans Affairs benefits letter, 29 June 2005, reflecting an evaluation of 50 percent for PTSD. The applicant provided a letter reflecting the applicant had survived an attack just outside the Bagdad Airport during the invasion of Iraq. During an attack, the applicant's tracked vehicle was up ended by enemy mortar causing a weight difference. The shift in weight caused the applicant's vehicle to roll over an embankment into a water-filled canal. The vehicle sank to the bottom and the applicant, along with their crewmembers were trapped. Despite the applicant's leg being crushed and pinned down, the applicant was able to keep their mouth and nose above the water as it filled the vehicle. The applicant was rescued, but the crewmembers perished. Today, the applicant suffers from post-traumatic stress disorder, traumatic brain injury, left leg nerve damage, and hearing loss. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command. The AMHRR includes a Memorandum for Record Certificate of Psychiatric Examination, 31 July 2003, reflecting the applicant was seen at Winn Army Community Hospital for comprehensive psychiatric evaluation. The applicant had no withdrawal symptoms. The applicant displayed no suicidal behavior and participated cooperatively. The applicant was not regarded as a danger to self or others. The applicant was diagnosed with Axis I Adjustment disorder.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends seeking treatment from the Department of Veterans Affairs and is doing much better. 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 [REDACTED] the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, PTSD, and TBI.

(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. The applicant is also diagnosed and service connected by the VA for PTSD and TBI. Service connection establishes that the conditions existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder. The applicant is also diagnosed and service connected by the VA for PTSD and TBI. Given the nexus between PTSD, TBI, and avoidance, the applicant's AWOL is mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, and TBI outweighed the applicant's discharge because the applicant already holds an honorable characterization with a Condition, Not a Disability narrative reason.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD and TBI. The applicant contends after returning from deployment, they were not given the treatment needed for their diagnoses and were unable to adapt to life in the Army. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, and TBI outweighed the applicant's discharge because the applicant already holds an honorable characterization with a Condition, Not a Disability narrative reason.

(2) The applicant contends good service, including a combat tour. The Board considered this contention, including the totality of the service record, but determined that further upgrade beyond what was decided by a prior ADRB is not warranted.

(3) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(4) The applicant contends seeking treatment from the VA and doing much better. The Board was glad to learn that the applicant sought treatment and is doing better but determined that further upgrade beyond what was decided by a prior ADRB is not warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available 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 determined the discharge is proper and equitable as a prior ADRB upgraded the discharge to Honorable. Therefore, further upgrade is not available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts. A prior ADRB upgraded the applicant's narrative reason for separation to Condition, Not a Disability per regulation.

(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:

3/8/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs