

**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 or general.

The applicant seeks relief contending, in effect, the applicant was in the Army during a time of war and earned numerous awards and medals for their service. The applicant was in the first group of Soldiers in Operation Freedom in Iraq. At the end of their service, the applicant was suffering from severe PTSD and numerous emotional and psychological stresses. The applicant also sustained extreme injuries during service which can be found in their C file.

b. **Board Type and Decision:** In a records review conducted on 11 January 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's Post Traumatic Stress Disorder providing medical mitigation for a portion of the applicant's misconduct. 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 / AR 635-200, Chapter 14-12b / JKA / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 24 September 2004

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 8 June 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 27 April 2004 and on 1 October 2002, the applicant received Field Grade Article 15's for larceny. The applicant has received numerous counseling statements for failure to report, being AWOL, and having warrants issued for failure to appear in court.

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

(4) **Legal Consultation Date:** 8 June 2004

(5) **Administrative Separation Board:** On 6 June 2004, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon

receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

On 18 August 2004, the applicant unconditionally waived consideration of the case before an administrative separation board.

**(6) Separation Decision Date / Characterization:** 7 September 2004 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 15 November 2001 / 3 years
- b. **Age at Enlistment / Education / GT Score:** 18 / GED / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 63W10, Wheel Vehicle Repairer / 2 years, 8 months, 14 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Iraq (14 February 2003 – 14 February 2004)
- f. **Awards and Decorations:** NDSM, GWOTEM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 1 October 2002, for stealing two Playstation Games, of a value of about \$54.90, the property of the Army Air Force Exchange Service. The punishment consisted of a reduction to E-1, suspended; forfeiture of \$552 pay per month for two months (suspended); and extra duty for 45 days.

The Town of New Llano, Warrant of Arrest, whereas on 28 March 2004, complaint under oath in writing was made charging in the said Town and State, the applicant did commit the offense of speeding (32:64) 11 to 15 mph over limit.

The Town of New Llano, Warrant of Arrest, whereas on 8 April 2004, complaint under oath in writing was made charging in the said Town and State, the applicant did commit the offense of Failure to Appear.

Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 13 April 2004; and,

From "AWOL" to "PDY," effective 15 April 2004.

FG Article 15, 27 April 2004, for stealing a watch cap, one Gerber knife and one compact disk of a value of about \$65.85, the property of Army and Air Force Exchange Service. The punishment consisted of a reduction to E-1; forfeiture of \$552 pay per month for two months; extra duty for 45 days, and restriction to establishments which sell alcohol for 45 days, and Letter of Reprimand.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. **Lost Time / Mode of Return:** 55 days (NIF, 7 June 2004 – 1 August 2004) / NIF

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 149; DD Form 214; Department of Veterans Affairs 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) 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) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 good service, including a combat tour and earning numerous awards and medals.

The applicant contends suffering from severe PTSD and numerous emotional and psychological stresses. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR does not contain a mental status evaluation (MSE).

**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 determined that, based on the Board Medical Advisor opine and review of the applicant's official records, including the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, the applicant's PTSD could potentially mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined, based on the Board Medical Advisor opine and review of the official records determined that, the applicant's PTSD existed during service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board determined, based on the Board's Medical Advisor opine and the applicant's official records that that applicant's PTSD mitigates the applicant's FTR and AWOL offense given the nexus between PTSD and avoidance. However, the applicant's offense of larceny and failure to appear in civilian court is not mitigated as there is no natural sequela between PTSD and these offenses since PTSD does not 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 opine, the Board determined that, while the applicant's Post Traumatic Stress Disorder mitigated the applicant's FTR and AWOL offenses, the applicant's PTSD did not outweigh the applicant's medically unmitigated offenses of larceny or failure to report to civilian court. However, the Board determined that an upgrade to General was warranted because of combat service and length of time since the offense.

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

(1) The applicant contends suffering from severe PTSD and numerous emotional and psychological stresses. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's FTR and AWOL offenses. However, the Board determined that an upgrade to Honorable is not warranted due to the applicant's medically unmitigated larceny offenses. The applicant's medically unmitigated misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The applicant contends good service, including a combat tour and earning numerous awards and medals. The Board considered the applicant's two years of service but determined that the applicant's record did not warrant further upgrade beyond what was discussed above in paragraph 9(1).

**c.** The Board determined that the characterization of service was inequitable based on the totality of the applicant's record, including the applicant's PTSD medically mitigating the applicant's FTR and AWOL offense. 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.

**d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to General because the applicant's Post Traumatic Stress Disorder outweighed the applicant's FTR and AWOL offenses. The Board determined that an upgrade to Honorable is not warranted due to the applicant's medically unmitigated larceny offenses. The applicant's medically unmitigated 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.

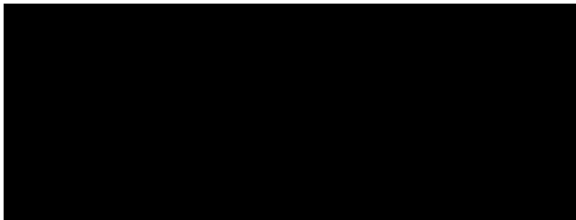
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

4/23/2024



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