

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

The applicant seeks relief contending, in effect, before deploying to Iraq, the applicant was a model Soldier in every aspect, but the service in a war zone really affected the applicant's mental health. The applicant was in trouble for driving under the influence (DUI) and received an Article 15, reducing the applicant from E-4 to E-1 and forfeiting one half of the applicant's pay. The applicant believes during the latter months of the applicant's service, the applicant suffered from post-traumatic stress disorder (PTSD). The applicant is receiving disability compensation for PTSD.

b. **Board Type and Decision:** In a records review conducted on 13 December 2023, 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:** Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 30 November 2007

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 17 October 2007

(2) **Basis for Separation:** The applicant was informed of the following reasons:

The applicant was counseled on divers occasions for not being in the appointed place of duty;

On 26 June 2007, the applicant was arrested for driving under the influence of alcohol;

On 25 August 2007, the applicant was arrested by the Pierce County Police Department for brandishing a knife and for assaulting a group of individuals; and

On 29 September 2007, the applicant was apprehended by the Military Police in Fort Lewis for driving without a license.

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

**(4) Legal Consultation Date:** 24 October 2007

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

**(6) Separation Decision Date / Characterization:** 15 November 2007 / General  
(Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 19 July 2006 / 4 years

**b. Age at Enlistment / Education / GT Score:** 24 / HS Graduate / 100

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 19D10, Cavalry Scout / 3 years,  
4 months, 16 days

**d. Prior Service / Characterizations:** RA, 15 July 2004 – 18 July 2006 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (22 August 2005 – 26 September  
2006)

**f. Awards and Decorations:** ARCOM, AAM, NDSM, GWOTSM, ICM, ASR, OSR, CAB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 24 July 2007, reflects the applicant was apprehended for: civil charge, driving while under the influence of alcohol (off post). Investigation revealed the applicant was operating a vehicle and attempted to turn the vehicle around but became stuck in a ditch. The applicant was administered a Standard Field Sobriety Test which showed impairment. The applicant was arrested and submitted a blood alcohol content (BAC) test with results of .133 / .130.

Washington State Department of Soldier and Health Services, Driving Under the Influence / Physical Control under the Influence Report, 16 August 2007, reflects the applicant was evaluated on 16 August 2007, by the Army Substance Abuse Program and there was insufficient evidence of substance abuse/dependence – Persons with low or minimal probability of reoffending, for whom intervention in the form of Alcohol / Drug School is required to address their problem with substance use and driving. The applicant was scheduled to attend various courses related to the DUI.

Mental Status Evaluation, 29 August 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements.

Company Grade Article 15, 12 September 2007, for on three occasions failing to go at the time prescribed to the appointed place of duty (27 and 28 March 2007 and 18 August 2007), and on two occasions, making false official statements (28 March 2007). The punishment consisted of a reduction to E-3; forfeiture of \$403 pay; and extra duty and restriction for 14 days.

Pierce County District Court Temporary Antiharassment Protection Order and Notice of Hearing, 19 September 2007, reflects a temporary restraining order was issued against the applicant until the hearing date of 2 October 2007.

General Officer Memorandum of Reprimand, 28 September 2007, reflects the applicant was driving under the influence of alcohol. After being stopped for reckless driving on 26 June 2007, the applicant submitted to a breathalyzer test which resulted in .130 grams of alcohol per 210 liters of breath.

Numerous Developmental Counseling Forms, for but not limited to:

- Various acts of misconduct in monthly counseling;
- Being under the influence of alcohol while on duty, with .04 percent BAC;
- Being arrested on three counts of assault, including brandishing a knife;
- Failing to follow instructions resulting in a second arrest;
- Failing to be at the appointed place of duty;
- Not being recommended for promotion to Sergeant / E-5 because of DUI;
- Disrespecting a noncommissioned officer (NCO);
- Making false statements to NCOs; and
- Receiving a court-ordered restraining order.

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

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

**(1) Applicant provided:** Department of Veterans Affairs (VA) Rating Decision, 29 August 2012, reflecting the VA rated the applicant 30 percent service-connected disabled for PTSD.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 149; DD Form 214; self-authored statement; VA Rating Decision; VA letter; Army Review Boards Agency Case Management Division letter.

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

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

**a.** Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

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

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

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

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

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

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

**(2)** Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of

acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

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

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) 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 contends PTSD affected behavior, which led to the discharge, and the applicant is receiving disability compensation. The applicant provided medical documents indicating the VA rated the applicant 30 percent disabled for PTSD. The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 29 August 2007, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis. The MSE was considered by the separation authority.

The applicant contends good service, including a combat tour.

**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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, Adjustment Disorder with Anxiety.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 30 percent service connected (SC) with combat related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that, given the association between PTSD and comorbid substance abuse, and PTSD and avoidance, there is a nexus between the applicant's misconduct characterized by DUI, and FTR. However, the applicant's misconduct characterized by brandishing a knife, assault, and driving without a license, are not normal sequela of the disorder and therefore not mitigated, as the disorder did not render him unable to appreciate the difference between right and wrong and adhere to 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 the available evidence did not support a conclusion that the applicant's PTSD, Adjustment Disorder with Anxiety outweighed the basis for applicant's separation – brandishing a knife, assault, and driving without a license.

b. Response to Contention(s):

(1) The applicant contends PTSD affected behavior, which led to the discharge, and the applicant is receiving disability compensation. The Board liberally considered this contention and determined that after applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD, Adjustment Disorder with Anxiety outweighed the basis for applicant's separation – brandishing a knife, assault, and driving without a license. The Board also considered the totality of the applicant's record, including the applicant's BH condition and determined that a discharge upgrade is not warranted based on the seriousness of the applicant's misconduct.

(2) The applicant contends good service, including a combat tour. The Board liberally considered this contention and determined that the applicant's good service, to include a combat tour, did not outweigh the remaining medically unmitigated basis of separation – brandishing a knife, assault, and driving without a license..

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 PTSD, Adjustment Disorder with Anxiety did not excuse or mitigate the offenses of brandishing a knife, assault, and driving without a license. The Board also considered the applicant's contentions and found that totality of the applicant's record does not warrant a discharge upgrade. 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, 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 / 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:

12/15/2023

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