

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, the discharge was based on hitting a military police officer with a privately owned vehicle, but the charges were dropped because of insufficient evidence.

b. **Board Type and Decision:** In a records review conducted on 5 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 18 January 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 28 July 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 3 May 2010, the applicant wrongfully and recklessly backed up a vehicle and struck SPC M. S. in the hip with said vehicle. At the time of the incident, SPC M. S. was in the execution of the duties as Military Police Officer.

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

(4) **Legal Consultation Date:** 3 August 2010

(5) **Administrative Separation Board:** On 3 August 2010, 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 21 September 2010, the applicant's conditional waiver was denied.

On 21 September 2010, the applicant was notified to appear before an administrative separation board and advised of rights.

On 13 October 2010, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the applicant did in fact wrongfully and recklessly backed up the vehicle and struck SPC M. S. in the hip with said vehicle and sufficient evidence supported a finding of misconduct under AR 635-200, paragraph 14-12c. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

(6) Separation Decision Date / Characterization: 17 December 2010 / Under Other Than Honorable Conditions / The GCMCA reviewed the medical recommendations of the Physical Evaluation Board.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 29 February 2008 / 5 years

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / 111

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92R20, Parachute Rigger / 5 years, 2 months, 4 days

d. Prior Service / Characterizations: RA, 15 November 2005 – 28 February 2008 / HD

e. Overseas Service / Combat Service: None

f. Awards and Decorations: ARCOM, AAM-2, AGCM, GWOTSM, ASR / The applicant's AMHRR reflects award of the NDSM, however, the award is not reflected on the DD Form 214.

g. Performance Ratings: 1 April 2009 – 30 September 2009 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Six Developmental Counseling Forms for failing to go at the time prescribed to the appointed place of duty, pattern of misconduct, improper disposal of PII, failing to obey a lawful order, resisting and breach of arrest, assault, dereliction of duty, and failed to perform duties as a malfunction NCO.

CG Article 15, 27 July 2009, for failing to obey a lawful general regulation on 3 June 2009. The punishment consisted of a forfeiture of \$503 pay (suspended); extra duty for 14 days; restriction for 14 days (suspended); and an oral reprimand.

Provo Police Department Follow-up Report, 21 August 2009, reflects the applicant was apprehended for: Resisting/Interfering with Police; Vehicle Burglary; Intoxication; and Disorderly Conduct.

Military Police Report, 3 May 2010, reflects the applicant was apprehended for: Assault on a Public Official (Military Police) and Unsafe Movement Backward (on post).

FG Article 15, 29 June 2010, for wrongfully and recklessly backing up a vehicle and striking SPC M. S. on 3 May 2010. The punishment consisted of a reduction to E-2; forfeiture of \$811 pay per month for two months; extra duty for 45 days (suspended); and restriction for 45 days.

Joint DoD / VA Disability Evaluation Pilot Referral, 12 October 2010, reflects several diagnoses, which may interfere with the applicant's ability to serve on active duty and the MEB action was completed on 3 December 2010 with the applicant being referred to the Physical Evaluation Board.

Physical Profile reflects the applicant had a permanent profile for the following medical conditions:

Left ankle pain with peroneal neuropathy
Chronic abdominal pain with nausea, vomiting and diarrhea NOS

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Chronological Record of Medical Care, 7 June 2010, reflects the applicant's health problems include Chronic Depression, Adjustment disorder, and Adjustment disorder with anxiety and depressed mood.

Report of Behavioral Health Evaluation (BHE), 9 July 2010, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The AXIS I diagnosis reflects "Occupational Problem." The BHE was considered by the separation authority.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; and 11 third-party statements.

6. POST SERVICE ACCOMPLISHMENTS: A third-party statement indicates the applicant has been attending the San Joaquin Delta College and has contributed to the success of student veteran community and the Veteran Resource Center.

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 charges for hitting a military police officer with a vehicle were dropped because of insufficient evidence. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The third-party statements provided with the application spoke highly of the applicant's character and performance as a Soldier and recognized the applicant's good conduct after separating from the Army.

A third-party statement indicates the applicant has been attending the San Joaquin Delta College and has contributed to the success of student veteran community and the Veteran Resource Center. 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's AMHRR contains documentation which supports diagnoses of in-service chronic depression, adjustment disorder, and adjustment disorder with anxiety and depressed mood. The record shows the applicant underwent a behavioral health evaluation (BHE) on 9 July 2010, which indicates the applicant was mentally responsible with a clear-thinking process. The BHE was considered by the separation authority.

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, and Major Depressive Disorder (MDD).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is no association between wrongfully and recklessly striking an individual with a motor vehicle and the SC diagnosis of PTSD.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, to include the Medical Advisor opine, the ADRB determined that the applicant's PTSD and MDD did not outweigh the basis of separation – assault with a motor vehicle.

b. Response to Contention(s): The applicant contends the charges for hitting a military police officer with a vehicle were dropped because of insufficient evidence. The Board considered this contention and determined the applicant's discharge is appropriate as there is insufficient evidence in the applicant's record to support an upgrade to honorable.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted 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 and MDD did not excuse or mitigate the offenses of wrongfully and recklessly striking an individual with a motor vehicle. The Board also considered the applicant's contention regarding charges being dropped 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

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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:

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