

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues: The current characterization of service for the period under review is honorable.

The applicant seeks relief contending, in effect, the discharge was inequitable because of the exemplary service record and combat-related mental health problems. From August 2005 to December 2006, the applicant served in Iraq with the 172nd Stryker Brigade. After the deployment, the applicant was reassigned to the 82nd Airborne Division, where the applicant contributed to authoring the SOP for the M777 A2 howitzer. The applicant excelled in the performance and loved being a Soldier. During the second deployment, the applicant engaged in combat operations in Afghanistan's Kunar Province in support of Operation Enduring. The applicant started having marital problems while on the second deployment and suffered from PTSD and nightmares. The applicant was deployed to Afghanistan again, ten months after returning from the second deployment and was also going through a divorce at the time. During this tour, posttraumatic stress symptoms began to overwhelm the personality and demanded help. The applicant sought help from behavioral health professionals and was prescribed medication for both the PTSD and depression. When the applicant returned from Afghanistan, the divorce was still underway, and the behavior was influenced by combat stress. The applicant began drinking heavily to aid sleep and cope with stress. Despite the applicant's desire to remain in the Army, the therapist prepared the applicant for a medical board. The applicant made a terrible mistake in January 2013, by receiving a DUI, and was subsequently discharged from the Army. The applicant is enrolled in college and pursuing a career as a social worker to assist Veterans suffering from posttraumatic stress disorder and other redeployment challenges. The applicant also volunteers as a peer mentor for the Upstate Warrior Solution, a nonprofit organization which connects veterans with resources, guides them through the process of self-empowerment and accountability, and inspires the community to embrace warriors as community servants and leaders. Since May 2013, the applicant has been sober.

b. Board Type and Decision: In a records review conducted on 12 October 2023, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable as the applicant's discharge was previously granted full relief.

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: Disability, Permanent (Enhanced) / AR 635-40, Paragraph 4 / SEJ / RE-4 / Honorable

b. Date of Discharge: 18 October 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 9 May 2013

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant physically controlled a vehicle while drunk.

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

(4) Legal Consultation Date: 13 May 2013

(5) Administrative Separation Board: On 13 May 2013, 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.

(6) Separation Decision Date / Characterization: On 19 July 2013, the GCMCA considered the completed medical evaluation board and determined the applicant's disability was not the direct or substantial contributing cause of the misconduct which led to the recommendations for an administrative separation. / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 October 2008 / 6 years

b. Age at Enlistment / Education / GT Score: 24 / High School Graduate / 107

c. Highest Grade Achieved / MOS / Total Service: E-6 / 13B3P, Cannon Crewmember / 9 years, 2 months, 15 days

d. Prior Service / Characterizations: RA, 4 August 2004 – 19 October 2008 / HD

e. Overseas Service / Combat Service: Alaska, SWA / Iraq (6 August 2005 – 1 December 2006); Afghanistan (3 January 2010 – 1 January 2011; 4 December 2011 – 2 October 2012)

f. Awards and Decorations: ICM-2CS, ARCOM-3, AAM-3, AGCM-2, NDSM, ACM-2CS-2, GWOTSM, ICM-CS-2, NCOPDR-2, OSR-4, NATOMDL, CAB

g. Performance Ratings: 1 February 2008 – 31 January 2009 / Marginal
1 February 2009 – 31 August 2011 / Among the Best
31 August 2011 – 30 August 2012 / Among the Best

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 23 January 2013, reflects the applicant was apprehended for driving under the influence (off post).

General Officer Memorandum Of Reprimand, 31 January 2013, reflects on 5 January 2013, the applicant was driving under the influence of alcohol and with a BAC of .200.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record of Medical Care, 7 October 2012, reflects the applicant during Post Deployment Health Assessment, had ADHD, and was prescribed medication for behavioral health problems.

(2) AMHRR Listed: Report of Medical History, 9 April 2013, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: The applicant has been managed for depression, anxiety, insomnia, and PTSD, and has continued to receive care from behavioral health and undergoing MED for the problems.

Report of Mental Status Evaluation, 19 April 2013, reflects the applicant was cleared for an administrative action under Chapter 14-12c. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with positive results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The AXIS I diagnosis was "Unspecified Substance use, PTSD by history."

Medical Evaluation Board Proceedings, 30 May 2013, reflect the following behavioral health diagnoses: PTSD, combat-related; depression, chronic severe; and mild traumatic injury.

Memorandum for Record, 17 June 2013, rendered by the Marriage and Family Therapist and an Advanced Nurse Psychiatric Provider, reflects it was the opinion of both the therapist at behavioral health and the provider, the applicant's alcohol use was a direct result of the PTSD symptoms which led to the behavior and subsequent DUI charge. The applicant required long-term and intensive psychiatric and mental health care in a supportive environment and without continued treatment, the applicant would decompensate and was at a high risk of completing suicide.

Informal Physical Evaluation Board (PEB) Proceedings, 9 May 2021, reflects the Board found the applicant was physically unfit and recommended a rating of 50 percent and permanent disability retirement for PTSD and major depressive disorder. The applicant was informed approved corrections of the disability separation records and retirement benefits.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 with listed enclosures.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is enrolled in college and pursuing a career as a social worker and volunteers as a peer mentor for the Upstate Warrior Solution, a nonprofit organization, and has remained sober since May 2013.

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 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Physical Disability Evaluation System according to the provisions of section 61, title 10, United States Code (10 USC § 61) and Department of Defense Directive (DODD) 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this

regulation provides for disposition of the Soldier according to applicable laws and regulations. The objectives of this regulation are to maintain an effective and fit military organization with maximum use of available manpower and provide benefits for eligible Soldiers whose military service is terminated because of a service-connected disability; and provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected. Paragraph 4-24b(1), states, based upon the final decision of USAPDA or APDAB, USAPDA will issue separation orders for permanent retirement for physical disability (10 USC § 1201 or § 1204).

e. 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.

f. 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 "SFJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-40, Chapter 4-24b(1), Disability, Permanent.

g. 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-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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 the discharge was inequitable because of the exemplary service record and combat-related mental health problems. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends having an exemplary service record with three combat tours and loved being a Soldier. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends being enrolled in college and pursuing a career as a social worker, volunteering as a peer mentor for the Upstate Warrior Solution (a nonprofit organization) and remaining sober since May 2013. 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 third-party statements provided with the application speak highly of the applicant's character and performance and recognize the applicant's good conduct after leaving the Army.

The applicant contends suffering from PTSD and nightmares during the second deployment and seeking help when the symptoms overwhelmed the applicant. The applicant's AMHRR shows a medical evaluation board and referral to a Physical Evaluation board for the PTSD was under process at the time of the separation proceedings. Subsequently, upon application to the Army Board for the Correction of Military Records (ABCMR), the applicant's case was referred to a Physical Evaluation Board (PEB). Having waived a formal Physical Evaluation Board (PEB) Proceeding, an informal PEB on 9 May 2021 found the applicant was physically unfit and recommended a rating of 50 percent and permanent disability retirement for PTSD and major depressive disorder. The applicant was informed of the approved corrections to disability separation records and retirement benefits. The applicant's AMHRR indicates the applicant's separation was changed to permanent retirement with 50 percent disability.

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? **No.** The Board determined that a previous ADRB upgraded the applicant's discharge to Honorable and the ABCMR changed the applicant's narrative reason to "Disability, Permanent" with an SPD of "SEJ" and an RE Code of "4" based on the PEB determining the applicant's PTSD and Major Depressive Disorder (MDD) rendered the applicant unfit for duty. Therefore, the applicant's PTSD/MDD cannot mitigate the applicant's discharge as the applicant was previously granted full relief.

(2) Did the condition exist, or experience occur during military service? **N/A** The Board's Medical Advisor found in service diagnoses of an Adjustment Disorder, PTSD, Major Depression, and TBI. The VA has also service connected the applicant's PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **N/A** The Board's Medical Advisor applied liberal consideration and opined that the applicant was originally separated for Misconduct, Serious Offense for a DUI. The applicant had multiple mitigating BH conditions to include PTSD, Major Depression, and TBI. Given the nexus with these conditions and self-medicating with substances, the DUI was mitigated, and the applicant's discharge was already upgraded to Honorable. In 2021, a PEB proceeding found that the applicant's PTSD and Major Depression fell below medical retention standards at the time of separation and granted permanent disability retirement, which remains appropriate.

(4) Does the condition or experience outweigh the discharge? **N/A** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that, while the applicant's behavioral health conditions outweighed the applicant's

medically mitigated DUI offense (warranting a previous Board to upgrade the applicant's characterization of service), the applicant's RE code is equitable because it accurately reflects fitness for further duty given the permanent disability rating.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD and nightmares during a second deployment and seeking help when symptoms overwhelmed the applicant. The Board liberally considered this contention but found that the applicant has already received the appropriate upgrades to the characterization and narrative reason for separation. Further upgrade to the applicant's RE code is not warranted due to the applicant's permanent disability rating.

(2) The applicant contends the discharge was inequitable because of an exemplary service record and combat-related mental health problems. The Board considered this contention during proceedings but ultimately did not address it for the reasons discussed above in 9b(1).

(3) The applicant contends having an exemplary service record with three combat tours and loved being a Soldier. The Board considered this contention during proceedings but ultimately did not address it for the reasons discussed above in 9b(1).

(4) The applicant contends being enrolled in college, pursuing a career as a social worker, volunteering as a peer mentor for the Upstate Warrior Solution (a nonprofit organization), and remaining sober since May 2013. The Board considered this contention during proceedings but ultimately did not address it for the reasons discussed above in 9b(1).

c. The Board determined that the discharge is, at this time, proper and equitable considering the current evidentiary record. However, the applicant may request a personal appearance hearing to address 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 determined the discharge is proper and equitable as a prior ADRB upgraded the discharge characterization to Honorable; no further relief is available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD as the applicant's narrative reason for discharge is both proper and equitable.

(3) The RE code will not change as the applicant was discharge with a permanent disability that renders the applicant unfit for future service.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001549

e. Change Authority to: No Change

Authenticating Official:

12/27/2023

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