

**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.

The applicant seeks relief contending, in effect, upon reenlisting in October 2009, the applicant received an honorable discharge. The applicant served two combat tours in Iraq and Afghanistan, earned a Combat Action Badge and Airborne wings, and packed parachutes for Soldiers, who jumped out of aircrafts while in flight.

**b. Board Type and Decision:** In a records review conducted on 27 July 2023, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, time since discharge and prior honorable service outweighing the AWOL basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. 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 (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 7 March 2012**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 23 January 2012

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant was absent without an official leave on 8 January 2011 and remained absent until 19 October 2011.

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

**(4) Legal Consultation Date:** 18 January 2012

**(5) Administrative Separation Board:** On 18 January 2012, the applicant waived consideration of the case before an administrative separation board and accepted an Under Other Than Honorable Conditions characterization of service, as part of an Offer to Plead Guilty in a Summary Court-Martial proceedings. The offer to plead guilty was accepted on 19 January 2012.

**(6) Separation Decision Date / Characterization:** 29 February 2012 (by the GCMCA) / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 21 October 2008 / 5 years, NIF (Per Commander's Report)

**b. Age at Enlistment / Education / GT Score:** 18 / NIF / 103

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 92R1P, Parachute Rigger / 5 years, 9 months, 7 days

**d. Prior Service / Characterizations:** RA, 20 July 2005 – 20 October 2008 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (2 October 2006 – 2 December 2007); Afghanistan (10 March 2009 – 27 January 2010)

**f. Awards and Decorations:** ARCOM, AAM, MUC, AGCM, NDSM, ACM-2CS, GWOTSM, ICM-CS, ASR, OSR-2, NATOMDL, CAB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** A Developmental Counseling Form for being recommended for an administrative separation.

Report of Return of Absentee reflects the applicant was apprehended by civil authorities on 19 October 2011 and returned to military control.

Charge Sheet reflects the following charge preferred against the applicant on 13 December 2011: The Charge: Violation of the UCMJ, Article 85, for without authority the applicant absent oneself from the unit in desertion on 8 January 2011 and remained in desertion until 19 October 2011.

Pretrial Agreement (Offer to Plead Guilty) and its Appendix (Quantum) as described in previous paragraph 3c.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 23 January 2012. The applicant pleaded not guilty to the Charge of Article 85 (desertion), but guilty to the lesser included offense of Article 86 (AWOL), and the finding was consistent with the guilty plea. Sentence: Reduction to E-1, forfeiture \$994 pay and confinement for one month.

**i. Lost Time / Mode of Return:** 315 days:

AWOL, 8 January 2011 – 18 October 2011 / Apprehended by Civil Authorities  
CMA, 23 January 2012 – 22 February 2012 / Released from Confinement

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Mental Status Evaluation, dated 8 February 2012, reflects the applicant was cleared for an administrative separation. The applicant met medical retention requirements. The "AXIS I" diagnosis was "Insomnia." The applicant had been screened for

PTSD and mTBI with negative / 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 examiner commented: The applicant reports symptoms consistent with insomnia, but the symptoms were minimal and do not negatively impact the social and occupational functioning.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293 and DD Form 214.

**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 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 14-12c 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 waivable and nonwaivable 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 waivable. 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 having received an honorable discharge upon reenlisting, served two combat tours, and earned a combat action badge and airborne wings. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant's AMHRR contains documentation indicating an AXIS I diagnosis of Insomnia. The applicant did not submit any evidence of any behavioral health diagnosis. The record shows the applicant underwent a mental status evaluation (MSE) on 8 February 2012, which indicates the applicant was cleared for an administrative separation and the applicant's reported symptoms were consistent with insomnia, but they were minimal and did not negatively impact the social and occupational functioning. The MSE was considered by the separation authority.

#### **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? **No.** The Board's Medical Advisor, a voting member, reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **N/A.**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.**

(4) Does the condition or experience outweigh the discharge? **N/A.**

**b.** Response to Contention(s): The applicant contends having received an honorable discharge upon reenlisting, served two combat tours, and earned a combat action badge and airborne wings. The Board considered this contention and determined the applicant's prior honorable service, two combat tours and numerous awards outweigh the applicant's characterization of service and warrant an upgrade to General, Under Honorable Conditions.

**c.** The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, time since discharge and prior honorable service outweighing the AWOL basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them. However, the applicant may request a personal appearance hearing to address further 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 to change the applicant's characterization of service to Honorable because the applicant's length and quality of service, to include combat service, time since discharge and prior honorable service outweighed the AWOL basis for separation. Thus, the prior characterization is no longer appropriate.

**(2)** The Board voted not to change the applicant's reason for discharge or accompanying SPD code 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.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001748**

**10. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

12/29/2023
X [Redacted Signature]
Presiding [Redacted Name]

**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