

**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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the characterization of service was based on a very short period in which the applicant was under much grief and distress. The applicant was recovering from a broken limb and a possible discharge from the military. While recovering from the injury, the applicant was coping with the death of a parent, death of a grandparent, and the stroke of the grandparent, which was instrumental in the applicant's upbringing. The applicant was coping with all this alone, with no support from the leadership. In the applicant's frustration, the applicant decided to drink, which led to other bad choices. The applicant does not deny making poor decisions but does not believe this time alone should represent the overall six years of service. None of the applicant's accomplishments were taken into consideration during the discharge.

**b. Board Type and Decision:** In a records review conducted on 11 July 2023, and by 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 / Under Other than Honorable Conditions.

**b. Date of Discharge:** 1 August 2011

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** On 1 April 2011 the applicant was informed of the commander's intent to separate the applicant. The applicant refused to sign the Acknowledgement of Receipt of Separation Notice.

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant received a DUI/refusal on 14 February 2010, a DUI/refusal on 13 November 2010 and violated a sobriety court order by consuming alcohol on 7 February 2011.

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

**(4) Legal Consultation Date:** 18 April 2011

**(5) Administrative Separation Board:** On 18 April 2011, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable discharge.

On 19 May 2011, the applicant's conditional waiver was denied.

On 1 June 2011, the applicant was notified to appear before an administrative separation board and advised of rights.

On 22 June 2011, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the three reasons listed in the notification memorandum were supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

On 1 July 2011, the separation authority approved the findings and recommendations of the administrative separation board and directed the applicant be discharged with a characterization of service of under other than honorable conditions.

**(6) Separation Decision Date / Characterization:** 1 July 2011 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 13 December 2007 / 6 years

**b. Age at Enlistment / Education / GT Score:** 22 / High School Graduate / 115

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 42A10, Human Resources Specialist / 8 years, 1 month, 5 days

**d. Prior Service / Characterizations:** USAR, 27 June 2003 – 10 August 2003 / NIF  
IADT, 11 August 2003 – 17 December 2003 / UNC  
USAR, 18 December 2003 – 6 February 2006 / NIF  
RA, 7 February 2006 – 12 December 2007 / HD

**e. Overseas Service / Combat Service:** SWA / Kuwait (8 August 2008 – 10 July 2009)

**f. Awards and Decorations:** AAM, AGCM-2, GWOTEM, GWOTSM, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report Number 00866-2010-MPC023, dated 14 February 2010, reflects the applicant was arrested for impaired driving (refusal) (NC Code 20-138.1) (Off Post) and improper right turn (NCGD 20-153(A)) (Off Post).

North Carolina Department of Health and Human Services Document, dated 14 February 2010, reflects the applicant was charged with an implied-consent offense.

Army Substance Abuse Program (ASAP) Enrollment Form, dated 8 March 2010, reflects the applicant was command referred in the ASAP.

Summary of Rehabilitation Efforts, dated 12 August 2010, reflects on 18 June 2010, the applicant was stopped by the local policeman for speeding and detained for drinking alcohol and

driving. On 21 June 2010, a rehabilitation team meeting was held, and the applicant admitted drinking two beers on the night of 18 June 2010 and report the BAC was .10. The applicant was informed due to the continued use of alcohol while enrolled in ASAP and refusal to utilize recommended tools to successfully rehabilitate, the applicant was deemed a rehabilitation failure.

Military Police Report # 06597-2010-MPC023, dated 13 November 2010, reflects the applicant was arrested for impaired driving (refusal) (NC Code 20-138.1) (Off Post) and driving while license revoked (NCGS 20-28) (Off Post).

North Carolina Department of Health and Human Services Document, dated 13 November 2010, reflects the applicant was charged with an implied-consent offense.

Military Protective Order, dated 13 November 2010, reflects the applicant was restrained from initiating any contact or communication with J. S.

General Officer Memorandum of Reprimand, dated 2 February 2011, on 13 November 2010, the applicant was arrested for driving while impaired after being stopped for reckless driving. The applicant refused to take a lawfully requested intoximeter test.

Military Police Report Number 00789-2011-MPC023, dated 8 February 2011, reflects the applicant was arrested for other (order for arrest) sobriety court violations (On Post).

Military Police Report Number 01966-2011-MPC023, dated 2 April 2011, reflects the applicant was arrested for violating orders of court (sobriety conditions) (NCGS 14-226.1) (Off Post).

Sobriety Treatment Court Memorandum, dated 21 June 2011, reflects the applicant entered Sobriety Court on 23 November 2010 and was ordered to produce a urine and alcohol test throughout participation in Sobriety Court. The applicant appeared at the first session and produced a negative drug screen. Since inception into the Sobriety Court program, the applicant's drug tests were negative. The applicant was ordered to be monitored with a home alcohol monitoring station. While being monitored, the applicant violated the bond conditions of prohibition by producing several positive alcohol tests. The applicant tested positive for alcohol on four separate occasions, the most than any other participant. The applicant also had three curfew violations while being monitored.

Report of Proceedings by Investigating Officer/Board of Officers, dated 22 June 2011. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

Several Developmental Counseling Forms, for failure to follow a direct order/driving after consuming alcohol; arrest; violating a court order; patterns of serious misconduct; enrollment in ASAP.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Behavioral Health Evaluation (BHE), dated 17 March 2011, 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 applicant was diagnosed with: Axis I: Occupational Problems.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 149; self-authored statement; three third-party letters; DD Form 214; ten certificates; DD Form 638.

**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 good service, including a deployment. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the characterization of service was unjustly determined and based on an isolated period. Army Regulation 635-200, paragraph 3-5 in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends coping with stress all alone with no help from the leadership and out of frustration, the applicant made the decision to drink which led to other bad choices. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and command directing the applicant into ASAP. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statements provided with the application speak highly of the applicant. They all recognize the applicant's good conduct while serving in the Army.

## **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 (via service connection). Additionally, the applicant asserts other behavioral health conditions of grief and distress, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found applicant is service connected for PTSD and has asserted other behavioral health conditions to include grief and distress associated with injury and deaths within his support network.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that applicant is 70% service connected (SC) for PTSD and has asserted other behavioral health conditions associated with grief and distress following a significant leg injury and the death of several people close to him. The medical advisor found no evidence in the medical record to support a level of associated impairment that would support this as a potentially mitigating psychiatric condition. PTSD is established via SC although there are no records in either applicant's available active duty or VA records to further clarify the nature of the diagnosis or trauma. Under liberal consideration guidelines the medical advisor presumes service-connected PTSD involved a trauma predating applicant's alcohol issues occurring post-deployment, and as such provides psychiatric mitigation for the DUI offenses noted in the record as well as the violation of the sobriety court order by drinking alcohol, as there is a nexus between PTSD and substance misuse as a coping mechanism. There is additional misconduct in the applicant's record. Breaking curfew would not be mitigated by PTSD or asserted grief/distress reactions nor would driving with a revoked license, as there is no nexus between such circumstances and these conditions. Finally, there is evidence in the record of an assault resulting in a military protective order (MPO) that would not be mitigated by PTSD or grief and related distress, as such conditions do not impair one's ability to differentiate right from 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 support a conclusion that the applicant's PTSD, grief and distress outweighed the basis for applicant's separation, however, the remaining misconduct included in applicant's record is not outweighed by the applicant's PTSD, grief and distress – breaking curfew while being monitored and assault resulting in an MPO.

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

(1) The applicant contends good service, including a deployment. The Board considered the applicant's 8 years of service and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's DUIs, violating a sobriety court order by consuming alcohol, breaking curfew while being monitored and assault resulting in an MPO misconduct.

(2) The applicant contends the characterization of service was unjustly determined and based on an isolated period, during which family issues affected behavior and ultimately caused the discharge. The Board considered this contention and determined that the applicant's family issues, and applicant's claim of an isolated period does not excuse or outweigh the applicant's DUIs, violating a sobriety court order by consuming alcohol, breaking curfew while being monitored and assault resulting in an MPO misconduct as the Army affords many avenues to Soldier's including seeking assistance and/or separation for hardship.

**(3)** The applicant contends coping with stress all alone with no help from the leadership and out of frustration, the applicant made the decision to drink which led to other bad choices. The Board considered this contention and determined that the applicant's coping with stress does not mitigate the applicant's DUIs, violating a sobriety court order by consuming alcohol, breaking curfew while being monitored and assault resulting in an MPO misconduct as the Army affords many avenues to Soldier's including seeking assistance and/or separation for hardship.

**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, grief and stress mitigated the applicant's DUIs and violating a sobriety court order by consuming alcohol, however, those conditions did not excuse or mitigate the misconduct of breaking curfew while being monitored and assault resulting in an MPO. The Board also considered the applicant's contentions of coping with stress all alone and family issues and found that the 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or 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 / 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:**

1/5/2024

**X**

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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