

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, after returning from overseas in Iraq, the applicant began suffering from post-traumatic stress disorder (PTSD). The VA rated the applicant as 90 percent service-connected disabled, which is considered a permanent and total disability. Post-traumatic stress disorder was rated at 70 percent. The applicant believes the unit was unable to determine what problems the applicant was suffering from and discharged the applicant with a general (under honorable conditions). The applicant had been diagnosed with PTSD. The applicant desires to attend school.

The applicant has been going to therapy at the VA for several years. Before therapy, the applicant was unable to continue the applicant's education or hold a full-time meaningful job. After years of therapy, the applicant is able to begin furthering the education and is seeking employment which would support the family.

b. Board Type and Decision: In a records review conducted on 17 May 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, applicant's PTSD diagnosis, and post service accomplishments outweighing the applicant's multiple failures to obey a lawful general order, disobeying a lawful order not to leave, disrespect to superiors, and driving in a reckless manner. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The RE code will not change, due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service.

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: 7 December 2006

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 7 November 2006

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

On 26 April 2006, the applicant received a Summarized Article 15 for failing to obey a lawful general order;

On 20 April 2006, the applicant received a Company Grade Article 15 for being disorderly and disrespectful in language toward Staff Sergeant (SSG) W. D. and Sergeant First Class (SFC) D. K.;

On 21 June 2006, the applicant received a Field Grade Article 15 for failing to obey a lawful order from SSG H., and being disorderly and disrespectful in language toward Corporal (CPL) T. and SSG H.; and

On 27 September 2006, the applicant failed to obey the lawful order of SSG J. W. On the date, the applicant refused to stop moving, as ordered to do so, but continued to proceed to the applicant's personal vehicle and drive in a reckless manner through the parking lot and on to the second avenue of Fort Drum.

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

(4) Legal Consultation Date: On 16 November 2006, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 20 November 2006 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 August 2005 / 6 years

b. Age at Enlistment / Education / GT Score: 21 / HS Graduate / 110

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M10, Motor Transport Operator / 3 years, 7 months, 14 days

d. Prior Service / Characterizations: RA, 24 April 2003 – 17 August 2005 / HD

e. Overseas Service / Combat Service: Korea, SWA / Iraq (11 August 2005 – 19 July 2006)

f. Awards and Decorations: AAM, NDSM, GWOTSM, KDSM, ICM, ASR, OSR,

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Summarized Article 15, dated 20 April 2006, for being disrespectful in language toward SSG W. D., a noncommissioned officer (NCO); being disrespectful in language toward SFC D. K., an NCO; and being disorderly (29 March 2006). The punishment consisted of extra duty for 14 days.

Field Grade Article 15, dated 21 June 2006, for:

Being disrespectful in language toward CPL M. T., an NCO, (1 June 2006);

Willfully disobeying SSG H., an NCO, to stand up (1 June 2006);

Being disrespectful in language toward SSG H., an NCO (1 June 2006); and

Being disorderly (1 June 2006).

The punishment consisted of a reduction to E-3; forfeiture of \$846 pay per month for two months (suspended); extra duty for 45 days; and oral reprimand.

Armed Forces Traffic Ticket, dated 27 September 2006, reflects the applicant received a traffic ticket for speed not reasonable or prudent and unsafe start.

Numerous Developmental Counseling Forms, for being disrespectful to the First Sergeant and other NCOs, failing to obey lawful orders from noncommissioned officers, failing to obey order or regulation, and being removed from the E-5/E-6 Promotion Board.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs (VA), benefits letter, dated 9 November 2012, reflecting the applicant was rated for chronic cervical tension associated with residuals of traumatic brain injury (TBI), 10 percent and PTSD, depressive disorder, not otherwise specified (NOS), 70 percent.

Department of Veterans Affairs letter, dated 24 November 2015, reflecting the applicant was rated a combine rating of 90 percent service-connected disabled and paid 100 percent rate because the applicant was unemployable.

(2) AMHRR Listed: Report of Mental Status Evaluation, dated 5 October 2006, 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. There is no psychiatric disorder which requires disposition through medical channels. The applicant was diagnosed with: Occupational Problem.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; two DD Forms 293; two VA letters; and VA Verified Service Data.

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) 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 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 PTSD affected behavior which ultimately led to the discharge and the VA diagnosed the applicant with PTSD and rated the applicant 70 percent service-connected disabled for PTSD. The applicant provided medical documents indicating the VA rated the applicant 70 percent service-connected disability for PTSD, depressive disorder, NOS, and 10 percent for chronic cervical tension associated with residuals of TBI. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 5 October 2006, which indicates the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was diagnosed with occupational problems. The MSE was considered by the separation authority.

The applicant contends the command did not recognize the applicant had PTSD. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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? **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 TBI.

(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 TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that applicant is service connected for PTSD and TBI, although records indicate TBI appears absent of noteworthy impairment and therefore does not merit further consideration as a mitigating condition. The presence of PTSD results in partial mitigation of offenses leading to discharge, as there is a relationship between PTSD and irritability and disrespect toward authority figures. Offenses during and subsequent to applicant's deployment associated with minor verbal disrespect to superiors and minor refusal to comply with directives are mitigated. Although PTSD can be associated with reckless behavior at times, it is the advisor's determination that the disregard of a directive and the subsequent reckless operation of vehicle putting others at risk was severe enough to outweigh the degree of mitigation provided by PTSD. Finally, PTSD does not mitigate the disregard for lawful order dated 26 April 2005, as there is no nexus between PTSD and wrongfully granting/extending a pass.

(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 and TBI outweighed the basis for applicant's separation – failure to obey a lawful general order and

disobeyed a lawful order not to leave and drove in a reckless manner – for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends PTSD affected behavior which ultimately led to the discharge and the VA diagnosed the applicant with PTSD and rated the applicant 70 percent service-connected disabled for PTSD. The Board considered this contention and determined applicant's PTSD partially mitigates the applicant's disorderly and disrespectful in language towards NCOs basis for separation. The remaining misconduct of failure to obey a lawful general order, disobeyed a lawful order not to leave and drove in a reckless manner is outweighed by applicant's length and quality of service, to include combat service, and post service accomplishments.

(2) The applicant contends the command did not recognize the applicant had PTSD. The Board considered this contention and determined there is no evidence of the Command acting in an arbitrary or capricious manner. The Board determined the applicant's PTSD partially mitigates the applicant's disorderly and disrespectful in language towards NCOs basis for separation. The remaining misconduct of failure to obey a lawful general order, disobeyed a lawful order not to leave and drove in a reckless manner is outweighed by applicant's length and quality of service, to include combat service, and post service accomplishments.

(3) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

c. the discharge is inequitable based on the applicant's length and quality of service, to include combat service, applicant's PTSD diagnosis, and post service accomplishments outweighing the applicant's multiple failures to obey a lawful general order, disobeying a lawful order not to leave, disrespect to superiors, and driving in a reckless manner. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The RE code will not change, due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service. 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 PTSD mitigated the applicant's misconduct of disorderly and disrespectful in language towards NCOs basis for separation. The remaining misconduct of failure to obey a lawful general order, disobeyed a lawful order not to leave and drove in a reckless manner is outweighed by applicant's length and quality of service, to include combat service, and post service accomplishments. Thus, the prior characterization is no longer appropriate.

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(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN

(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: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

12/29/2023



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