

**1. Applicant's Name:**

- a. **Application Date:** 15 December 2020
- b. **Date Received:** 18 December 2020
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is under honorable conditions (general). The applicant requests an upgrade to honorable and a narrative reason change.

b. The applicant seeks relief contending, in effect they were not convicted of a serious offense.

c. **Board Type and Decision:** In a records review conducted on 6 March 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200 / JKQ / RE-3 / Under Honorable Conditions (General)

b. **Date of Discharge:** 16 July 2010

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 25 June 2010

(2) **Basis for Separation:** On or about 6 March 2009, the applicant was arrested for aggravated assault and public intoxication by Clarksville police.

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

(4) **Legal Consultation Date:** 30 June 2010

(5) **Administrative Separation Board:** N/A

(6) **Separation Decision Date / Characterization:** 6 July 2010 / General, Under Honorable Conditions.

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 3 November 2008 / 6 years

b. **Age at Enlistment / Education / GT Score:** 22 / GED / 115

**c. Highest Grade Achieved / MOS / Total Service:** E-4 (Specialist) / 19D10 Cavalry Scout / 3 years, 6 months, 13 days

**d. Prior Service / Characterizations:** 4 January 2007 – 2 November 2008 / Continuous Honorable Service

**e. Overseas Service / Combat Service:** None / Iraq; 3 December 2007 – 14 November 2008

**f. Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM-CS, ASR, OSR

**g. Performance Ratings:** N/A

**h. Disciplinary Action(s) / Evidentiary Record:**

(1) An Enlistment/ Reenlistment Document provides that the applicant enlisted in the United States Army Reserve at the rank of private (E-1) with an active duty obligation of 3 years and 19 weeks on 13 November 2006. The applicant reenlisted on 2 November 2008.

(2) A Case Docket History document dated 19 March 2009 provides the applicant was charged with public intoxication from an incident that happened on 6 March 2009; The charges were dismissed.

(3) A Case Docket History document dated 24 November 2009, provides the applicant was arrested and charged with aggravated assault on 6 March 2009; released on bond 30 April 2009. The applicant plead guilty; punishment consisted of probation for 3 years, 150 hours of public service work, they were prohibited from having personally owned weapons and they had to pay court and probation supervision fees. The applicant was ordered to continue mental health counseling provided by the Army.

(4) A Report of Behavioral Health Evaluation document dated 23 February 2010, provides that the applicant received a risk assessment that psychologically cleared them for any administrative action deemed appropriate by command.

- Recommended increased supervision
- Recommended command securing all weapons
- Recommended an order against the use of alcohol
- Recommended that the unit hold and dispense the applicant's medication as prescribed

(5) A Report of Medical Examination document dated 12 May 2010, provides the applicant received a separation medical examination.

(6) A memorandum, Headquarters, 101st Airborne Division, Fort Campbell, Kentucky subject: separation under AR 635-200, Chapter 14-12c (commission of a serious offense) dated 25 June 2010 provides the applicants immediate commander notified them of their intent to separate them for being arrested for aggravated assault and public intoxication, they recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, their available rights, to include the right to consult with counsel prior to submitting their election of rights. On 30 June 2010 the applicant consulted with a military counsel and elected to not submit any statements on their behalf.

(7) On 30 June 2010 the chain of command endorsed and concurred with the commander's recommendation. On 6 July 2010 the appropriate authority approved the separation under the provisions of AR 635-200 and directed a characterization of service of General, under honorable conditions.

(8) A DD Form 214 shows on 16 July 2010 the applicant was discharged accordingly, they completed total active service of 3 years , 6 months, and 13 days.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of medical examination, provides the applicant was diagnosed with PTSD, Report of Behavioral Health Evaluation provides the applicant was being seen at ASAP and behavioral health.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293 (Discharge Review) application and a copy of their DD Form 214 in support of their application.

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted in support of their 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), dated 25 September 2019, 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 provides the authorized types of characterization of service or description of separation.

(1) 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.

(2) 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.

(3) An 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.

(4) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons. Rehabilitative requirements are not required for individuals separated under Chapter 14-12c.

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards

(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. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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.

(6) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

- RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met
- RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted
- 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.

**a.** The applicant requests an upgrade to honorable. The applicant's DD Form 214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge which is normally considered appropriate for a soldier discharged for serious misconduct.

**b.** Based on available evidence the applicant entered active duty in 2007 at the age 22, they deployed to Iraq later that same year. Four months after returning from deployment they were arrested for aggravated assault and public intoxication. They spent 55 days in confinement and plead guilty to the aggravated assault charge.

**c.** The applicant was notified of the intent to separate them for serious misconduct and acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. The applicant consulted with military counsel and elected to not submit any statements on their behalf. They received the required health and mental health separation examinations that cleared them for administrative separation.

**d.** Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

**e.** Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

**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: Anxiety DO NOS; Adjustment DO with anxiety and depressed mood; Episodic Mood DOs; PTSD (70%SC); MST (as claimed by his NCO and mother).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found anxiety DO NOS; Adjustment DO with anxiety and depressed mood; Episodic Mood DOs were all diagnosed during military service. VA service connection for PTSD establishes the condition occurred and/or began during active service. Report from NCO and mother indicate MST occurred during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant had a BH condition, PTSD and MST, which mitigate some of his misconduct. (Letters from his Chief Master Sergeant and mother indicate that the applicant was a victim of MST.) As there is an association between PTSD, MST and self-medication with alcohol and/or illicit drugs, there is a nexus between these conditions, his incident of underage drinking and his wrongful use of marijuana. As there is an association between PTSD, MST, avoidant behaviors, and difficulty with authority figures, there is a nexus between these conditions and his offenses of being AWOL, failing to report, disrespectfulness towards an NCO and breaking restriction. Neither PTSD nor MST mitigate the offenses of making a false official statement, engaging in domestic violence, or engaging in larceny as none of these conditions affects one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition or experience did not outweigh the basis of separation.

b. Prior Decisions Cited: 15 April 2011; Denied.

c. Response to Contentions:

(1) The applicant contends they were not convicted of a serious offense. The Board considered this contention and determined that the totality of misconduct outweighs mitigation.

d. 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 contentions that the discharge was improper or inequitable.

e. Rationale for Decision:

(1) The applicant has an in-service diagnosis of Anxiety DO NOS; Adjustment DO with anxiety and depressed mood; Episodic Mood DOs. The applicant is 70% service-connected for PTSD and MST. Report from NCO and mother indicate MST occurred during service. The Board's Medical Advisor applied liberal consideration and opined the applicant had a BH condition, PTSD and MST, which mitigate some of his misconduct. (Letters from his Chief Master Sergeant and mother indicate that the applicant was a victim of MST.) As there is an association between PTSD, MST and self-medication with alcohol and/or illicit drugs, there is a

nexus between these conditions, his incident of underage drinking and his wrongful use of marijuana. As there is an association between PTSD, MST, avoidant behaviors, and difficulty with authority figures, there is a nexus between these conditions and his offenses of being AWOL, failing to report, disrespectfulness towards an NCO and breaking restriction. Neither PTSD nor MST mitigate the offenses of making a false official statement or engaging in larceny as neither of these conditions affects one's ability to distinguish right from wrong and act in accordance with the right. The Board discussed the applicant's contentions, carefully considered the applicant's request, evidence in the records, and medical review recommendation. Although the BH diagnosis mitigated some of the misconduct, the gravity of the unmitigated misconduct (Domestic Violence (Noted in file), Larceny and making a false official statement) outweigh the mitigation. Based on the non-mitigation of the remaining misconduct, the current discharge is appropriate.

**(2)** The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.



(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No change
- c. Change Reason / SPD code to: No change
- d. Change RE Code to: No change
- e. Change Authority to: No change

**Authenticating Official:**

3/25/2024

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