

**1. Applicant's Name:**

- a. **Application Date:** 9 December 2020
- b. **Date Received:** 28 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.

The applicant states in effect, they joined the Army so that they may go to school one day. When they enlisted, they had a difficult time adjusting to their life, but they still pushed through their first tour in Iraq safely. Although the Army was not the best idea for them, personally, it still taught them so much. After they were separated, they struggled to adapt to life, and had symptoms of PTSD. They spent 10 years of their life being homeless and living in the backseat of their mother's vehicle. They feel like they have made a lot of changes in their life for the better since the age of 18, as they were young and made mistakes. They don't believe they should be punished for the rest of their life for their adolescence, for that reason they feel like they should be entitled to their G.I. Bill and an upgrade in their discharge.

b. **Board Type and Decision:** In a records review conducted on 30 October 2024, and by a 4-1 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.*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200 / JKA / RE-3 / Under Honorable Conditions (General).

b. **Date of Discharge:** 2 October 2009

c. **Separation Facts:** AMHRR

(1) **Date of Notification of Intent to Separate:** 9 September 2009

(2) **Basis for Separation:** The applicant engaged in a serious pattern of misconduct, to include absent without leave from 1 November 2008 – 13 November 2008, multiple episodes of disrespect to commissioned and noncommissioned officers, and numerous failures to report to duty.

(3) **Recommended Characterization:** General, under honorable conditions.

(4) **Legal Consultation Date:** 12 September 2009

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

(6) **Separation Decision Date / Characterization:** 21 September 2009 / General, under honorable conditions.

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 15 November 2006 / 4 years.
- b. **Age at Enlistment / Education / GT Score:** 18 / High School Diploma / 97
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 89B10 Ammunition Specialist / 2 years, 9 months, 23 days.
- d. **Prior Service / Characterizations:** None.
- e. **Overseas Service / Combat Service:** Kuwait / Iraq; 2008 – 2009
- f. **Awards and Decorations:** NDSM, ASR
- g. **Performance Ratings:** N/A
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Record of Proceedings UCMJ dated 21 July 2008 provides the applicant received a NJP for violating Articles 89 and 91 of the UCMJ. They spoke to their superior commissioned officer in an inappropriate tone of voice while in Kuwait on 19 June 2008, and on 16 January 2008 while at Fort Hood, Texas they disobeyed a lawful order. Punishment consisted of reduction to E-1, forfeiture of \$674 pay for two months, 45 days extra duty and restriction.

(2) A Developmental Counseling Form provides the applicant failed to go to their appointed place of duty while in Iraq; they failed to report to PT on 8 September 2008.

(3) A Personnel Action Document provides that the applicant's duty status changed from present for duty (PDY) to absent without leave (AWOL) on 28 October 2008.

(4) A military Police Report dated 13 November 2008 provides the applicant surrendered to military authorities at Fort McPherson.

(5) On 11 December 2008 the applicant was counseled after they failed to show up to their place of duty at the designated time; reported to work call late (Iraq).

(6) Record of Proceedings UCMJ dated 3 January 2009 provides the applicant received a NJP for violating Article 86 UCMJ. They were absent from their unit located in Iraq from 1 November 2008 – 13 November 2008. Punishment consisted of forfeiture of \$673 pay for two months, 45 days extra duty and restriction.

(7) July 2009 the applicant received a NJP for violating Article 91 of the UCMJ. They disobeyed the lawful order to not go to the PX at Camp Teji Iraq on 12 May 2009, and they were disrespectful in language towards a noncommissioned officer. Punishment consisted of forfeiture of \$326 pay, extra duty, and restriction for 14 days.

(8) On 20 July 2009 the applicant was counseled for being absent without leave from 13 July 2009 – 20 July 2009.

(9) On 9 September 2009 the applicant's immediate commander notified them of their intent to separate them for a Pattern of Misconduct. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they consulted with counsel and completed their election of rights indicating they understood the prejudices that may occur in receiving a characterization of service of less than honorable.

(10) On 14 September 2009 the chain of command endorsed and concurred with the commander's discharge recommendation. On 21 September 2009 the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

i. **Lost Time / Mode of Return:** 20081028 – 20081116, 20090714 – 20090719 / Surrendered to military authorities.

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

(1) **Applicant provided:** The applicant did not provide any medical documentation.

(2) **AMHRR Listed:** None.

5. **APPLICANT-PROVIDED EVIDENCE:** A DD Form 293 (Record Review) application, and a handwritten statement 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)** 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.

**(5)** 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 "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 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.

**g.** Army Regulation 630-10 (Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings) provides policies and procedures for reporting

unauthorized absentees and deserters, the administering of absent without leave (AWOL) personnel and deserters, returning absentees and deserters to military control and the surrendering of military personnel to civilian law enforcement authorities.

(1) When a soldier returns from an absence that is or appears to be unauthorized, the unit commander informally investigates whether disciplinary action should be taken and if the soldier should be charged with time lost.

(2) Classification of an absence is dependent upon such factors as the following

- Orders and instructions, written and oral, the Soldier received before and during the absence.
- Age, military experience, and general intelligence of the soldier.
- Number and type of contact the soldier had with the military while absent.
- Complete or incomplete results of a court-martial decision, if any.

(3) An absence immediately following authorized leave is classified as AWOL. Should the absence subsequently be reclassified, the soldier's leave is corrected to reflect the reclassified absence, except if the absence is caused by the following:

- Mental incapacity
- Detention by civilian authorities
- Early departure of a mobile unit due to operational commitments.

**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-214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTHC) discharge, which is normally considered appropriate for a soldier discharged under Chapter 14 for misconduct.

b. Based on the available evidence the applicant enlisted in the army at the age of 18, they deployed to Iraq sometime in 2008 and returned to Fort Hood, Texas sometime in June/July 2009. The AMHRR is void of the applicant's deployment orders and exact deployment dates. While in Kuwait they received their first Non Judicial Punishment (NJP), four months later they were AWOL when they failed to return to their unit after R&R leave from Iraq. The applicant surrendered to military authorities, returned to Iraq, and subsequently received their second NJP. The applicant received their third NJP while deployed after they disobeyed the lawful to not go to the PX on 12 May 2009. When the applicant returned from deployment, they were AWOL for seven days.

c. The applicant was notified of the Intent to separate them, they consulted with counsel and the appropriate authority approved their separation. Evidence provides the applicant received the required mental health separation examination. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 2 October 2009, estimated 3 – 4 months after they returned from Iraq.

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: In-service diagnoses included Antisocial Personality Disorder and variations of Adjustment Disorder. Post-service, he is service connected for combat related PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** In-service diagnoses included Antisocial Personality Disorder and variations of Adjustment Disorder. Post-service, he is service connected for combat related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial** The Board's Medical Advisor applied liberal consideration and opined that given liberal consideration compels acceptance of the service connected PTSD, related trauma occurring prior to the basis of separation, and nexus between trauma, avoidance, and difficulty with authority and others, the misconduct is mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opinion, the Board determined that the available evidence did not support a conclusion that the applicant's medical conditions outweighed the basis of separation.

b. Prior Decisions Cited: None.

c. Response to Contention:

(1) The applicant contends they had symptoms of PTSD. The Board considered this contention and determined that the majority of the applicant's intentional misconduct pre-dates the applicant's deployment and combat-related PTSD.

d. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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.

**e. 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 did not fully excuse or mitigate the offenses. The Board noted the majority of the misconduct occurred in October 2007 (shoplifting at the PX, disrespect to an NCO and FTR) and is not medically mitigated. However, the applicant's misconduct during and after deployment are medically mitigated (AWOL and FTR to duty while in Iraq). The majority of the Board believed the medically unmitigated misconduct was more serious, pre-dates the applicant's combat-related PTSD, and does not warrant an upgrade to Honorable. Additionally, the Board noted the applicant's chain of command attempted to rehabilitate the applicant through a unit transfer, however the applicant's conduct did not improve. 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.

(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.

**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:**

11/6/2024

**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  
UOTH – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs