

**1. Applicant's Name:**

**a. Application Date:** 12 May 2021

**b. Date Received:** 17 May 2021

**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 General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

**b.** The applicant seeks relief contending, at the time of the civilian offense that led to their separation, the applicant was within months of returning from Iraq, was suffering from severe mental illness, and neurological issues from exposure. They served their full term of service, since they have taken steps to better themselves, such as therapy, neurological treatment, and medicine management. Upgrading their discharge, would allow them to further better themselves, with the G.I. Bill.

**c. Board Type and Decision:** In a records review conducted on 06 December 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, Chapter 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 9 March 2010

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 29 January 2010

**(2) Basis for Separation:** On or about 28 June 2009, the applicant was cited by the Fairbanks Police Department for two counts of burglary and theft in the second degree by unlawfully entering a private residence and stealing about \$2,946.00 worth of merchandise. Additionally, on 1 July 2009, the applicant unlawfully entered an apparel [store] and stealing about \$1,500.00 worth of merchandise.

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

**(4) Legal Consultation Date:** 8 February 2010

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 9 March 2010 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. Date / Period of Enlistment:** 16 August 2006 / 3 years, 17 weeks
- b. Age at Enlistment / Education / GT Score:** 17 / GED / 111
- c. Highest Grade Achieved / MOS / Total Service:** E-4 (SPC) / 11B10 Infantryman / 3 years, 3 months, 17 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** SWA / Iraq (20 September 2008 – 21 March 2009)
- f. Awards and Decorations:** NDSM, GWOTSM, ICM-CS, ASR, OSR, CIB
- g. Performance Ratings:** None
- h. Disciplinary Action(s) / Evidentiary Record:** On 16 August 2006, the applicant enlisted in the Regular Army for 3 years and 17 weeks as a private, PVT (E-1). The Enlisted Record Brief provides the applicant promoted up to specialist, SPC (E-4) on 1 July 2008, nearly two years after enlisting. They deployed to Iraq for six months, between 20 September 2008 – 21 March 2009. The applicant received several counseling's for various acts of indiscipline for having missed an appointment, lying to their NCO (noncommissioned officer), and for having their pass privileges revoked. On 2 August 2009, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

(1) On 2 August 2009 they were indicted for two counts of burglary and theft in the second degree. On 1 July 2009 a western apparel store was broken into and approximately \$1,500 worth of jewelry, spurs, belt buckles, belts, knives, hats, and watches were stolen. On 7 July 2009, the business owner called State Troopers to report that they found their stolen items on eBay. They obtained the webpage from the business owner and confirmed the pictures and description of the items. The Trooper took the username of the person selling the items and worked with eBay to get their account information, which led to the applicant's address. The Trooper met the applicant at their address and after confirming their username matched the eBay sellers, the applicant confessed to the burglary and theft, by having pried open the window at the business and entered the store, stole the items, and tried to sell them on eBay. Many of the stolen items were recovered in the applicant's apartment pursuant to a search warrant. They also recovered a stolen laptop that was stolen in a burglary on 28 June 2009, nearby. All of these stolen items were stored throughout their apartment. They were remanded to civil confinement. Their status changed from present for duty (PDY) to confined by civil authorities (CCA).

(2) On 10 and 20 November 2009, the applicant completed their separation medical assessment, history, and physical (MHE) at Kamish Clinic, Fort Wainwright, AK, which provides they were qualified for service and separation. The provider made note of their diagnosis: Varicocele, although there were no further recommendations; the provider also noted that the applicant was in counseling for Depression and drug abuse with Community Mental Health that was "better," although they were still receiving therapy without any medication then.

(3) On 19 November 2009, they were released to military control (status changed from CCA to PDY). On 28 January 2010, they were flagged, involuntary separation (BA). On 29

January 2010, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12C, Misconduct (Serious Offense), for having been cited by the Fairbanks Police for two counts of burglary and theft in the second degree, in which they unlawfully entered a private residence on 28 June 2009 and stealing about \$2,946.00 in merchandise; and for having unlawfully entered an apparel store and stealing about \$1,500.00 worth of merchandise on 1 July 2009. They recommended a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of their separation notice.

(4) On 8 February 2010, they elected and consulted with legal and declined to provide a statement on their behalf. Defense counsel counseled them on the possible effects of their separation and the rights available to them. The commander's report indicates the applicant had committed the same offense on two separate occasions and signed a work release to would work at the apparel store; however, the applicant did not show up to work. On 9 March 2010, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(5) On 10 March 2010, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 19 March 2010, with 3 years, 4 months, and 17 days of total service. Their electronic signature was provided and the applicant has completed their first full term of service.

i. **Lost Time / Mode of Return:** 106 days; CCA, 2 August – 19 November 2009 / Released to Military Control

j. **Behavioral Health Condition(s):** Posttraumatic Stress Disorder (PTSD); Adjustment Disorder

(1) **Applicant provided:** A Veterans Affairs (VA) Rating Decision, indicates effective 18 May 2020, the applicant has been granted an evaluation of 80% service-connected disability for tonic-clonic seizures or Grand Mal Epilepsy; and an evaluation of 50% service-connected disability for PTSD (as claimed as Depression, Anxiety, Insomnia). This was a partial copy and does not indicate the combined rating.

**(2) AMHRR Listed:**

(a) On 8 April 2009, the applicant was seen by the Psychiatrist, Kamish Clinic, Wainwright, AK, which revealed the applicant had a personality which was poorly matched to military service. This included chronic and longstanding problems with depressed mood, and frequent periods of suicidal ideation. They have attempted suicide before (prior to military service). They had poor coping skills, with the rigorous demands of military life, and have required removal from deployment for safety. If they were remained in active military service, they will very likely deteriorate, leading to possible hospitalization or attempts at self-harm. The provider strongly recommended that the applicant be administratively separated under the provisions of AR 635-200, Chapter 5-13.

(b) On 23 November 2009, the applicant completed a mental status evaluation (MSE) at Community Mental Health Services, AK, which indicated a behavioral diagnosis of Adjustment Disorder and recommended keeping the follow up appointment scheduled with community mental health. They met the retention standards IAW AR 40-501, had the mental capacity to understand and participate in chapter proceedings, and was psychiatrically cleared for any administrative action deemed appropriate by the command.

**5. APPLICANT-PROVIDED EVIDENCE:** Application for the Review of Discharge; Partial VA Rating Decision

**6. POST SERVICE ACCOMPLISHMENTS:** None provided with this 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 (Active Duty Enlisted Administrative Separations), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

**(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 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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12c, 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:

(1) 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.

(2) 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.

(3) 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. Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military laws is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 121 (larceny of property other than military property of a value of more than \$500.00) states in the subparagraph, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

h. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered, medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

**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 Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were

carefully reviewed.

b. The available evidence provides the applicant enlisted in the RA, promoted to SPC, deployed for six months to Iraq, and served 3 years, 5 months, and 12 days prior having been flagged for involuntary separation. They were charged with two counts of burglary and theft in the second degree and remanded to civilian confinement from 2 August – 19 November 2009. They were released and returned to military control (Fort Wainwright, AK) and separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12C, Misconduct (Serious Offense), with a General (Under Honorable Conditions) characterization of service. They elected to consult with legal, declined to submit a statement on their behalf, and defense counsel advised them on the effects of their separation and the rights available to them. They served a few weeks shy of their 3 year-17 week contractual obligation.

(1) In April 2009, less than a month out from redeployment, they were seen by a Psychiatrist, which revealed the applicant had a personality which was poorly matched to military service. This included chronic and longstanding problems with depressed mood, and frequent periods of suicidal ideation. They have attempted suicide before (prior to military service). They had poor coping skills, with the rigorous demands of military life, and have required removal from deployment for safety. If they were remained in active military service, they will very likely deteriorate, leading to possible hospitalization or attempts at self-harm. The provider strongly recommended that the applicant be administratively separated under the provisions of AR 635-200, Chapter 5-13.

(2) They completed their separation mental status evaluation directly upon their release from CCA and the provider diagnosed the applicant with an Adjustment Disorder and recommended they keep their follow-up appointment with Community Mental Health. Their medical exam revealed a Varicocele diagnosis with no further recommendations and qualified them for service. The applicant has been rated 80% service-connected disability for tonic-clonic seizures or Grand Mal Epilepsy; and an evaluation of 50% service-connected disability for PTSD (as claimed as Depression, Anxiety, Insomnia).

c. Chapter 14 establishes policy and prescribes procedures for separation members 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.

d. 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: Major Depressive Disorder (MDD); Dysthymic Disorder; PTSD (50%SC).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found diagnosis of MDD was made while applicant was on active duty. VA service connection for PTSD establishes nexus with active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating Behavior Health conditions. While the applicant has been diagnosed with Adjustment DO with depressed mood, Adjustment DO with disturbance of emotions and conduct, Major Depressive DO, Dysthymic DO, PTSD and Epilepsy, none of these conditions mitigates his misconduct of burglary and theft given that none of these conditions affect 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 did not outweigh the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contention(s): The applicant seeks relief contending, at the time of the civilian offense that led to their separation, the applicant was within months of returning from Iraq, was suffering from severe mental illness, and neurological issues from exposure. They served their full term of service, since they have taken steps to better themselves, such as therapy, neurological treatment, and medicine management. Upgrading their discharge, would allow them to further better themselves, with the G.I. Bill. The Board considered this contention as well as applicant's medical diagnoses, combat service, length and quality of service and determined that these factors did not mitigate or outweigh the basis of separation (Larceny).

d. 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 Behavioral Health diagnoses did not excuse or mitigate the offense of Larceny. 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

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 BH diagnoses did not excuse or mitigate the offense of Larceny. 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 under the same rationale, 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:**

1/9/2025

**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