

1. Applicant's Name:

- a. **Application Date:** 4 September 2021
- b. **Date Received:** 7 September 2021
- c. **Counsel:** NA

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade of their characterization of service to honorable and a change in the narrative reason for separation.

(2) The applicant states they have served 15 years honorably. They gladly gave the Army everything that they could. They helped hundreds of Soldiers develop and become more in the Army. They mentally gave all they could while they were in service to the point that they were diagnosed with Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) from combat in Iraq in 2003. The false words of one Soldier that was upset at them made it where they could not finish their career and stained their record with the current characterization of service that they know they did not deserve.

(3) They felt their case was not judged off the merit of their character of 15 years nor the word of multiple service members stating that these accusations were not of their nature and that they were an outstanding noncommissioned officer (NCO) and did not deserve this treatment. To be accused of assault for tapping a Soldier on the shoulder to get their attention should not have ever been considered assault.

b. Board Type and Decision: In a records review conducted on 10 April 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) / Army Regulation 635-200, Paragraph 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 13 June 2012

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** NIF

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: 24 May 2012 / Under Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 9 May 2009 / Indefinite

b. Age at Enlistment / Education / GT Score: 25 / 60 Semester Hours or More College Credit / 117

c. Highest Grade Achieved / MOS / Total Service: E-6 / 11B14, Infantryman / 8 years, 6 months, 15 days.

d. Prior Service / Characterizations: USAR, 17 May 1997 – 24 January 2000 / HD

e. Overseas Service / Combat Service: Bosnia-Herzegovina, Korea, and SWA / Iraq (28 February 2003 – 3 February 2004 and 30 April 2009 – 30 April 2020)

f. Awards and Decorations: ARCOM-2, AAM, MUC, AGCM-3, NDSM, GWTEM, GWTSM, KDSM, AFSM, IC-CS, NCOPDR-2, ASR, OSR-3, ARCOTR, AFRM-M, NATOMDL

g. Performance Ratings: February 2004 – June 2004 / Fully Capable
July 2004 – December 2004 / Fully Capable
January 2005 – June 2005 / Fully Capable
July 2005 – May 2006 / Among the Best
1 June 2006 – 30 June 2010 / Fully Capable
1 July 2010 – 30 June 2011 / Marginal

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ) dated 28 September 2010, reflects the applicant received nonjudicial punishment for, on diverse occasions between on or about 30 July 2010 and 10 August 2010, did maltreat Private First Class (PFC) T____ P____, a person subject to their orders, by harassing them to pay \$40.00 for the wear and tear of their vehicle, or words to that effect, in violation of Article 93, (Cruelty and Maltreatment) UCMJ; and for, on or about 11 August 2011, unlawfully grab PFC P____ on the arm with their hands, in violation of Article 128 (Assault), UCMJ. Their punishment consisted of a reduction in rank/grade from staff sergeant/E-6 to sergeant/E-5, forfeiture of \$1,462.00 pay, and extra duty for 45 days. The applicant elected not to appeal.

(2) A DA Form 2166-8 (NCO Evaluation Report), covering the period 1 July 2010 through 30 June 2011 shows in:

- Part iV (Army Values/Attributes/Skills/Actions) – their rater marked "No" for all seven Values and commented "fails to fulfill [applicant's] duty as an NCO and has no integrity or honor," "does not live the Army Values," and "personal courage needs to be checked."
- Part IVb (Competence) – their rater marked "Needs Improvement (Much)" and commented – "Soldier does not make sound judgement calls."

- Part IVd (Leadership) – their rater marked "Needs Improvement (Some)" and commented, – "does not set the example of Be, Know, Do," "has no concern for Soldiers," and "required supervision from fellow NCOs daily."
- Part IVe (Training) – their rater marked "Needs Improvement (Some)" and commented, "negatively affected unit readiness," "failed to coach, teach, mentor Soldiers in [applicant's] charge," and "did not foster a team environment."
- Part IVf (Responsibility & Accountability) – their rater marked "Needs Improvement (Much)" and commented, "did not take responsibility or accountability for [applicant's] own actions."
- Part IVi (Rater Overall Performance) – their rater rated their overall performance as "Marginal."
- Part V (Senior Rater Overall Potential) – their senior rater commented –
 - do not promote
 - do not sent to advance schooling
 - has no potential for increased responsibility
- Part Vc (Senior Rater Overall Performance) – their senior rater rated their overall performance as "Fair" "4."
- Part Vd (Senior Rater Overall Potential) – their senior rater rated their overall potential as "Fair" "4."

(3) A memorandum, Rear Delta, 3rd Battalion, 227th Assault Helicopter Battalion, subject: Disqualification of the U.S. Army Good Conduct Medal for [Applicant], Period 23 January 2009 to 23 January 2012, the applicant's company commander states this memorandum is to inform the applicant that they will not be getting an award for this period. The decision was made because the applicant is pending chapter separation for maltreatment of Soldiers and bouncing checks.

(4) A memorandum, Headquarters, 3rd Corp and Fort Hood, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 24 May 2012, the separation authority, carefully considered the applicant's separation packet, the recommendation of the Medical Evaluation Board to have the case referred to a Physical Evaluation Board, the recommendations of the chain of command, and the findings and recommendations of the Administrative Separation Board. The commanding general directed the applicant be separated from the U.S. Army with a characterization of service of Under Other Than Honorable Conditions. Additionally, the applicant will be reduced to the rank/grade of private/E-1, in accordance with Army Regulation 600-8-19, paragraph 10-1(d).

(5) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 24 May 2012, with 12 years, 4 months, and 19 days of net active service this period. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 24 May 2012
- item 18 (Remarks) – in part,
- Continuous Honorable Active Service – 20000125 – 20090508
- Member has Completed First Full Term of Service
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 26 (Separation Code) – JKQ [Misconduct (Serious Offense)]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct (Serious Offense)

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

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

(1) Applicant provided: On 13 February 2022 the Army Review Boards Agency requested the applicant provide their medical documents to support their mental health issues (PTSD and TBI), as of this date there has been no response.

(2) AMHRR Listed: NIF

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Excerpt of their Army Military Human Resource Record
- four 3rd Party Statements

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (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, Title 10 U.S. Code, Section 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 (DoD) 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; Title 10 U.S. Code; Section 1553 and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 September 2011, 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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. 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. Paragraph 14-12c (Commission of a

Service Offense), stated 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 (Secretarial Plenary Authority), currently in effect, 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 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 DoD Instruction 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 (2012 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 law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following, Article 93 (Absence Without Leave) and Article 128 (Cruelty and Maltreatment).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DoD Instruction 1332.28.

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the applicant's Administrative Separation Board Findings and Recommendations, and the applicant's case files for approved separation only contains the separation authority memorandum and the separation order. The AMHRR does reflect the applicant's adverse documents consisting of a DA Form 2627 and an adverse NCO Evaluation Report. The DD Form 214, signed by the applicant, provides the applicant was discharged with a character of service of Under Other Than Honorable Conditions for misconduct (serious offense). They completed 12 years, 4 months, and 19 days of net active service this period; however, the applicant did not complete their contractual reenlistment obligation of 3 years.

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. The applicant's AMHRR does not provide documentation of a diagnosis of a PTSD diagnosis during the applicant's term of service nor did the applicant provide documentation.

e. Published DoD 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) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a 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, mild TBI, Major Depressive DO(MDD), Anxiety DO NOS. [Note- diagnosis of Adjustment DO with depressed mood is subsumed under MDD; diagnosis of Nightmare DO is subsumed under PTSD.]

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the diagnoses of PTSD, TBI, MDD and Anxiety DO NOS were made during active 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, while the applicant has been diagnosed with Adjustment DO with depressed mood; PTSD, chronic; Nightmare DO;

MDD, Anxiety DO NOS; GAD and TBI, none of these conditions mitigate his misconduct as none of these conditions affect one's ability to distinguish right from wrong and act in accordance with the right. Applicant has also been diagnosed with mild TBI which can, on occasion, impact frontal lobe executive function leading to impaired ability to organize, plan and carry out actions. Applicant's TBI, however, does not appear to have affected his executive functioning as evidenced by his ability to convince another soldier to pay him \$40 each time he used an Army vehicle for wear and tear on the Army vehicle. Being able to develop, organize and implement such a scheme clearly indicates the applicant had intact executive function.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the ADRB's application of liberal consideration, the board concurred with the opinion of the Board's Medical Advisor, a voting member, that the applicant's financial mismanagement for bounce check/extortion offenses outweighed the applicant's Adjustment DO with depressed mood; PTSD, chronic; Nightmare DO; MDD, Anxiety DO NOS; GAD and TBI diagnoses for the misconduct of financial mismanagement and attempting to elicit money from subordinates for personal gain.

b. Response to Contention(s):

(1) The applicant contends they mentally gave all they could while they were in service to the point that they were diagnosed with PTSD and TBI from combat in Iraq in 2003. The board considered the applicant mitigated medical diagnosis (adjustment DO with depressed mood; PTSD, chronic; Nightmare DO; MDD, Anxiety DO NOS; GAD and TBI) and totality of the applicant's service record to include 8 years of service, numerous awards (quality), and two combat tours to Iraq, and prior honorable discharge but determined that these factors did not outweigh the applicant's misconduct of financial mismanagement and attempting to elicit money from subordinates for personal gain.

(2) The applicant contends they felt their case was not judged off the merit of their character of 15 years nor the word of multiple service members stating that these accusations were not of their nature and that they were an outstanding NCO and did not deserve this treatment. The board considered this contention during proceedings, but ultimately did not address the contention but determined that the applicant length of service alone did not outweigh the basis of separation due to the severity of the offenses, and the medical records explain that the conditions were symptomatic but not to the level of diagnostic which would alter behavior.

(3) The applicant contends to be accused of assault for tapping a Soldier on the shoulder to get their attention should not have ever been considered assault. The board considered this contention during proceedings and determined that the applicant were charge with article 128 assault on a junior Soldier, who the applicant has a duty to protect as the victim's first line leader. Also, the applicant elected not to appeal.

c. The board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the board, the applicant's

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

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Adjustment DO; PTSD; Nightmare DO; Anxiety DO NOS; GAD and TBI did not excuse or mitigate the offenses of financial mismanagement and attempting to elicit money from a subordinate. 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 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:

4/25/2024

X

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