

**1. Applicant's Name:**

- a. **Application Date:** 8 June 2021
- b. **Date Received:** 11 June 2021
- c. **Counsel:** Yes

**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 general (under honorable conditions). The applicant requests an upgrade in their character of service to honorable, a change of their separation code, and change of narrative reason.

(2) The applicant, through counsel, states they served the vast majority of their Army service honorably and without incident. They were accused of unlawfully pointing a loaded firearm at a civilian Uber driver and their command recommended they receive an other than honorable conditions discharge for the offense. They agreed to waive their right to an administrative separation board in exchange for the receipt of a general (under honorable conditions) discharge.

(3) The applicant contends their discharge was unduly harsh and improper when the totality of the circumstances is examined. The unfortunate event with the civilian was an isolated incident and not indicative of their true character. The Uber driver was driving in the wrong direction, and they attempted to communicate with the driver, but there was a communication barrier that prevented the driver from understanding. They then made a rash decision and produced their firearm, but they did not point the weapon at the driver. They understand this incident was a gross mistake, they are repentant about their actions and had taken responsibility for their misguided attempt to protect their fiancée.

(4) The applicant contends their military record clearly demonstrates they were a good Soldier and could have rehabilitated from this misconduct. Their character letters received during their separation proceedings laud their professionalism, military bearing, integrity, and dedication to the Army.

**b. Board Type and Decision:** In a records review conducted on 26 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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 / General (Under Honorable Conditions)

**b. Date of Discharge:** 31 August 2017

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 13 April 2017

**(2) Basis for Separation:** unlawfully pointed a loaded firearm at a civilian Uber driver on or about 5 February 2017

**(3) Recommended Characterization:** Under Other Than Honorable Conditions

**(4) Legal Consultation Date:** 26 April 2017

**(5) Administrative Separation Board:** On 17 July 2017, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge. They elected to submit statements on their own behalf [Note, statements are not in evidence for review].

**(6) Separation Decision Date / Characterization:** 10 August 2017 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 19 May 2014 / 4 years

**b. Age at Enlistment / Education / GT Score:** 19 / Associate Degree / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 68W10, Health Care Specialist / 3 years, 3 months, 12 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** Germany / None

**f. Awards and Decorations:** ARCOM-2, NCOPDR, ASR, OSR, the applicant's Army Military Human Resource Record (AMHRR) reflects award of the NDSM and GWTSM, however, the awards are not reflected on the DD Form 214 (Certificate of Release or Discharge from Active Duty).

**g. Performance Ratings:** NA

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

**(1)** A DA Form 4856 (Developmental Counseling Form) dated 9 February 2017 reflects the applicant received event-oriented counseling for civilian criminal charges. The key points of discussion states on or about 5 February 2017, the applicant was involved in an incident which they may face prosecution from the civilian sector. At this time, the applicant's unit has decided to move forward with a separation of service packet, terminating their service in the military. The applicant agreed with the counseling and signed the form.

**(2)** A memorandum, Headquarters and Headquarters Company, 92nd Engineer Battalion, 3rd Infantry Division Artillery, subject: Separation Under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 13 April 2017, the

applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense with a recommended characterization of service of under other than honorable conditions, for unlawfully pointed a loaded firearm at a civilian Uber driver. On the same day the applicant acknowledged the basis for the separation and of the right available to them.

(3) A memorandum, Headquarters and Headquarters Company, 92nd Engineer Battalion, 3rd Infantry Division Artillery, subject: Commander's Report – Proposed Separation Under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 26 April 2017, reflects the applicant's company commander's recommendation to separate them from the Army prior to the expiration of their current term of service. The company commander states further attempt at rehabilitation is not in the best interest of this command or the U.S. Armed Forces.

(4) On 26 April 2016, the applicant completed their election of rights, signing they had been advised of their rights available to them and of the effect of any action taken by them in waiving their rights. They requested consideration of their case by an administrative separation board and acknowledged they have been advised of their right to submit a conditional waiver.

(5) A DA Form 3822 (Report of Mental Status Evaluation) dated 10 May 2017, reflects the applicant has no duty limitations due to behavioral health reasons. They meet medical retention standards and are cleared for administrative action.

(a) Section IV (Diagnoses) reflects a behavioral health diagnosis of Other issues related to employment.

(b) Section VI (Recommendations and Comments for Commander) states the applicant had a negative Post-Traumatic Stress Disorder (PTSD) screen.

(6) On 17 July 2017, the applicant having been advised by Trial Defense Service, voluntarily request to waive consideration of their case by an administrative separation board contingent upon being issued a characterization of service of no less favorable than General (Under Honorable Conditions). They elected to submit statements on their own behalf [Note, statements are not in evidence for review]. Additionally, they stated they do not believe that they suffer from PTSD as a result of their military service, but they do believe they suffer from depression.

(7) A memorandum, Headquarters, Task Force Marne and Fort Stewart, subject: Separation Under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 10 August 2017, the separation authority, having reviewed the applicant's separation packet and after careful consideration of all matters and the conditional waiver, directed that the applicant be separated from the Army prior to the expiration of current term of service. The commander directed the applicant's service be characterized as General (Under Honorable Conditions). Upon their decision to separate the applicant and after reviewing the rehabilitative transfer requirement, they have determined the requirements do not apply to this action.

(8) A DD Form 214 reflects the applicant was discharged on 31 August 2017 and shows in:

- item 4a (Grade, Rate or Rank) – Specialist
- item 4b (Pay Grade) – E4
- item 12c (Net Active Service This Period) – 3 years, 3 months, 12 days

- item 18 (Remarks) – in part, member has not completed first term of service
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12c
- item 26 (Separation Code) – JKQ [Misconduct, Commission of a 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:** None

**(2) AMHRR Listed:** MSE/BHE as described in previous paragraph 4h(5).

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Brief in Support of Application
- DD Form 214
- Notification of Separation Memorandum
- nine 3rd Party Character References/Statement submitted during their separation process attesting their professionalism, military bearing, integrity, and dedication to the Army.
- Resume, reflecting the applicant's professional career

**6. POST SERVICE ACCOMPLISHMENTS:** The application's resume reflects their post service professional accomplishments, employment experience and certifications.

**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 19 December 2016, 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.

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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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):

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

b. The available evidence provides the applicant received developmental counseling for civilian criminal charges. A review of the available evidence provides the applicant was entitled

to have their case considered by an administrative separation board because they were being considered for separation under Other Than Honorable conditions. The applicant voluntarily waived consideration of their case by an administrative separation board, contingent upon being issued a characterization of service no less favorable than General (Under Honorable Conditions). The DD Form 214 provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct, (serious offense). They completed 3 years, 3 months, and 12 days of net active service this period; however, they did not complete 4-year contractual enlistment obligation.

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 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 [REDACTED] the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends they served the vast majority of their Army service honorably and without incident. The Board considered this contention and the applicant's three years and four months of service, and the awards received by the applicant but determined that these factors did not outweigh the applicant's unlawfully pointing a loaded firearm at a civilian Uber driver.

(2) The applicant contends they agreed to waive their right to an administrative separation board in exchange for the receipt of a general (under honorable conditions) discharge. The Board considered this contention and noted that this action is a procedural step which is part of a normal process when an alternative forum is chosen. In this case, the applicant conditionally waived consideration of the case before an administrative separation

board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge. There was no evidence presented to the Board to convince the Board of any mitigating circumstances.

(3) The applicant contends their discharge was unduly harsh and improper when the totality of the circumstances is examined. The unfortunate event with the civilian was an isolated incident and not indicative of their true character. The Board considered this contention but determined that the applicant's offense of unlawfully pointing a loaded firearm at a civilian Uber driver was a single incident which can serve as the basis for separation and characterization in accordance with AR 635-200. Therefore, a discharge upgrade is not warranted.

(4) The applicant contends their military record clearly demonstrates they were a good Soldier and could have rehabilitated from this misconduct. The Board considered this contention and the applicant's three years and four months of service, and the awards received by the applicant but determined that these factors did not outweigh the applicant's unlawfully pointing a loaded firearm at a civilian Uber driver.

(5) The applicant contends their character letters received during their separation proceedings laud their professionalism, military bearing, integrity, and dedication to the Army. The Board considered this contention and the applicant's three years and four months of service, and the awards received by the applicant but determined that these factors did not outweigh the applicant's unlawfully pointing a loaded firearm at a civilian Uber driver.

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 was not found to hold an in-service behavioral health condition that would mitigate or excuse the discharge. The Board considered the applicant's contention that the applicant served the vast majority of their Army service honorably and without incident and found that the totality of the applicant's record does not warrant a discharge upgrade. 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. Therefore, the applicant's General, Under Honorable Conditions discharge was proper and equitable as the applicant's misconduct fell below the level of meritorious service warranted for an upgrade to an Honorable discharge.

(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:**

2/2/2024

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