

1. Applicant's Name:

- a. **Application Date:** 10 June 2023
- b. **Date Received:** 24 July 2023
- 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 other than honorable conditions. The applicant requests an upgrade to general (under honorable conditions).

b. The applicant seeks relief contending, in effect, this correction should be made because the actions that caused the discharge came as a direct result of incidents that occurred during deployment, and symptoms of PTSD and Borderline Personality Disorder. The applicant is requesting a general (under honorable conditions) discharge to receive VA disability benefits.

c. **Board Type and Decision:** In a records review conducted on 12 July 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 (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 15 December 2010

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 9 November 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 17 September 2010, during a urinalysis the applicant tested positive for marijuana. The applicant also received counseling statements for missing formations and failure to make appointments. On or about 21 July 2009 the applicant did, assault Specialist (SPC) R__ S__, to wit: slamming SPC S__'s head against a door frame. On or about 15 October 2009 the applicant did, unlawfully strike SPC S__ using a closed fist. On or about 21 December 2009 the applicant did, assault SPC S__, to wit: lifting and dropping SPC S__ on the foot board. On or about 19 January 2010 the applicant did, assault SPC S__ with a dangerous weapon. On or about 30 January 2010 the applicant did, assault SPC S__ by choking SPC S__, to wit: the applicant's hands around S__'s neck.

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

(4) **Legal Consultation Date:** On 16 November 2010, the applicant waived legal counsel.

(5) Administrative Separation Board: On 16 November 2010, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 8 December 2010 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 February 2009 / 3 years

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

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42A10, Human Resources / 4 years, 3 months, and 11 days

d. Prior Service / Characterizations: USAR, 12 February 2005 - 4 September 2006 / HD RA, 5 September 2006 - 22 February 2009 / HD

e. Overseas Service / Combat Service: SWA / Qatar (27 October 2007 - 17 January 2009); Iraq (13 December 2005 - 17 January 2009) (Qatar service is annotated on the enlisted record brief (ERB) and on the DD Form 214; however, Iraq service is annotated on the DD Form 214 and not the ERB; foreign service in block 12f (2 years, 2 months, and 16 days) is incorrect and there are no deployment orders in the AMHRR)

f. Awards and Decorations: AAM, AGCM, NDSM, GWOTEM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Army Drug Alcohol Prevention Training (ADAPT) referral states on 12 April 2010, the applicant authorized the Army Substance Abuse Program (ASAP) to provide information to the Army Drug Abuse Officer for the purpose of the applicant completing the ADAPT as required per their ASAP treatment plan.

(2) Three Developmental Counseling Forms, for missing formation, missing an appointment, and failure to communicate their location and giving incorrect information to a noncommissioned officer.

(3) Charge Sheet, 12 July 2010, shows the applicant was charged with violation of the UCMJ, Article 128, for:

- Specification 1: The applicant, did, at or near Fort Eustis, VA, on or about 21 July 2009, commit an assault upon S__ by slamming S__'s head against a door frame and did thereby intentionally inflict grievous bodily harm upon S__, to wit: deep scalp lacerations
- Specification 2: The applicant, did, at or near Fort Eustis, VA, on or about 15 October 2009, unlawfully strike S__ multiple times on S__'s torso and legs using a closed fist
- Specification 3: The applicant, did, at or near Fort Eustis, VA, on or about 21 December 2009, assault S__ by lifting S__ and dropping S__ on the foot board
- Specification 4: The applicant, did, at or near Fort Eustis, VA, on or about 19 January 2010, commit an assault upon S__ by pointing at S__ with a dangerous weapon, to wit: a knife

- Specification 5: The applicant, did, at or near Fort Eustis, VA, on or about 30 January 2010, commit an assault upon S__ by choking S__ with a force likely to produce death or grievous bodily harm, to wit: the applicant's hands around S__'s neck

(4) On 19 August 2010, the applicant offered to plead guilty to all specifications of the charge in exchange to have their case be referred to a summary court-martial. The convening authority accepted the plea.

(5) Report of Result of Trial shows the applicant was tried in a Summary Court-Martial on 17 September 2010. The applicant was charged with five specifications. The summary of offenses, pleas, and findings:

(a) Violation of Article 128:

- On or about 21 July 2009, assault S__ by slamming S__'s head against a door frame; guilty, consistent with the plea;
- On or about 15 October 2009, unlawfully strike S__ using a closed fist; guilty, consistent with the plea;
- On or about 21 December 2009, assault S__ by lifting and dropping S__ on the foot board; guilty, consistent with the plea;
- On or about 19 January 2010, assault S__ with a dangerous weapon; guilty, consistent with the plea; and,
- On or about 30 January 2010, assault S__ by choking S__, to wit: the applicant's hands around S__'s neck; guilty, consistent with the plea

(b) Sentence: Confinement for 30 days.

(6) Electronic Copy of DD Form 2624, 29 September 2010, shows the applicant tested positive for THC 67 (marijuana), during an Other Testing (OO) urinalysis, conducted on 18 September 2010.

(7) Developmental Counseling Form, 18 October 2010, for positive urinalysis test.

(8) On 9 November 2010, the commander initiated action to separate the applicant for commission of a serious offense.

(9) The applicant's ERB, 10 December 2010, shows the applicant was flagged for Involuntary separation/field initiated (BA), effective 15 October 2010, and adverse action (AA), effective 19 May 2009; was ineligible for reenlistment due to loss of qualification in primary military occupational specialty (9P). The Assignment Eligibility Availability (AEA) code shows AEA code "C" which is temporarily ineligible for reassignments due to medical, convalescence, confinement due to trial by court martial, enrollment in Track III ASAP, or local bar to reenlistment. The applicant was reduced from E-4 to E-3 effective 24 August 2009.

(10) The applicant's DD Form 214, shows the applicant had completed the first full term of service. The applicant was discharged on 15 December 2010 under the authority of AR 635-200, paragraph 14-12c(2), with a narrative reason of Misconduct (Drug Abuse). The DD Form 214 was authenticated with the applicant's electronic signature. The applicant was reduced from E-3 to E-1 effective 8 December 2010.

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

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

(1) Applicant provided: Three Rivers Medical Associates medical record shows the applicant was diagnosed with PTSD and anxiety on an unspecified date.

(2) AMHRR Listed:

(a) Report of Mental Status Evaluation, 4 October 2010, shows the applicant was psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; and could appreciate the difference between right and wrong. The applicant would benefit from structured/limited type cognitive behavioral therapies such as dialectical behavior therapy after separation from service. The applicant was diagnosed with Atypical depressive disorder.

(b) Report of Medical History, 15 October 2010, the examining medical physician noted the applicant's medical conditions in the comments section: Depression in September 2010.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; Three Rivers Medical Associates medical record; two University transcripts; Test Taker Score Report; and three character references.

6. POST SERVICE ACCOMPLISHMENTS: The applicant earned a Bachelor of Arts in Psychology and currently working towards a Doctor of Philosophy.

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 PTSD, 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), 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), provides the basic authority for the separation of enlisted personnel.

(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.

(5) Paragraph 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(6) Paragraph 14-3 prescribes 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.

(7) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

(8) 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 (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 (Certificate of Release or Discharge from Active Duty). It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (drug abuse).

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.

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 general (under honorable conditions). The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 4 years, 3 months, and 11 days including foreign service in Qatar and Iraq. The applicant was counseled for missing formations and failure to make appointments. The applicant also tested positive for marijuana and assaulted another soldier on multiple occasions. The applicant's DD Form 214 shows the applicant was discharged on 15 December 2010 under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of under other than honorable conditions.

c. The applicant contends, in effect, this correction should be made because the actions that caused the discharge came as a direct result of incidents that occurred during deployment, and symptoms of PTSD and Borderline Personality Disorder.

(1) The applicant provided Three Rivers Medical Associates medical record showing the applicant was diagnosed with PTSD and anxiety on an unspecified date.

(2) Report of Mental Status Evaluation, 4 October 2010, shows the applicant was psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; and could appreciate the difference between right and wrong. The applicant would benefit from structured/limited type cognitive behavioral therapies such as dialectical behavior therapy after separation from service. The applicant was diagnosed with Atypical depressive disorder.

(3) Report of Medical History, 15 October 2010, the examining medical physician noted the applicant's medical conditions in the comments section: Depression in September 2010.

d. The applicant requests a general (under honorable conditions) discharge to receive VA disability benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

e. The character references provided with the application speaks to the applicant's professionalism, dedication, and commitment to the applicant's current occupation. The applicant is always willing to help colleagues and frequently goes above and beyond to ensure work is done on time and to the highest standard.

f. The applicant earned a Bachelor of Arts in Psychology and is currently working towards a Doctor of Philosophy. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

g. 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: the applicant was diagnosed in-service with Depression, Major Depressive Disorder (MDD), and Personality Disorder with narcissistic and antisocial traits. The applicant had four FAP cases as the offender with increasing injury to the victim. Post-service, the applicant is not service-connected and does not hold a VA diagnosis. The applicant did submit a minimal print out noting diagnoses of PTSD and Anxiety; however, the related evaluation and notes are void for clarification.

(2) Did the condition exist or experience occur during military service? The applicant was diagnosed in-service with Depression, Major Depressive Disorder (MDD), and Personality Disorder with narcissistic and antisocial traits. The applicant had four FAP cases as the offender with increasing injury to the victim.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the substantiated diagnoses are not mitigating, as there is no nexus between Major Depressive Disorder, Post Traumatic Stress Disorder, Anxiety, and Personality Disorder and the applicant's multiple assault offenses.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Major Depressive Disorder, Post Traumatic Stress Disorder, Anxiety, and Personality Disorder outweighed the applicant's four medically unmitigated assault offenses.

b. Response to Contention: The applicant contends, in effect, this correction should be made because the actions that caused the discharge came as a direct result of incidents that occurred during deployment, and symptoms of PTSD and Borderline Personality Disorder. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Major Depressive Disorder, Post Traumatic Stress Disorder, Anxiety, and Personality Disorder outweighed the applicant's four medically unmitigated assault offenses.

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 to all the evidence before the Board, the applicant's Major

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Depressive Disorder, Post Traumatic Stress Disorder, Anxiety, and Personality Disorder did not outweigh the applicant's medically unmitigated assault offenses. The Board considered the totality of the applicant's record and determined that it does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and 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:

2/3/2025

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs