

Applicant's Name: [REDACTED]

- a. **Application Date:** 12 November 2021
- b. **Date Received:** 2 October 2023
- c. **Counsel:** [REDACTED]

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant through counsel, requests an upgrade to honorable.

b. The applicant through counsel, seeks relief contending, in effect, the command made an error in discretion. Equity to follow upon hearing date.

c. **Board Type and Decision:** In a telephonic review conducted on 12 August 2024, and by a 5-0 vote, the board determined the discharge is inequitable based on the circumstances surrounding the discharge (PTSD) and applicant's in-service factors (length, quality, combat, prior HD) and post-service accomplishment (Master's Degree). Accordingly, the board voted to grant relief in the form of an upgrade to the characterization of service to honorable. The board determined the narrative reason/SPD code were proper and equitable and voted not to change them.

Please see Board Discussion and Determination 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:** Unacceptable Conduct / AR 600-8-24, Chapter 4-2B / JNC / General (Under Honorable Conditions)

b. **Date of Discharge:** 21 April 2009

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 30 January 2009

(2) **Basis for Separation:** The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraphs 4-2a(3), 4-2a(10), and 4-2c(5), due to the following reasons: Failure to exercise necessary leadership or command expected of an officer of the applicant's grade when dealing with subordinate NCOs and the applicant's duties as a battle captain, failing two consecutive Army Physical Fitness Tests (APFTs), and receiving a General Officer Memorandum of Reprimand (GOMOR) for driving an automobile while impaired by alcohol. Specifically:

- 4 February 2008 - the applicant engaged in an unprofessional verbal altercation with Staff Sergeant (SSG) S__

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230013395

- 18 March 2008 - the applicant failed to remain calm and maintain the applicant's military bearing while speaking to Sergeant First Class K__ S__
- 21 March 2008 - the applicant was counseled by Major J__ S__ regarding the applicant's inability to perform the applicant's duties adequately as a battle captain
- 11 June 2008 and 4 July 2008 - the applicant failed record APFTs
- 24 October 2008 - Brigadier General W__ M__ filed a GOMOR for driving an automobile while impaired by alcohol in the applicant's OMPF

(3) Legal Consultation Date: 9 February 2009

(4) Board of Inquiry (BOI): NA

(5) GOSCA Recommendation Date / Characterization: On 5 March 2009, the GOSCA recommended the applicant be involuntarily eliminated from service. / General (Under Honorable Conditions)

(6) DA Board of Review for Eliminations: On 20 March 2009, the Ad Hoc Board considered the GOSCA's request to involuntarily separate the applicant for substandard performance in accordance with AR 600-8-24, chapter 4.

(7) Separation Decision Date / Characterization: 20 March 2009 / General (Under Honorable Conditions) (Analyst notes: See Army Human Resources Command notification to the applicant's command, 3 April 2009, and Army Review Board Agency Case Tracking System)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 3 April 2007 / NIF

b. Age at Appointment: / Education: 33 / bachelor's degree

c. Highest Grade Achieved / MOS / Total Service: O-2 / 35D All Source Intelligence / 6 years, 2 months, and 4 days

d. Prior Service / Characterizations: ARNG, 17 December 1993 - 6 January 1994 / None

HD (Break in Service)
RA, 16 September 1994 - 2 February 1997 /

(Break in Service)
USAR, 22 March 2005 - 13 June 2005) / HD
AD, 14 June 2005 - 28 September 2005 / HD
(Concurrent Service)

2007 /HD USAR APPT, 29 September 2005 - 2 April

AD, 17 October 2005 - 10 March 2006 / HD
(Concurrent Service)

AD, 1 October 2006 - 28 March 2007 / HD
(Concurrent Service)

e. Overseas Service / Combat Service: SWA / Iraq (10 June 2007 - 13 July 2008)

f. Awards and Decorations: AGCM, NDSM-2, AFEM, GWOTSM, ASR, OSR, AFRM-MD, AFRM

g. Performance Ratings: 29 March 2007 - 5 December 2007 / Best Qualified
15 March 2008 - 15 September 2008 / Do Not Promote
16 September 2008 - 24 April 2009 / Fully Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) Military Police Report, 21 May 2008, shows the applicant was arrested on 21 May 2008 by a Fayetteville Police Department Officer, for driving while impaired after the applicant was stopped for failing to maintain the applicant's lane. The applicant was transported to the Cumberland County Detention Center where the applicant refused the intoximeter test.

(2) Developmental Counseling Form, shows the applicant was counseled on 23 March 2008 on the applicant's poor performance as a battle captain and borderline "conduct unbecoming an officer."

(3) Letter of Concern, undated, shows the applicant received this letter due to battalion executive officer's concern regarding the applicant's professionalism, judgment, and military bearing as a commissioned officer based on the applicant having an unprofessional verbal altercation with SSG S___, using inappropriate language to the NCO and verbally reprimanding SSG S___ in a public forum.

(4) GOMOR, 9 June 2008, shows the applicant was arrested for driving while impaired. After being pulled over for failing to maintain the applicant's lane, the applicant refused to complete a lawfully requested breath analysis test.

(5) APFT Scorecard shows the applicant failed a record APFT on 11 June 2008 for receiving "0" points in the two mile run event.

(6) Developmental Counseling Form shows the applicant was counseled on 14 June 2008 for failing the APFT and for drinking and driving.

(7) APFT Scorecard, shows the applicant failed a record APFT on 4 July 2008 for receiving "59" points in the two mile run event.

(8) Developmental Counseling Form shows the applicant was counseled on 5 July 2008, for failing two APFTs.

(9) Developmental Counseling Form shows the applicant was counseled on 1 August 2008, for failing the applicant's fourth APFT.

(10) On 15 August 2008, the applicant submitted a rebuttal to the GOMOR, requesting the filing of the GOMOR be delayed until the civilian court system made its final decision. The applicant states their refusal to complete a lawfully requested breath analyzer test was not based in defiance. It was based on the applicant's lack of knowledge of NC law and requested to speak to an attorney.

(11) On 24 October 2008, the GOSCA directed the GOMOR be filed in the applicant's OMPF.

(12) On 30 January 2009, the applicant was required to show cause for retention on active duty, as stated in paragraph 3c (2) above.

(13) On 31 January 2009, the applicant completed substance abuse treatment.

(14) On 7 February 2009, the applicant completed driving improvement training. On this same date, the applicant submitted a rebuttal for the involuntary release from active duty, requesting that the applicant's 6 years between enlisted and officer service be considered and that the applicant be allowed to continue to serve.

(15) On 5 March 2009, the Staff Judge Advocate and the GOSCA recommended that the applicant be discharged with a general (under honorable conditions) characterization.

(16) Army Human Resources Command, notification, subject: Separation (Probationary), 3 April 2009, states the Deputy Assistant Secretary (Army Review Boards) approved the elimination of the applicant with a general (under honorable conditions) characterization of service. The elimination was based on AR 600-8-24, chapter 4, substandard performance of duty.

(17) Army Human Resources Command memorandum, subject: Promotion Review Board, 1 June 2009, shows the applicant was removed from the FY09 Captain Army Promotion Selection List, due to the applicant's affirmed discharge for unacceptable conduct, without provisions for reinstatement in the event the applicant returned to active duty.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293.

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the 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) 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 600-8-24 (Officer Transfers and Discharges) sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(2) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation; Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.

(3) Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.

(4) Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.

(5) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.

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. It identifies the SPD code of "JNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct.

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 AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's current DD Form 214 shows the applicant served 2 years and 19 days during which the applicant served 1 year, 1 month, and 4 days in Iraq. The applicant received four counseling's for poor performance, failing four APFTs, and drinking and driving, and the applicant received a GOMOR. On 30 January 2009, the applicant was notified by the GOSCA to show cause for retention on active duty. On 20 March 2009, the Deputy Assistant Secretary (Army Review Boards) involuntarily eliminated the applicant from the U.S. Army with a general (under honorable conditions) characterization of service. The applicant's DD Form 214 shows the applicant was discharged on 21 April 2009 under the provisions of AR 600-8-24, Chapter 4, paragraph 4-2b, by reason of Unacceptable Conduct, with a characterization of service of general (under honorable conditions).

c. The applicant through counsel, contends, in effect, the command made an error in discretion. Equity to follow upon hearing date. The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. **The applicant submitted the following additional document(s):** N/A

b. **The applicant presented the following additional contention(s):** Applicant and counsel provided oral arguments in support of the contentions they provided in their written submissions and in support of their documentary evidence.

c. **Counsel / Witness(es) / Observer(s):** [REDACTED] (counsel)

10. 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 diagnosis: PTSD.

(2) Did the condition exist, or experience occur during military service? **No.** The applicant is not asserting, and records are void of in-service behavioral health information.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor determined that the medical condition is partially mitigating. The Board's Medical Advisor applied liberal consideration and opined that the VA's diagnosis and service connection for PTSD, the PTSD diagnosis relating to trauma during or before the misconduct, and the nexus between PTSD, substance use, difficulty with authority, and poor performance especially in the environment serving as the basis for the PTSD, the basis for separation is partially mitigated. Specific to the unmitigated offense, there is no known association between APFT failure and PTSD. Additionally, after documentation review there is no indication the APFT failure was due to any behavioral health condition.

(4) Does the condition or experience outweigh the discharge? **No.**

b. **Response to Contention:** The applicant through counsel, contends, in effect, the command made an error in discretion. The board considered this contention and based on the applicant's medical diagnosis (PTSD), in-service factors (length, quality, combat,

prior HD) and post-service accomplishment (Master's Degree), the board voted to grant relief.

c. The board determined the discharge is inequitable based on the totality of the circumstances. The applicant's medical condition (PTSD) partially mitigates the applicant's misconduct of (substance use, difficulty with authority and poor performance). The board determined the remaining misconduct (APFT failure) is outweighed by the applicant's in-service factors (length, quality, combat service, prior HD) and post-service accomplishment (Master's Degree). Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable. The board voted that the narrative reason/SPD code were proper and equitable.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable based on the totality of the circumstances. The applicant's PTSD partially mitigated the applicant's misconduct (substance use, difficulty with authority and poor performance) and the remaining misconduct (APFT) is outweighed by the applicant's service record (length, quality, combat service, prior HD) and post-service accomplishment (Master's Degree). Thus, the prior characterization is no longer appropriate.

(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.

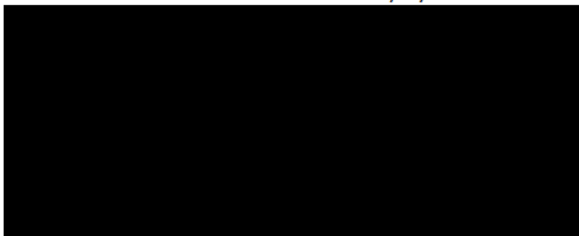
(3) As the applicant was an Army Officer, there is no reentry code supplied upon discharge, honorable or otherwise.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD code to: No Change**
- d. Change Authority to: No Change**

Authenticating Official:

9/23/2024



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