

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** None**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 requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the applicant requested the discharge. the applicant was an exceptional Soldier with over six years of service. The applicant's actions and mindset were no longer focused on being a Soldier after two deployments; the death of a sibling and extremely close cousin, which was killed by a drunk driver; and a divorce. While in Basic Training, the applicant was one of two Soldiers promoted to E-2 and made E-5 in two and a half years. The applicant completed WLC, receiving the Distinguished Leadership Award and received multiple commendations for their service of valor. The applicant never received an Article 15 and received one negative counseling statement during the last two months of service. The applicant has been receiving VA medical treatment for PTSD, severe depression and tremors.

b. Board Type and Decision: In a records review conducted on 3 December 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's DUI, public intoxication, and FTR offenses. The Board found that the applicant's good service outweighed the remaining offense of failure to appear in court. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

Please see Section 9 of this document for more details regarding the Board's decision. Board member names available upon request.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 2 May 2011**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 4 April 2011

(2) Basis for Separation: The applicant was informed of the following reasons: Over the past several months, the applicant had been involved in discreditable situations with both military and civilian authorities which conduct is not consistent with the good order and discipline expected of a Soldier in the U.S. Army. Specifically:

On or about 26 February 2011, the applicant was arrested in Johnston County for driving under the influence;

On or about 26 February 2010, was arrested for public intoxication in Stephens County;

There was a warrant issued on 5 January 2010 for the applicant's arrest in Colorado Springs for failure to appear to a court hearing for driving under the influence on or about 28 September 2008, the warrant was currently outstanding; and,

Failed to report to the appointed places of duty on numerous occasions.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 5 April 2011

(5) Administrative Separation Board: On 5 April 2011, 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.

(6) Separation Decision Date / Characterization: 20 April 2011 / The separation authority accepted the conditional waiver and directed a General (Under Honorable Conditions) characterization.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 22 October 2009 / 2 years

b. Age at Enlistment / Education / GT Score: 23 / High School Transcript / 103

c. Highest Grade Achieved / MOS / Total Service: E-5 / 35F20, Intelligence Analyst / 6 years, 3 months, 7 days

d. Prior Service / Characterizations: RA, 26 January 2005 – 11 June 2007 / HD
RA, 12 June 2007 – 21 October 2009 / HD

e. Overseas Service / Combat Service: SWA / Iraq (14 January 2006 – 3 January 2007; 12 October 2008 – 28 August 2009)

f. Awards and Decorations: ARCOM-3, AAM, AGCM-2, NDSM, ICM-A, GWOTSM, ICM-CS, ASR, OSR-2

g. Performance Ratings: 1 August 2009 – 24 November 2009 / Among the Best
20 January 2010 – 1 October 2010 / Among the Best

h. Disciplinary Action(s) / Evidentiary Record: Integrated Colorado Online Network Document, 28 September 2008, details the applicant's arrest and warrant history.

Johnston County District Court, Sherriff's Bond Document, 26 February 2011, reflects the applicant received a sheriff's bond to appear in a court on 4 March 2011, for driving under the influence.

Several Developmental Counseling Forms, for various acts of misconduct.

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

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

(1) Applicant provided: Health Record, chronological Record of Medical Care, 15 March 2011, reflects the following problems: Major depression, anxiety disorder NOS, alcohol abuse, alcohol abuse in remission, adjustment disorder with disturbance of emotions, and depression.

VA Medical Center letter, 10 April 2013, reflects the applicant was referred to the Adjustment to Traumatic Stress (ATS) class because the applicant had symptoms which were typical of people who were having problems as a result of having experienced a traumatic event in their life (PC PTSD screen).

(2) AMHRR Listed: Report of Mental Status Evaluation (MSE), 18 March 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The evaluation does not reflect a diagnosis.

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: Application for the Review of Discharge; Certificate of Release or Discharge from Active Duty; two death obituaries; divorce decree; VA letter; health record.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been receiving VA medical treatment for PTSD, severe depression and tremors.

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 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(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 14-3 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.

(6) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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: 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.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends good service, including two combat tours, being promoted early, and receiving several awards. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends their actions and mindset were no longer focused on being a Soldier after two deployments, the death of a sibling and close cousin and a divorce. The applicant provided a Health Record, Chronological Record of Medical Care, 15 March 2011, which reflects the following problems: Major depression, anxiety disorder NOS, alcohol abuse, alcohol abuse in remission, adjustment disorder with disturbance of emotions, and depression. A VA

Medical Center letter, 10 April 2013, reflects the applicant was referred to the Adjustment to Traumatic Stress (ATS) class because the applicant had symptoms which were typical of people who were having problems as a result of having experienced a traumatic event in their life. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 18 March 2011, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The evaluation does not reflect a diagnosis. The MSE was considered by the separation authority. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant has been receiving VA medical treatment for PTSD, severe depression and tremors. 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.

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 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, MDD, Anxiety Disorder NOS, and various Adjustment Disorders.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant is 50 percent SC for PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. Given the nexus between PTSD and the use of substances to self-medicate, and PTSD and avoidant behavior, the applicant's DUI, public intoxication, and FTRs are mitigated. However, the failure to appear in court is not mitigated by any of the diagnosed BH conditions as records indicate the applicant made an informed decision not to address the matter before PCSing/Deploying and failed to address the issue upon redeployment.

(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 Post Traumatic Stress Disorder, Major Depressive Disorder, Anxiety, and Adjustment Disorder outweighed the applicant's medically unmitigated offense of failure to appear in court.

b. Response to Contention(s):

(1) The applicant has been receiving VA medical treatment for PTSD, severe depression and tremors. The Board liberally considered this contention and determined that the

available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, Anxiety, and Adjustment Disorder outweighed the applicant's medically unmitigated offense of failure to appear in court.

(2) The applicant contends good service, including two combat tours, being promoted early, and receiving several awards. The Board considered the applicant's six years of service, including two combat tours in Iraq and numerous awards received, and found that the applicant's service record outweighed the lone unmitigated offense (failure to appear in court). Therefore, a discharge upgrade is warranted.

(3) The applicant contends their actions and mindset were no longer focused on being a Soldier after two deployments, the death of a sibling and close cousin and a divorce. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the reasons discussed above in 9b(1-2).

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's DUI, public intoxication, and FTR offenses. The Board found that the applicant's good service outweighed the remaining offense of failure to appear in court. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder outweighed the applicant's DUI, public intoxication, and FTR offenses. The Board found that the applicant's good service outweighed the remaining offense of failure to appear in court. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change given the BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

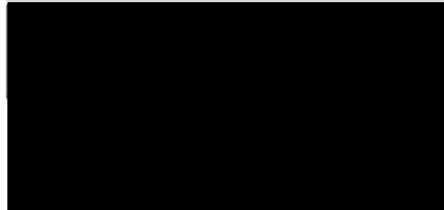
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10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

12/10/2024



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