

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, suffering from multiple medical issues, such as compressed disk, bipolar type II, chronic depression and anxiety, and post-traumatic stress disorder (PTSD). The applicant claims having numerous problems to cope with following the deployment to Iraq, which led to the discharge from the military. The applicant claims having no issues prior to the deployment. The applicant needed to leave because the applicant felt overburdened.

b. Board Type and Decision: In a records review conducted on 5 November 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the separating offenses of AWOL, Disrespect toward an Officer, and Disrespect toward an NCO. 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: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 18 November 2009

c. Separation Facts:

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

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant absented oneself from the unit on or about 28 March until on or about 16 September 2009, behave with disrespect toward a Commissioned Officer, and was disrespectful in language toward a Noncommissioned Officer.

(3) Recommended Characterization: General (Under Honorable Conditions)

(4) Legal Consultation Date: On 26 October 2009, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 29 October 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 September 2006 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / NIF

c. Highest Grade Achieved / MOS / Total Service: E-2 / 25U1P, Signal Support System Specialist / 2 years, 8 months, 24 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Alaska, SWA / Iraq (15 June 2007 – 19 July 2008)

f. Awards and Decorations: NDSM, GWOTSM, ICM-CS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Record of Trial by Summary Court-Martial, reflects the applicant was charged with:

Charge I: violation of Article 86: The Specification: on or about 28 March 2009, without authority, absent oneself from the unit, and did remain so absent until on or about 16 September 2009. Plea Guilty; Finding: Guilty.

Charge II: Violation of the UCMJ, Article 89: The Specification: on or about 19 September 2009, behave with disrespect toward CPT R.K., the superior commissioned officer, then known by the applicant, to be the superior commissioned officer, by saying "Yea, whatever, and what can you do to me," or words to that effect. Plea Not Guilty; Finding Guilty.

Charge II: Violation of the UCMJ, Article 91: The Specification: on or about 19 September 2009, disrespectful in language toward SSG G.B., a noncommissioned officer, then known by the applicant, to be the applicant's noncommissioned officer, who was then in the execution of their office, by saying to them, "Yea, whatever" or words to that effect. Plea Guilty; Finding: Guilty.

The sentence adjudged: Forfeiture \$1,045 pay for one month; reduction to E-1; confined for 30 days.

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 28 March 2009;
From AWOL to Dropped From Rolls (DFR), effective 27 April 2009; and
From Dropped From Rolls (DFR) to Present for Duty (PDY), effective 16 September 2009.

i. Lost Time / Mode of Return: 5 months, 2 weeks, 4 days (AWOL, 28 March 2009 – 15 September 2009) / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs Rating Decision, 27 August 2013, reflects a rating of 20 percent for a service connection for coccydynia and scoliosis.

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), 18 September 2009, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The evaluation included a diagnosis of Axis I: Adjustment disorder. Upon review of available clinical information, the applicant did not exhibit symptoms or had been diagnosed with Post Traumatic Stress Disorder. The applicant was (2008) undergoing treatment through Neurology for TBI but was never cleared. The applicant needed to be medically cleared through Neurology. There was no evidence of an emotional or mental disorder of psychiatric significance at the time to warrant disposition through medical channels; therefore, the applicant was psychiatrically cleared for any administrative action deemed appropriate by command, including administrative discharge.

Report of Medical History, 29 September 2009, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a diagnosis of adjustment disorder with anxiety and depressed mood.

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: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; Disabled American Veterans; Department of Veterans Affairs Rating Decision.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for their mental health from the VA.

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 14-12c prescribes 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 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 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 suffering from multiple medical issues, such as compressed disk, bipolar type II, chronic depression and anxiety, and post-traumatic stress disorder (PTSD). The applicant provided a Department of Veterans Affairs Rating Decision, reflecting a rating of 20 percent for a service connection for coccydynia and scoliosis. The AMHRR includes a Report of Behavioral Health Evaluation (BHE), 18 September 2009, reflecting the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The evaluation included a diagnosis of Axis I: Adjustment disorder. Upon review of available clinical information, the applicant did not exhibit symptoms or had been diagnosed with Post Traumatic Stress Disorder. The applicant was (2008) undergoing treatment

through Neurology for TBI but was never cleared. The applicant needed to be medically cleared through Neurology. There was no evidence of an emotional or mental disorder of psychiatric significance at the time to warrant disposition through medical channels; therefore, the applicant was psychiatrically cleared for any administrative action deemed appropriate by command, including administrative discharge. Also, a Report of Medical History, 29 September 2009, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a diagnosis of Adjustment disorder with anxiety and depressed mood. The BHE was considered by the separation authority.

The applicant contends having numerous problems to cope with following deployment to Iraq, which led to the discharge from the military. The applicant claims having no issues prior to the deployment. The applicant needed to leave because they felt overburdened. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

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: PTSD and Bipolar II Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected for PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the discharge. Given the nexus between PTSD and avoidant behavior and PTSD and problems with authority figures, the offenses of AWOL, Disrespect toward an Officer, and Disrespect toward an NCO are mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder outweighed the separating offenses of AWOL, Disrespect toward an Officer, and Disrespect toward an NCO.

b. Response to Contention(s):

(1) The applicant contends suffering from multiple medical issues, such as compressed disk, bipolar type II, chronic depression and anxiety, and post-traumatic stress disorder (PTSD). The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the separating offenses of AWOL, Disrespect toward an Officer, and Disrespect toward an NCO.

(2) The applicant contends having numerous problems to cope with following deployment to Iraq, which led to the discharge from the military. The applicant claims having no issues prior to the deployment. The applicant needed to leave because they felt overburdened. The Board considered this contention during proceedings, but ultimately did not address it in

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detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the separating misconduct.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the separating offenses of AWOL, Disrespect toward an Officer, and Disrespect toward an NCO. 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.

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 separating offenses of AWOL, Disrespect toward an Officer, and Disrespect toward an NCO. 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.

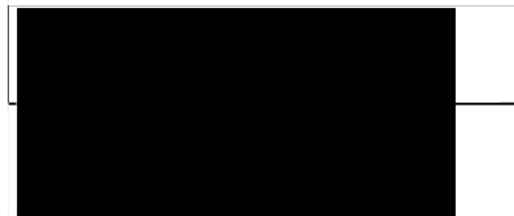
(3) The RE code will not change given the service connected BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

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:

11/13/2024



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