

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**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 requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the original discharge was not an equivalent punishment for the infraction, and it has caused the applicant difficulty in the civilian world.

b. Board Type and Decision: In a records review conducted on 12 November 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's offenses of FTR, DUI, AWOL, and failure to obey a General Order. The Board found that the applicant's service record outweighed the offense of making a false official statement regarding unauthorized use of the Shopette. 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.

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: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 8 May 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 16 April 2013

(2) Basis for Separation: The applicant was informed of the following reasons:

On 7 February 2013, the applicant received a Field Grade Article 15 for violating Article 92 (3x);

Wrongfully possessed Spice;

Wrongfully damaged German Government property while driving impaired by both alcohol and Spice;

On 22 February 2013, the applicant made a false official statement to CPT T. M. B, to wit: the applicant did not know they could not go to the Shoppette, or words to the effect;

On 17 October 2012, the applicant was counseled for failing to be at the appointed place of duty, to wit: 17 October 2012, 0630 hours accountability behind building 840;

On 22 January 2013, the applicant was counseled for being AWOL, to wit: 16 January 2013, 1230 hours to 17 January 2013, 1100 hours.

On 22 January 2013, the applicant was counseled for failing to be at the appointed place of duty, to wit: 22 January 2013, 0630 hours accountability formation at building 840;

On 12 March 2013, the applicant was counseled for failing to be at the appointed place of duty twice, to wit: 8 March 2013, 1800 hours at building 633 and 10 March 2013, 0900 hours at building 633 for extra duty;

On 6 January 2013, after being in an accident, submitted two blood withdrawals on a voluntary basis, which subsequently tested positive for the presence of "the Cannabi mimetics drug XLR-11 (Spice);" and,

Violated Article 92, failed to obey a lawful general order, to wit: Secretary of the Army's Memorandum on Army Directive 2012-14 (Prohibited Substances (Controlled Substance Analogues)), 29 May 2012.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: On 16 April 2013, the applicant waived legal counsel.

(5) Administrative Separation Board: On 16 April 2013, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than under other than honorable conditions discharge.

(6) Separation Decision Date / Characterization: On 18 April 2013 the separation authority considered the separation packet; conditional waiver and recommendations of the chain of command. / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 9 February 2010 / 3 years, 16 weeks

b. Age at Enlistment / Education / GT Score: 20 / High School Transcript / 103

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years, 3 months

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany, SWA / Afghanistan (9 July 2011 – 9 June 2012)

f. Awards and Decorations: ACM-CS, ARCOM, VUA, NDSM, GWOTSM, ASR, OSR-2. NATOMDL, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report Number 00055-2013-MPC147, 8 January 2013, reflects the applicant was the subject of an investigation for Drunken Driving (Article 111, UCMJ) (Off Post); Traffic Accident Resulting in Damage to Host Nation and Private Property – Failure to Maintain Lane (ER 190-1) (Off Post); and Failure to Obey Order or Regulation (Article 92, UCMJ) (On Post).

Commander's Report reflects on 7 February 2013, the applicant received a Field Grade Article 15 for violating Article 92 (3x), wrongfully possessed Spice; and Article 109, wrongfully damaged German Government property while they were driving impaired by both alcohol and Spice. The report does not include the punishment.

GCMCA Memorandum of Reprimand, 29 March 2013, reflects the applicant was reprimanded for operating a motor vehicle on a public road while impaired and causing a traffic accident.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Report of Mental Status Evaluation (MSE), 3 October 2012, reflects the applicant was 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 had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with Axis III: Knee and back pain.

Memorandum for Record, Completion of Alcohol and Drug Abuse Prevention Training (ADAPT) PRIME For Life, 20 March 2013, reflect the applicant completed ADAPT/PRIME for Life on 19 and 20 March 2013.

(2) AMHRR Listed: None

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; Memorandum for Record, Completion of Alcohol and Drug Abuse Prevention Training; certificate; Report of Mental Status Evaluation; Physician Discharge Summary; index; partial separation packet.

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

(1) Paragraph 1-16b, states the Army's separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation. Soldiers who do not conform to required standards of discipline and performance and Soldiers who do not demonstrate potential for further military service should be separated in order to avoid degradation of morale and substandard mission performance. A substantial investment is made in training persons enlisted or inducted into the Army; therefore, this general guidance will be considered when initiating separation action.

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

(3) 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.

(4) 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.

(5) 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.

(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 14-12b, 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 waivable. 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 contends good service, including a combat tour and receiving the Combat Infantry Badge.

The applicant contends the discharge was inequitable punishment for the offense or offenses committed. Army Regulation 635-200, paragraph 1-16b, states the Army's separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation. Soldiers who do not conform to required standards of discipline and performance and Soldiers who do not demonstrate potential for further military service should be separated in order to avoid degradation of morale and substandard mission performance. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends an upgrade of the discharge would allow veterans 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.

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, Chronic Stress Reaction, mTBI, Adjustment Disorder w/Depressed Mood.

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

(3) Does the condition or experience actually 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, the applicant's offense of driving while impaired on spice and alcohol is mitigated. The offense of wrongful damage to property of the German Government (i.e., signposts), is mitigated as a consequence of mitigated misconduct. Violation of a general order prohibiting substance use is also mitigated given the nexus between PTSD and the use of substances to self-medicate. The FTR offenses are mitigated given the nexus between PTSD and avoidant behavior. However, the offense of making a false official statement is not mitigated

as this behavior is natural sequela of PTSD, and the applicant's mTBI was not of a severity to impact cognition, judgement, or behavior at the time of this misconduct.

(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, Chronic Stress Reaction, Traumatic Brain Injury, and Adjustment Disorder outweighed the applicant's medically unmitigated false official statement offense.

b. Response to Contention(s):

(1) The applicant contends good service, including a combat tour and receiving the Combat Infantry Badge. The Board liberally considered this contention during proceedings and determined that the applicant's service record outweighed the applicant's medically unmitigated false official statement offense. The remainder of the applicant's misconduct was medically mitigated by the applicant's behavioral health conditions. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the discharge was inequitable punishment for the offense or offenses committed. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the reasons discussed above in 9b(1).

(3) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(4) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do 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.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's offenses of FTR, DUI, AWOL, and failure to obey a General Order. The Board found that the applicant's service record outweighed the offense of making a false official statement regarding unauthorized use of the Shopette. 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 offenses of FTR, DUI, AWOL, and failure to obey a General Order. The Board found that the applicant's service record outweighed the offense of making a false official statement regarding unauthorized use of the Shopette. Thus, the prior characterization is no longer appropriate.

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(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, 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: 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:

1/30/2025

**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