

**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 honorable. The applicant requests a narrative reason change.

The applicant seeks relief contending, in effect, had several grand mal seizures while serving in Iraq in 2007; however, they were undiagnosed at the time. The applicant came home on mid-tour leave in October 2007 and had several back to back seizures while they were home and reported to the rear detachment command for the unit. They were told they would be medically cleared and then would return to Iraq, if cleared. The following day, the applicant was told they were going back to Iraq without being cleared. The applicant stated they would not return unless they were cleared. They were then placed under arrest for missing movement back to Iraq and then taken to a civilian jail because the brig at Fort Stewart was full and they could not take them under their current medical conditions. The applicant spent two months in jail and was released 3 December 2007. Most of all the charges were dropped. The applicant is currently diagnosed with seizure disorder at 100 percent and is also 50 percent service-connected through VA for PTSD which both have been service-connected since the applicant was discharged from the Army. The applicant came home on leave started having more medical issues, was told they could not stay at Fort Stewart until they were medically cleared and branded a deserter and jailed for missing movement because they were suffering from seizure disorder and PTSD. The applicant should have been placed on medical hold or in a wounded warrior battalion until cleared to return to Iraq or medically discharged.

**b. Board Type and Decision:** In a records review conducted on 24 October 2024, and by a 5-0 vote, the Board, based on the applicant's Anxiety and Post Traumatic Stress Disorder outweighing the applicant's offense of failing to obey a lawful order, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service and reentry eligibility code were proper and equitable and voted not to change them.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Honorable

**b. Date of Discharge:** 28 December 2007

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 5 December 2007

**(2) Basis for Separation:** The applicant was informed of the following reasons: On 6 November 2007, the applicant failed to follow orders from a superior commissioned officer.

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

**(4) Legal Consultation Date:** On 5 December 2007, the applicant waived legal counsel.

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 18 December 2007 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 7 June 2006 / 3 years, 19 weeks / There appears to be an error on the applicant's DD Form 214, block 12a, Date entered AD this Period, which reflects 2 June 2006. The applicant's Enlistment/Reenlistment Document, reflects the applicant enlisted on 7 June 2006.

**b. Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 87

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 13D10, Field Artillery Automation / 1 year, 6 months, 23 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Iraq (8 May 2007 – 25 September 2007)

**f. Awards and Decorations:** NDSM, GWOTSM, ICM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Memorandum for Record, Verification of Direct Order to return to Iraq, 5 November 2007, reflects on 5 November 2007, the applicant received a direct order from the 1-9 Field Artillery Rear Detachment Command to return to Iraq as soon as possible.

Memorandum for Record, Direct Order from BN Commander, 6 November 2007, reflects the Battalion Rear-Detachment Commander, issued a direct order for the applicant to get on the 1-9 Field Artillery TMP van and travel to Atlanta on Tuesday 060800NOV07 to fly to Kuwait. The applicant had already received a direct order by the battalion rear D Commander to get on the 1-9 Field Artillery Battalion TMP van and travel to Atlanta on Tuesday 060800NOV07 and fly to Kuwait. The applicant disobeyed this lawful order by CPT T. J. R. This was the applicant's last chance. If they disobeyed the order, they would be considered a flight risk and recommend pre-trial confinement and court-martial. The applicant acknowledged these instructions.

Charge Sheet, 14 November 2007, reflects the applicant was charged with: The Charge: Violation of the UCMJ, Article 90. The Specification: Having received a lawful command from CPT T. J. R, the superior commissioned officer, to get in the Battalion TMP Van at 0800 on 6 November 2007 to be driven from Fort Stewart to the Atlanta airport and return to Iraq or words to the effect, did on or about 6 November 2007 willfully disobey the same.

Memorandum for Rear Detachment Commander, Summary Court Martial Offer to Plea, 28 November 2007, reflects after consulting with defense counsel the applicant offers to: accept trial by summary court-martial; plead guilty to the Charge and its specification; agree to enter a written stipulation of fact, if requested, correctly detailing the facts and circumstances surrounding the charges to which they are pleading guilty. The offer was accepted.

Report of Result of Trial, 3 December 2007, reflects the applicant was found guilty by a summary court-martial for failure to follow a lawful command from a superior commissioned officer, in violation of Article 90, UCMJ. The sentence consisted of a reduction to E-1 and confinement for 30 days.

Developmental Counseling Form, to discuss the plan for environmental leave and discuss the duties and responsibilities as they relate to environmental leave.

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

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

(1) **Applicant provided:** Outpatient Record, 5 September 2007, reflects the applicant was diagnosed with headache syndromes and epilepsy partial (Complex – Psychomotor).

Health Summary, 2 October 2008, reflects the applicant was diagnosed with: Axis I: Depression NOS r/o Bipolar Disorder NOS and Axis III: Seizure D/O; facial reconstruction surgery following bicycle accident in teen years.

VA Rating Decision, 7 July 2011, reflects the applicant's evaluation of seizure disorder, was at 40 percent disabling, was increased to 100 percent effective 29 November 2010 and the evaluation of PTSD with depressive disorder, was at 30 percent disabling, was increased to 50 percent effective 29 November 2010.

VA Decision letter, 8 July 2011, reflects the applicant was granted a combined rating of 100 percent service-connected disability for seizure disorder and PTSD.

(2) **AMHRR Listed:** Report of Medical Examination, 28 November 2007, the examining medical physician noted the applicant was diagnosed with seizures and prescribed medication on 20 November 2007.

Mental Status Evaluation (MSE), 3 December 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The MSE did not contain 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 Correction of Military Record; self-authored statement; Certificate of Release or Discharge from Active Duty; three VA decision letters; health records.

**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) 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) 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.

(4) 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.

(5) 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 a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends good service, including a combat tour.

The applicant contends suffering from undiagnosed grand mal seizures while serving in Iraq. While on mid-tour leave in October 2007, the applicant had several back to back seizures and reported to the rear detachment command for the unit. The applicant was told they would be medically cleared before returning to Iraq. The following day the applicant was told they were going back to Iraq without being cleared. The applicant stated they would not return until cleared. The applicant was placed under arrest for missing movement back to Iraq and taken to a civilian jail where they spent two months. The applicant was granted a combined rating of 100 percent service-connected disability by the VA for seizure disorder and PTSD. The applicant provided an Outpatient Record, 5 September 2007, which reflects the applicant was diagnosed with headache syndromes and epilepsy partial (Complex – Psychomotor). A Health Summary, 2 October 2008, reflecting the applicant was diagnosed with: Axis I: Depression NOS r/o Bipolar Disorder NOS and Axis III: Seizure D/O; facial reconstruction surgery following bicycle accident in teen years. A VA Rating Decision, 7 July 2011, reflecting the applicant's evaluation of seizure disorder, was at 40 percent disabling, was increased to 100 percent effective 29 November 2010 and the evaluation of PTSD with depressive disorder, was at 30 percent disabling, was increased to 50 percent effective 29 November 2010. A VA Decision letter, 8 July 2011, reflects the applicant was granted a combined rating of 100 percent service-connected disability for seizure disorder and PTSD. The AMHRR includes a Report of Medical Examination, 28 November 2007, wherein the examining medical physician noted the applicant was diagnosed with seizures and prescribed medication on 20 November 2007. A Mental Status Evaluation (MSE), 3 December 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The MSE did not include a diagnosis. All the medical documents in the AMHRR were considered by the separation authority. The applicant's AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

## **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: Anxiety, PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with Anxiety and is service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD also existed during military service.

(3) Does the condition or experience actually 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 Anxiety, PTSD, and avoidance, the applicant's BH conditions mitigate failing to follow orders to get in a van to go to the airport to return to Iraq. The medical record supports the applicant's contention that the applicant was treated for a seizure disorder in September 2007 while on R&R from Iraq.

(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 Anxiety and Post Traumatic Stress Disorder outweighed the applicant's offense of failing to obey a lawful order.

**b. Response to Contention(s):**

(1) The applicant contends suffering from undiagnosed grand mal seizures while serving in Iraq. While on mid-tour leave in October 2007, the applicant had several back to back seizures and reported to the rear detachment command for the unit. The applicant was told they would be medically cleared before returning to Iraq. The following day the applicant was told they were going back to Iraq without being cleared. The applicant stated they would not return until cleared. The applicant was placed under arrest for missing movement back to Iraq and taken to a civilian jail where they spent two months. The applicant was granted a combined rating of 100 percent service-connected disability by the VA for seizure disorder and PTSD. The Board liberally considered this contention and determined that the applicant's Anxiety and Post Traumatic Stress Disorder outweighed the applicant's offense of failing to obey a lawful order. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined that it was valid based on medical mitigation of the applicant's misconduct.

(3) The applicant contends good service, including a combat tour. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Anxiety and Post Traumatic Stress Disorder outweighing the applicant's offense of failing to obey a lawful order.

**c.** The Board, based on the applicant's Anxiety and Post Traumatic Stress Disorder outweighing the applicant's offense of failing to obey a lawful order, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service and reentry eligibility code were proper and equitable and voted not to change them.

**d. Rationale for Decision:**

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE****AR20210000685**

(1) The Board voted not to change the applicant's characterization of service as the applicant already holds an honorable characterization and further relief is not available.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) based on medical mitigation of the applicant's misconduct, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

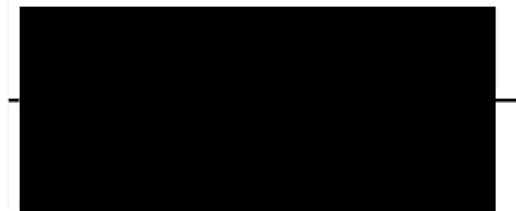
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- 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

**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