

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 under other than honorable conditions. The applicant requests an upgrade to general.

The applicant seeks relief contending, in effect, their spouse was on drugs, and the Department of Social Services (DSS) was taking their kids. The applicant went home to care for their children and did what they thought was best for them. The applicant claims their command did not care about their family and was not willing to offer any assistance. The applicant claims to be a good Soldier and has never had any problems with their unit.

b. Board Type and Decision: In a records review conducted on 15 October 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, and partial medical mitigation of the applicant's misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General 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, and the reentry code to RE-3.

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 - Commission of a Serious Offense / AR 635-200, Chapter 14-12c / JKQ / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 31 August 2005

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 22 April 2005

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant was AWOL for over four months along with impersonation a noncommission officer.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 4 May 2005

(5) Administrative Separation Board: On 22 April 2005, the applicant was notified to appear before an administrative separation board and advised of rights.

On 4 May 2005, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable discharge.

On 20 June 2005, the applicant's conditional waiver was denied.

On 21 July 2005, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the reasons listed in the notification memorandum were supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

On 17 August 2005, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 17 August 2005 / Under Other Than Honorable Conditions / Parts of the separation authority's approval memorandum is blacked out. / The Report of Proceeding by Investigating officers and Board officers were approved by the separation authority.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 March 2001 / 4 years

b. Age at Enlistment / Education / GT Score: 42 / High School Graduate / 102

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92A20, Automated Logistical Specialist / 14 years, 6 months, 5 days

d. Prior Service / Characterizations: RA, 28 September 1990 – 23 August 1993 / HD
RA, 24 August 1993 – 25 January 1995 / HD
RA, 26 January 1995 – 23 October 1997 / HD
RA, 24 October 1997 – 2 December 1998 / HD
RA, 3 December 1998 – 20 March 2001 / HD

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: AGCM, NDSM, GWOTSM, KDSM, ASR

g. Performance Ratings: January 2001 – December 2001 / Fully Capable
January 2002 – November 2002 / Fully Capable
December 2002 – November 2003 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 8 July 2008, reflects the applicant was apprehended for: Deposit account fraud (off post).

FG Article 15, 21 October 2004, on or about 20 January 2004, without authority absent oneself from their unit until 16 June 2004. The punishment consisted of a reduction to E-4; forfeiture of \$900 pay per month for two months and extra duty and restriction for 45 days.

FG Article 15, 11 April 2005, on or about 8 January 2005, wrongfully and willfully impersonate a noncommissioned officer of the Army by publicly wearing the uniform and insignia of rank of a sergeant of the U.S. Army and showing the Geneva Conventions Identification Card of a

sergeant of U.S. Army. The punishment consisted of a reduction to E-3; and extra duty for 45 days.

Two Developmental Counseling Forms, for reporting late to formation; failing to shave; insubordination; lost identification card; and leaving from appointed place of duty without authority.

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

From AWOL to Dropped From Rolls (DFR), effective 18 February 2004; and
From Dropped From Rolls (DFR) to Present for Duty (PDY), effective 16 June 2004

Two Developmental Counseling Forms, for AWOL and being in debt.

i. Lost Time / Mode of Return: 4 Months, 26 days
AWOL, 20 January 2004 – 15 June 2004 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical Assessment, 8 February 2005, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a medical diagnosis.

Report of Mental Status Evaluation, 3 May 2005, 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 evaluation included 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: Certificate of Release or Discharge from Active Duty; Correction to DD Form 214, Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge.

6. POST SERVICE ACCOMPLISHMENTS: None were 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) 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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(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 14-12c 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-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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 family issues affected behavior and ultimately caused the discharge. 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 contends their command did not care about their family and was not willing to offer any assistance. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service.

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: Chronic MDD, Dysthymic Disorder, Adjustment Disorder with Depressed Mood.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant's behavioral health conditions existed during service.

(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. The applicant contends going AWOL to care for children due to threats they would be taken by DSS, owing to the spouse's drug addiction. Records support that at least one child was placed in foster care secondary to issues discovered at birth. Records indicate that the applicant had a history of dysthymia and after learning a child was placed in foster care, experienced a major depressive episode and under distress made an ill-informed decision to go AWOL. Given the nexus between MDD and poor decision making under distress, the applicant's AWOL is mitigated. However, the multiple offenses of impersonating an NCO are not mitigated as it appears the applicant made an informed decision to present as an E-5 to the rental car agency on multiple occasions and made an informed decision not to update the applicant's CAC after being reduced in rank.

(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 Major Depressive Disorder, Dysthymic Disorder, and Adjustment Disorder outweighed the applicant's medically unmitigated offenses of impersonating an NCO.

b. Response to Contention(s):

(1) The applicant contends good service. The Board considered the applicant's 14 years of service and determined that the applicant's record, combined with partial medical mitigation of the applicant's misconduct, warranted a discharge upgrade.

(2) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered the applicant's circumstances with the applicant's spouse and children. The Board determined that a further upgrade beyond what was decided in 9b(1) was not warranted.

(3) The applicant contends their command did not care about their family and was not willing to offer any assistance. The Board considered this contention but found insufficient evidence that the applicant was denied access to family resources or sought separation for hardship.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, and partial medical mitigation of the applicant's misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General 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, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to General because of the applicant's length and quality of service, and partial medical mitigation of the applicant's misconduct. The Board found that a General discharge is proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(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.

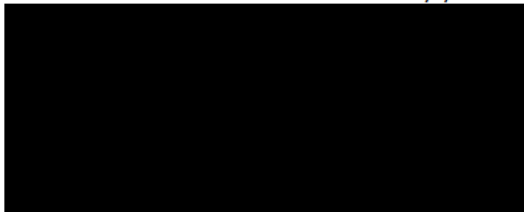
(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

11/1/2024



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