

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, not receiving any care and being mistreated while experiencing a difficult time with the death of their family member and other traumatic events. The unit did not want the applicant there. Before joining the Army, the applicant's grandparent passed away in an intensive care unit, and the applicant witnessed the grandparent's passing. Shortly after joining the Army, the applicant's cousin was murdered. The applicant attended the funeral, but it was difficult to cope with the cousin's death when the applicant returned to the unit because they were like brothers. Soon thereafter, another cousin was beaten until unconscious in their home and in front of their kids. The applicant frequently had conversations with the Chaplain and the chain of command. The applicant attended meetings at Behavior Mental Health to talk about some of their problems and began taking depression medication because the applicant had crying breakdowns while at work during the day. The more the applicant went to the Behavioral Health clinic the applicant believed, the more the applicant was not welcomed by the unit. The applicant had several appointments and soon after, the applicant was discharged under Army Regulation 635-200, Chapter 14. The applicant agreed once the applicant was well, the applicant would return to the military as soon as possible. The applicant began the chapter proceedings and was told by their first sergeant the applicant would participate in a field exercise with the unit. The applicant questioned the decision and was told to not ask questions and just to do it. The applicant informed the 1SG, the applicant did not have a weapon and stated they did not emotionally feel like going to the field. The applicant received action under the Uniform Code of Military Justice and their discharge was changed to misconduct. The applicant was going through a death in their family and was very hurt to leave the military. Serving in the armed forces really means everything to the applicant, and everyone knows it. The applicant was not in very long but met some of the best people in the military and loves the pride of serving in the United States military. Having to go through this process really makes the applicant look bad and is a tragic misjudgment of their character. It is harder on the applicant because the applicant was a great Soldier who went through a terrible time at the best time in their lives. The applicant further details the contentions in the self-authored statement submitted with the application.

b. Board Type and Decision: In a records review conducted on 22 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Dysthymic Disorder outweighing the applicant's offenses of drinking in violation of orders and DUI. 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000726

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 30 September 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 12 September 2011

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant disobeyed a noncommissioned officer (NCO) on multiple occasions; on 4 May 2011, the applicant disobeyed an NCO; and on 17 August 2011, the applicant operated a motor vehicle while under the influence of alcohol.

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

(4) Legal Consultation Date: On 13 September 2011, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 20 September 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 29 December 2009 / 3 years, 18 weeks

b. Age at Enlistment / Education / GT Score: 23 / 1 Semester College / 97

c. Highest Grade Achieved / MOS / Total Service: E-3 / 19D10, D3 Calvary Scout / 1 year, 9 months, 2 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Field Grade Article 15, 26 May 2011, for willfully disobeying a lawful command from Captain J. D., a superior commissioned officer to not drink alcohol (4 May 2011). The punishment consisted of a reduction to E-1; forfeiture of \$733 pay per month for two months; and extra duty and restriction for 45 days.

Report of Medical History, 7 July 2011, the applicant reported their sibling was killed in September 2010 and it was difficult for the applicant to go to work and to get over the sibling's death. The applicant went to Behavioral Health on several occasions, seeking counsel. The

examining medical physician noted in the comments section, seen Behavioral Health, currently not otherwise specified (illegible).

Five Developmental Counseling Forms, for possessing alcohol while in the Army Substance Abuse Program (ASAP); being late for guard duty because of intoxication; violating a brigadier general's order; and failing to obey an order from an NCO on multiple occasions.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record of Medical Care, from 3 December 2010 to 23 August 2011, reflecting the applicant chronic problems listed as adjustment disorder with depressed mood; alcohol abuse; bereavement with complications; and adjustment disorder with anxiety.

(2) AMHRR Listed: Report of Mental Status Evaluation, 10 August 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for post-traumatic stress disorder (PTSD) and mild traumatic brain injury (mTBI). The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with alcohol abuse, bereavement. The provider recommended separation under AR 635-200, paragraph 5-17, given the applicant's history of bereavement induced depression, which likely contributed to the alcohol abuse, resulting from the murder of their sibling and the incarceration of family members.

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; self-authored statement; Chronological Record of Medical Care; third party VA Statement in Support of Claim; three third-party character references; S. G.'s Obituary; and M. P-H.'s Obituary.

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) 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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(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-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 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 a general (under honorable conditions) 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 bereavement over the passing of their grandparent and the murder of a close cousin affected behavior, which led to the applicant's discharge. The applicant provided medical records reflecting the applicant's chronic problems listed as adjustment disorder with depressed mood; alcohol abuse; bereavement with complications; and adjustment disorder with anxiety. The applicant provided a third party statement from fellow Soldiers which described the applicant's change in behavior the death of their cousin. The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 10 August 2011, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant was diagnosed with alcohol abuse, bereavement. The provider recommended separation under AR 635-200, paragraph 5-17, given the applicant's history of bereavement induced depression, which likely contributed to the alcohol abuse, resulting from the murder of their sibling and the incarceration of family members. The MSE was considered by the separation authority.

The applicant contends mistreatment by members of the unit. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant desires to rejoin the military service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good military 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: Dysthymic Disorder, MDD, various Adjustment Disorders, Bereavement.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent SC for Dysthymic Disorder.

(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 Dysthymic Disorder and the use of substances to self-medicate the applicant's DUI is mitigated. The offense of disobeying a commissioned officer is also mitigated because the underlying act was consuming alcohol after being directed not to. The instances of disobeying an NCO that involved the applicant's substance use are summarily mitigated. However, the instance of disobeying an NCO characterized by failing to notify the NCO when departing the area was an informed decision with willful intent and therefore is not mitigated by any of the diagnosed BH conditions, given neither rendered him unable to differentiate between right and wrong and adhere to the right.

(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 Dysthymic Disorder outweighed the applicant's offenses of drinking in violation of orders and DUI. The Board found that the applicant's offense of disobeying an NCO by not informing the NCO when departing an area was minor in nature and did not rise to a level to negate meritorious service.

b. Response to Contention(s):

(1) The applicant contends bereavement over the passing of their grandparent and the murder of a close cousin affected behavior, which led to the applicant's discharge. The Board liberally considered this contention and determined that the applicant's Dysthymic Disorder outweighed the applicant's offenses of drinking in violation of orders and DUI. The Board found that the applicant's offense of disobeying an NCO by not informing the NCO when departing an area was minor in nature and did not rise to a level to negate meritorious service.

(2) The applicant contends the narrative reason for the discharge needs changed. 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 Dysthymic Disorder outweighing the applicant's offenses of drinking in violation of orders and DUI.

(3) The applicant contends mistreatment by members of the unit. 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 Dysthymic Disorder outweighing the applicant's offenses of drinking in violation of orders and DUI.

(4) The applicant contends good service. 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 Dysthymic Disorder outweighing the applicant's offenses of drinking in violation of orders and DUI.

(5) The applicant desires to rejoin the military service. The Board considered this contention and voted to maintain RE-code at RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate

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c. The Board determined the discharge is inequitable based on the applicant's Dysthymic Disorder outweighing the applicant's offenses of drinking in violation of orders and DUI. 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 reenry 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 Dysthymic Disorder outweighed the applicant's offenses of drinking in violation of orders and DUI. The Board found that the applicant's offense of disobeying an NCO by not informing the NCO when departing an area was minor in nature and did not rise to a level to negate meritorious service. 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, 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:

10/29/2024

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