

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, they are attempting to secure employment after the discharge, but the character of service and narrative reason for separation are making it difficult to secure employment or file for unemployment benefits. The applicant was diagnosed with Asperger Syndrome prior to enlistment and believes the condition contributed to the behavior in service and should not be penalized.

b. Board Type and Decision: In a records review conducted on 10 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service outweighing the discharge. 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: 15 January 2014

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file.

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

(2) Basis for Separation: NIF

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 14 March 2011 / 3 years, 25 weeks
- b. **Age at Enlistment / Education / GT Score:** 22 / High School Graduate / 104
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 91B10, Wheeled Vehicle Mechanic / 2 years 10 months, 2 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Korea / None
- f. **Awards and Decorations:** NDSM, GWOTSM, KDSM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Orders 010-0019, 10 January 2014, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 15 January 2014 from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12b, with a narrative reason of Pattern of Misconduct. The DD Form 214 was authenticated with the applicant's electronic signature.

The applicant's Enlisted Record Brief (ERB), 16 January 2014, reflects the applicant was flagged for Army Body Composition Program (KA), effective 25 July 2012; APFT failure (JA), effective 11 February 2013; Involuntary Separation or Discharge (Field Initiated) (BA), effective 27 February 2013; and Adverse Action (AA), effective 27 February 2013; was ineligible for reenlistment due to pending separation and was not eligible for reenlistment or extension (9V). The applicant was reduced from E-3 to E-2 effective 29 August 2013.

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

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

(1) **Applicant provided:** Central Service Area, Kalamazoo Public Schools, Individualized Educational Program, 3 March 2003, reflects the purpose of the IEPT was an annual review and reflects the applicant's condition.

(2) **AMHRR Listed:** Informal Physical Evaluation Board (PEB) Proceedings, 2 December 2013, reflect the Board diagnosed the applicant with an anxiety disorder not otherwise specified (NOS) and Asperger's Disorder, claimed as an adjustment disorder with a depression disorder, bipolar disorder, psychotic disorder and PTSD. The Board further found the applicant physically unfit and recommended a 50 percent disability rating and place the applicant on the Temporary Disability Retired List (TDRL) with a reexamination during May 2015.

Informal Physical Evaluation Board (PEB) Proceedings, 28 July 2015, reflect the Board diagnosed the applicant with an anxiety disorder, not otherwise specified (NOS). The applicant was placed on TDRL on 16 January 2014. The applicant was competent to participate in the PEB process. This condition continues to be unfitting in accordance with DoDI 1332.18,

appendix 2 to enclosure 3, paragraph 2b(1) because continuing in the military presented a decided medical risk to the applicant since it was likely the condition would deteriorate if they were returned to the stresses of active military service. Original MEB Condition: Asperger's disorder was not ratable since it was not considered as an unfitting condition on the original PEB. The Board further found the applicant physically unfit and recommended a rating of 50 percent disability rating and be permanent disability retirement.

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; four third-party letters; Central Service Area Kalamazoo Public Schools Individualized Educational Program Form.

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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(2), states Soldiers under processing for an administrative separation for fraudulent enlistment or misconduct remain eligible to be referred to the MEB. The Soldier's commander must notify the Soldier's PEBLO in writing that administrative separation action has been initiated. The Soldier's completed MEB must be referred to the Soldier's General Court-martial Convening Authority (GCMCA) in accordance with AR 635-200 to determine whether the Soldier will be referred to the PEB. Approval and suspension of an AR 635-200 separation action is not authorized when the Soldier is pending both an AR 635-200 and AR 635-40 action. The GCMCA must decide which action to pursue (as described in AR 635-200). Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by USAPDA for the SECARMY. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the GCMCA.

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

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

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12b, 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.

f. 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.

g. 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) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with a characterization of service of general (under honorable conditions).

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation,

entered in block 28 and separation code, entered in block 26 of the form, will be exactly 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 being diagnosed with Asperger Syndrome prior to enlistment and believes this condition contributed to the behavior in service. The applicant provided Central Service Area, Kalamazoo Public Schools, Individualized Educational Program, 3 March 2003, which reflects the purpose of the IEPT was an annual review and reflects the applicant's condition. Two of the third-party letters are from the parent and grandparent which state the applicant was diagnosed with Asperger Autism while in the 7th grade. The applicant's AMHRR includes an Informal Physical Evaluation Board (PEB) Proceedings, 2 December 2013, which reflect the Board diagnosed the applicant with an anxiety disorder not otherwise specified (NOS) and Asperger's Disorder, claimed as an adjustment disorder with a depression disorder, bipolar disorder, psychotic disorder and PTSD. The Board further found the applicant physically unfit and recommended a 50 percent disability rating and placed the applicant on the Temporary Disability Retired List (TDRL) with a reexamination during May 2015. Informal Physical Evaluation Board (PEB) Proceedings, 28 July 2015, reflect the Board diagnosed the applicant with an anxiety disorder, not otherwise specified (NOS). The applicant was placed on TDRL on 16 January 2014. The applicant was competent to participate in the PEB process. This condition continues to be unfitting in accordance with DoDI 1332.18, appendix 2 to enclosure 3, paragraph 2b(1) because continuing in the military presented a decided medical risk to the applicant since it was likely the condition would deteriorate if they were returned to the stresses of active military service. Original MEB Condition: Asperger's disorder was not ratable since it was not considered as an unfitting condition on the original PEB. The Board further found the applicant physically unfit and recommended a rating of 50 percent disability rating and be permanent disability retirement.

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 third-party statements provided with the application reflect the applicant's hard work and good character after being discharged.

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: Adjustment Disorder, Anxiety Disorder NOS.

(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 an Adjustment Disorder and Anxiety Disorder NOS. The VA has also service connected the applicant for Chronic Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health

conditions do not mitigate the discharge. The applicant was in service diagnosed with Adjustment Disorder and Anxiety Disorder NOS. The VA has also service connected the applicant for Chronic Adjustment Disorder. However, the specifics of the basis of separation (pattern of misconduct) is not contained in the file. Because the basis of separation is unknown, the Board's BH Advisor cannot determine if the applicant's BH conditions contributed to the misconduct that led to the separation. As such, medical mitigation cannot be determined. The applicant's self-asserted Asperger's Disorder is supported by the active duty medical record, but it is not a mitigating BH condition since it was a pre-existing development disorder.

(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 Adjustment Disorder and Anxiety Disorder outweighed the applicant's medically unmitigated pattern of misconduct due to insufficient information regarding the nature of the applicant's misconduct.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with Asperger Syndrome prior to enlistment and believes this condition contributed to the behavior in service. The Board liberally considered the applicant's behavioral health conditions and experiences, including the applicant's Asperger Syndrome. The Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder and Anxiety Disorder outweighed the applicant's medically unmitigated pattern of misconduct due to insufficient information regarding the nature of the applicant's misconduct. The Board further found that the applicant's Asperger Syndrome could not mitigate the applicant's misconduct as it was a pre-existing development disorder. However, the Board did find that the applicant's nearly three years of service did warrant a discharge upgrade.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined that it was warranted based on the applicant's length of service and the lack of specific information regarding the applicant's misconduct leading the Board to conclude that the applicant's offenses were minor in nature.

(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.

c. The Board determined the discharge is inequitable based on the applicant's length of service outweighing the discharge. 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 length of service outweighed the discharge. Thus, the prior characterization is no longer appropriate.

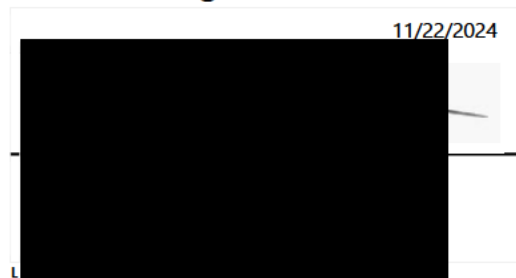
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(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(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:

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