

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 would like to reenlist in the Army or achieve employment at State or Federal levels in law enforcement, and to receive maximum benefits for Army and State education incentives to ensure the best college education. The applicant suffers from PTSD which caused the applicant to drink alcohol excessively, and contributed to the applicant separating from their family and eventually caused a divorce. The drinking led to the applicant drinking and driving which led to Driving While Intoxicated (DWI). After being diagnosed with PTSD, things seemed to get worse for the applicant and the applicant drank more and ended up losing their way. They started to get into trouble for being late to work formations which displayed a pattern of misconduct.

b. Board Type and Decision: In a records review conducted on 15 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and partial medical mitigation of the applicant's misconduct combining to outweigh 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: 6 June 2012**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 11 May 2012

(2) Basis for Separation: The applicant was informed of the following reasons: Between on or about 14 April 2012, and on or about 30 September 2011, on divers, occasions, the applicant failed to go at the time prescribed to the appointed place of duty. On or about 12 April 2012, the applicant was cited with Aggravated Unlicensed Operation of a Motor Vehicle. On or about 17 November 2011, the applicant was cited with Driving While Intoxicated.

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

(4) Legal Consultation Date: 15 May 2012

(5) Administrative Separation Board: On 15 May 2012, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 October 2007 / 6 years

b. Age at Enlistment / Education / GT Score: 24 / High School Graduate / 102

c. Highest Grade Achieved / MOS / Total Service: E-6 / 21B30, Combat Engineer / 7 years, 6 months, 5 days

d. Prior Service / Characterizations: ARNG, 2 December 2004 – 28 March 2006 / HD
IADT, 2 January 2005 – 15 April 2005 / HD
(Concurrent Service)
RA, 29 March 2006 – 22 October 2007 / HD

e. Overseas Service / Combat Service: SWA / Iraq (10 May 2007 – 3 July 2008; 30 October 2009 – 11 October 2010)

f. Awards and Decorations: ICM-3CS, ARCOM-2; AAM-4, AGCM, NDSM, GWOTSM, HSM, NCOPDR-2, ASR, OSR-2, CAB

g. Performance Ratings: 1 June 2008 – 31 May 2009 / Among the Best
1 June 2009 – 15 August 2011 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report Number 04714-2011-MPC552, 24 November 2011, reflects the applicant was apprehended and charged with Willfully Disobeying a Superior Commissioned Officer, Art 90 UCMJ (Post Suspension List) (On Post).

City Court of Watertown Court Document, 5 March 2012, reflects on 17 November 2011, the applicant was charged with Op MV Impaired and Op MV While Intoxicated.

Memorandum, Revocation of On-Post Driving Privileges, 6 March 2012, reflects the applicant's privately owned vehicle driving privileges were revoked for an additional five years for driving on Fort Drum military installation while the driving privileges were suspended.

Military Police Report Number 00913-2012-MPC552, 12 April 2012, reflects the applicant was apprehended and charged with Aggravated Unlicensed Operation of a Motor Vehicle 2nd Degree NYVTL 511-2(A) III (Civil) (Off Post); Driving/Wrong Direction on a One Way Street NYVTL 1127(A) (Civil) (Off Post); and Uninspected Motor Vehicle NYVTL 306(B) (Civil) (Off Post).

FG Article 15, 25 April 2012, on divers occasions, between on or about 30 September 2011 and on or about 4 April 2012, without authority fail to go at the time prescribed to the appointed place of duty. The punishment consisted of a reduction to E-5; forfeiture of \$1,331 pay per month for two months (suspended); and extra duty and restriction for 45 days, suspended; and an Oral Reprimand.

Several Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 20 March 2012, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Medical Assessment, 28 March 2012, the health care provider noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation (MSE), 17 April 2012, 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 PTSD and mTBI. While the applicant screened positive for both possible PTSD and previous TBI, further investigation revealed the absence of any psychiatric condition apart from an adjustment disorder, the applicant was still considered psychologically fit for duty (meeting medical retention standards). The MSE contains 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 the Review of Discharge; self-authored statement; listed enclosures.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is a full-time college student studying a double major in Criminology and Psychology.

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 14-3, 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.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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.

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 good service, including two combat tours.

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 suffering from PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR includes a Report of Medical History, 20 March 2012, reflecting the examining medical physician noted the applicant's medical conditions in the comments section. A Report of Medical Assessment, 28 March 2012, shows the health care provider noted the applicant's medical conditions in the comments section. A Report of Mental Status Evaluation (MSE), 17 April 2012, 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 PTSD and mTBI. While the applicant screened positive for both possible PTSD and previous TBI, further investigation revealed the absence of any psychiatric condition apart from an adjustment disorder, the applicant was still considered psychologically fit for duty (meeting medical retention standards). The MSE contains a diagnosis. All medical documents contained in the AMHR were considered by the separation authority.

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

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The third-party statements provided with the application reflect the applicant's good character and behavior while serving in the Army.

The applicant is a full-time college student studying a double major in Criminology and Psychology. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if

post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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: PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 50 percent SC for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. As there is a nexus between PTSD and the use of substances to self-medicate and avoidant behavior, the applicant's offenses of DUI and FTRs are mitigated. The offense of Aggravated Unlicensed Operation of a Motor Vehicle is not mitigated as the behavior is not natural sequela of PTSD. The applicant did not have a condition that impaired ability to differentiate between right and wrong and adhere to the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated Aggravated Unlicensed Operation of a Motor Vehicle offense.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated Aggravated Unlicensed Operation of a Motor Vehicle offense. However, the Board did find that the applicant's PTSD mitigated the DUI and FTR offenses.

(2) The applicant contends good service, including two combat tours. The Board considered the applicant's seven years of service and two tours in Iraq. The Board found that the applicant's record, combined with the medical mitigation discussed above in 9b(1), warranted a discharge upgrade.

(3) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered the applicant's marital difficulties but did not find that this matter warranted further upgrade above what was decided based on good service and medical mitigation.

(4) The applicant desires to rejoin the military service. The Board considered this contention and voted to maintain the 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.

(5) 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.

(6) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(7) The applicant is a full-time college student studying a double major in Criminology and Psychology. The Board considered the applicant's post-service accomplishments but did not find that they warranted further upgrade above what was decided based on good service and medical mitigation.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and partial medical mitigation of the applicant's misconduct combining to outweigh 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 of the applicant's service record and partial medical mitigation of the applicant's misconduct. 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.

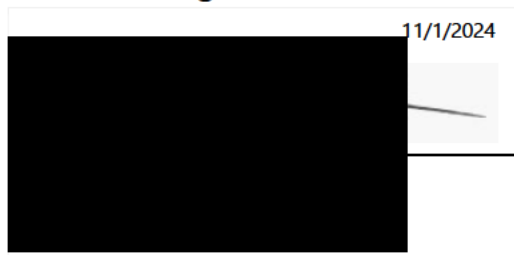
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000746

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:



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