

**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, serving the country and proving to be a Soldier. The applicant may have experienced a downfall and believes every Soldier does at some point but accepts responsibility. The applicant is not able to find employment.

b. **Board Type and Decision:** In a records review conducted on 27 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on partial medical mitigation of the applicant's misconduct and the applicant's length and quality of service outweighing the remaining offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed 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 the Board Discussion and Determination section of this document for details 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, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 10 October 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 28 August 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons:

On 15 June 2013, the applicant did without authority, go from the appointed place of duty to wit: Extra Duty;

On 14 and 15 June 2013, the applicant having knowledge of a lawful order issued by Captain (CPT) C. H., to be restricted to post for 14 days from an Article 15 adjudicated on 11 June 2013, an order which it was the applicant's duty to obey, fail to obey the same by leaving post;

On 10 June 2013, the applicant, without authority, fail to go at the time prescribed to the appointed place of duty, to wit 0450, DFAC;

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On 3 June 2013, the applicant who should have known of their duties, was derelict in the performance of those duties in that the applicant negligently failed to come to work in a clean uniform, as it was the applicant's duty to do;

On 28 May 2013, the applicant having knowledge of a lawful order issued by Sergeant First Class (SFC) C. F. to stand at parade rest, an order which was the applicant's duty to obey, did fail to obey the same; and

On 4 June 2013, the applicant having knowledge of a lawful order issued by Staff Sergeant (SSG) G. K. to report to Staff Duty at 2000 for corrective training, an order which it was the applicant's duty to obey, did fail to obey the same.

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

**(4) Legal Consultation Date:** 29 August 2013

**(5) Administrative Separation Board:** NA / However, on 29 August 2013, the applicant unconditionally waived consideration of the case before an administrative separation board.

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

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 25 July 2011 / 3 years, 21 weeks

**b. Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 89

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 92G1P, Food Service Specialist / 2 years, 2 months, 16 days

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

**e. Overseas Service / Combat Service:** Italy, SWA / Afghanistan (3 July 2012 – 11 February 2013)

**f. Awards and Decorations:** ACM-CS, ARCOM, NDSM, GWOTSM, ASR, NATOMDL, CAB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Company Grade Article 15, 11 June 2013, for being derelict in the performance of the duties (3 June 2013); failing to obey a lawful order issued by SFC C. F. to stand at parade rest (28 May 2013); and failing to obey a lawful order issued by SSG G. K., to report to Staff Duty at 2000 for corrective training (4 June 2013). The punishment consisted of a reduction to E-2; forfeiture of \$397 pay; and extra duty and restriction for 14 days.

Six Developmental Counseling Forms, for failing to report; failing to obey an order or regulation on multiple occasions; soliciting another to commit an offense; being insubordinate toward a warrant officer or noncommissioned officer; being late to corrective training; having dirty cook whites; and pending separation.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 23 July 2013, reflects the applicant was cleared for administrative action. The applicant could understand and participate in administrative proceedings. 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 adjustment disorder with depressed mood and alcohol abuse by history.

*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; two Certificates of Achievement.

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 14-3 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-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 suffering from a downfall. The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 23 July 2013, which indicates the applicant was cleared for administrative action. The applicant was diagnosed with adjustment disorder with depressed mood and alcohol abuse by history. The MSE was considered by the separation authority.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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.

## **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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder with Depressed Mood.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with multiple forms of Adjustment Disorder during service.

(3) Does the condition or experience 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 basis of separation misconduct. The applicant has in-service diagnoses of Adjustment Disorder and Adjustment Disorder with Depressed Mood. The symptoms were reportedly secondary to harassment by a SFC that began during deployment and continued upon redeployment. Records indicate that the SFC at issue was the applicant's NCO at the DFAC, and that the command decided to remove the applicant from the DFAC. There is insufficient evidence to establish that the alleged harassment constituted Military Sexual Trauma and the applicant does not assert MST or any other trauma-related condition. However, given the reported history of harassment by the specific SFC, the applicant's misconduct of failing to stand at parade rest as ordered by the SFC, failure to report to the DFAC, and dereliction of duty by failing to report in a clean uniform are mitigated given the nexus between Adjustment Disorder with Depressed Mood secondary to harassment, and decreased motivation and difficulty engaging with the harasser. The misconduct of leaving extra duty early on 4 June to attend soccer practice, disobeying lawful orders on 14 and 15 June by breaking restriction, and leaving extra duty early on 15 June are not mitigated, as the applicant's BH conditions did not impair the ability to differentiate between right and wrong and adhere to the right. Additionally, the misconduct of soliciting another to commit an offense is also not mitigated. The non-mitigated misconduct presents as the result of informed decisions and deliberate action on the part of the applicant.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder with Depressed Mood outweighed the applicant's medically unmitigated offenses of disobeying lawful orders.

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

(1) The applicant contends suffering from a downfall. The Board liberally considered this contention, acknowledged the applicant's challenges, and determined that the available evidence did not support a conclusion that the applicant's challenges and/or Adjustment Disorder with Depressed Mood outweighed the medically unmitigated offenses.

(2) The applicant contends good service, including a combat tour. The Board considered the totality of the applicant's service record, including years of service and a combat tour in Afghanistan. The Board substantiated this contention and also found that the unmitigated misconduct did not necessarily rise to a level warranting a General characterization of service.

(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 partial medical mitigation of the basis of separation misconduct, the applicant's length and quality of service, and the

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severity of the unmitigated misconduct. 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 changed 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 due to partial medical mitigation of the applicant's misconduct, the applicant's length and quality of service, and the severity of the remaining offenses. 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.

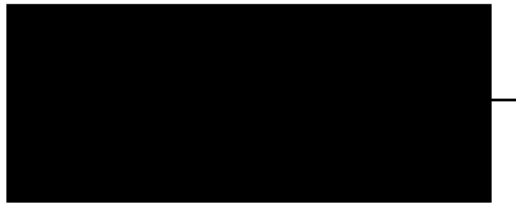
(3) The RE code will not change based on the behavioral health condition. The current code is also consistent with the procedural and substantive requirements of the regulation.

**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:**

8/29/2024



**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