

1. Applicant's Name: [REDACTED]

- a. Application Date: 26 April 2021
- b. Date Received: 26 April 2021
- c. Counsel: None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

- a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the current discharge is incorrect because of the applicant's emotional stress at the time. The applicant should have been discharged for medical reasons. The applicant grew up in a home of frequent drug and alcohol abuse, and the applicant sustained mental, emotional, and physical abuse. The applicant tried to suppress those negative memories and emotions, but encountered the same emotional feelings at their duty station. The applicant attempted suicide, but was unsuccessful. Shortly after the applicant's mental breakdown, the applicant left the Army without any notice. The applicant made a life for themselves in Kansas, married a sheriff deputy, and they had two children together. Having a family helped the applicant want to better their life and be a good role model for their children. In 2009, the applicant applied for a job and was informed there was a warrant for their arrest through the military. The applicant was arrested and returned to Fort Stewart. The applicant did everything the command asked the applicant to do until the applicant was discharged. The applicant received an other than honorable discharge. The applicant knew leaving the unit was wrong and is reminded of it every time the applicant applies for a new job. The applicant is always turned down because of the discharge. The applicant has been a school bus driver for the past six years and is subjected to random drug tests because the applicant holds a commercial driver's license (CDL); the applicant passed every test. The applicant is seeking full-time employment because part-time bus driving does not help pay the bills. The applicant had not been in any trouble before or following the discharge. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) should reflect the applicant's rank as Private E-2.

b. **Board Type and Decision:** In a records review conducted on 3 September 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Major Depressive Disorder outweighing the applicant's AWOL offense. 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 Board Discussion and Determination 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 17 July 2009

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

- (1) Date and Charges Preferred (DD Form 458, Charge Sheet):** NIF
- (2) Legal Consultation Date:** NIF
- (3) Basis for Separation:** NIF
- (4) Recommended Characterization:** NIF
- (5) Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 7 February 2001 / 4 years
- b. Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 97
- c. Highest Grade Achieved / MOS / Total Service:** E-2 / 88M10, Motor Transport Operator / 9 months, 3 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:** Five Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 28 August 2001;
From AWOL to Dropped From Rolls (DFR), effective 28 September 2001;
From DFR, to Confinement, effective 29 April 2009;
From Confinement, to Returned to Military Control (RMC), effective 5 May 2009; and
From RMC to PDY, effective 6 May 2009.

Report of Return of Absentee, 29 April 2009, reflects the applicant's absence began on 20 August 2001, and the applicant was apprehended by civil authorities on 29 April 2009.

Orders 194-0002, 13 July 2009, as amended by Orders 203-0004, 22 July 2009, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 17 July 2009 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, Chapter 10, with a narrative reason of In Lieu of Trial by Court-Martial. The DD Form 214 was not authenticated with the applicant's signature. The applicant had lost time for the period 28 August 2001 to 5 May 2009.

i. Lost Time / Mode of Return: 7 years, 8 months, 9 days:

AWOL, 28 August 2001 – 28 April 2009) / Apprehended by Civil Authorities
Confined by Civil Authorities, 29 April 2009 – 5 May 2009 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Winn Army Community Hospital Record of Inpatient Treatment record, 7 August 2001, reflecting the applicant was admitted into the hospital on 1 August 2001 and was discharged on 3 August 2001. The applicant was diagnosed during admission with major depressive disorder, suicide attempt, and with a discharge diagnosis of adjustment disorder with depressed mood; borderline personality traits; antisocial personality traits; and family problems. The applicant overdosed on 30 Tylenol tablets on 27 July 2001, in the Fort Stewart barracks. The applicant was transferred to Emory University Hospital in Atlanta, Georgia.

Emory University Hospital Consultation Report, 29 July 2001, reflecting an impression of major depression, possibly superimposed on dysthymia; s/p Tylenol overdose; unhappy with the military; conflict with parent and stepparent; limited social and financial; and global assessment of functioning of 35. The medical examining physician recommended continued follow-up and the applicant be considered for psychological impatient treatment when medically stable.

(2) AMHRR Listed: None

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; third party character reference; Winn Army Community Hospital Fort Stewart, Record of Inpatient Treatment; Emory University Hospital Consultation Report; Very Seriously III / Seriously III / Special Category Patient Report; Sworn Statement; and Enlisted Record Brief.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been a school bus driver for the past six years and has subjected to and passed every random drug test.

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.

a. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-3, in effect at the time, states except as provided below, an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions. The commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation if the GCMCA finds the disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

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

(1) Paragraph 1-14 states when a soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade (see AR 600-8-19).

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

(3) Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(4) 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.

(5) 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.

(6) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(7) Paragraph 3-9 states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status. Except when: (1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case. The Soldier is on active duty with less than 181 days of continuous active military service, has completed IET, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment (see para 11-3c). RC Soldiers will receive a characterization of service as "honorable" upon successful completion of IET.

(8) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(9) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(10) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However,

the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(11) Paragraph 10-8b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

(12) Paragraph 10-8c, stipulates when characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status, service will be uncharacterized.

(13) Glossary defines entry-level status for RA Soldiers is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

c. 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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

d. 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes. RE-4 Applies to: Person separated from last period of service with a nonwaivable 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'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 not authenticated by the applicant's signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions.

The applicant contends prior service mental health issues, which were aggravated by military service, affected behavior, which led to the discharge. The applicant provided several medical documents indicating a diagnosis of adjustment disorder with depressed mood; borderline personality traits; antisocial personality traits; and family problems, as well as an impression of major depression, possibly superimposed on dysthymia; s/p Tylenol overdose; unhappy with the military; conflict with mother and stepfather; limited social and financial; and global assessment of functioning of 35. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization. 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 applicant contends the discharge should have been for medical reasons. The applicant did not provide any evidence to show the applicant was in the Disability Evaluation System at the time of discharge. However, Army Regulation 635-40, paragraph 4, in effect at the time, states an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions. The commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation if the GCMCA finds the disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

The applicant contends their rank should be changed to reflect Private E-2. AR 635-200, paragraph 1-13 states when a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade. The applicant's requested change to the DD Form 214 does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The applicant contends being a school bus driver for the past six years and passing every random drug test. 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.

The third party statement provided with the application speaks highly of the applicant. It recognizes the applicant conduct after leaving the Army.

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: MDD, Adjustment Disorder with Suppressed Mood, Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant has an in-service diagnosis of MDD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the misconduct. There is sufficient evidence to indicate that the applicant's depression was exacerbated by service, resulting in a major depressive episode and a significant suicide attempt. Given the nexus between MDD and withdrawal, social isolation, and avoidance, the applicant's misconduct characterized by AWOL is mitigated.

(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 Major Depressive Disorder outweighed the applicant's AWOL offense.

b. Response to Contention(s):

(1) The applicant contends prior service mental health issues, which were aggravated by military service, affected behavior, which led to the discharge. The Board liberally considered this contention and determined that the applicant's Major Depressive Disorder outweighed the applicant's AWOL offense.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but ultimately did not address it after finding that an upgrade was warranted based on medical mitigation.

(3) The applicant contends good service. The Board considered this contention but ultimately did not address it after finding that an upgrade was warranted based on medical mitigation.

(4) The applicant contends the discharge should have been for medical reasons. When a Servicemember is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended. The Physical Evaluation Board case remains in suspense pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct, the medical process is stopped, and the board report is filed in the member's medical record. Here, the Board found that the suspension of a medical discharge was proper and equitable given that the applicant was AWOL and not present to participate in the medical discharge process.

(5) The applicant contends their rank should be changed to reflect Private E-2. The Board determined that the applicant's request for restoration in rank does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(6) The applicant contends being a school bus driver for the past six years and passing every random drug test. The Board considered the applicant's post-service accomplishments but did not find that they warrant further discharge upgrade.

c. The Board determined the discharge is inequitable based on the applicant's Major Depressive Disorder partially outweighing the applicant's AWOL offense. 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

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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 Major Depressive Disorder outweighed the applicant's AWOL offense.

(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.

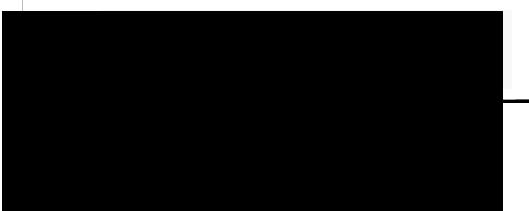
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

10/16/2024



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