

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 in the military for two years before signing an active contract for three years. The applicant was deployed for 15 months. The applicant is rated at 70 percent disability for post-traumatic stress disorder (PTSD) and 90 percent overall. The applicant received 100 percent unemployment insurance because of PTSD. The applicant was fired from three different jobs since being released from active duty. At the last job, the applicant was charged with aggravated assault because of the injuries the applicant caused an individual. Before joining the military, the applicant was a happy person, with several friends from high school and the job. The applicant had a very active social life. The applicant did not drink much at all but began drinking more when they joined the Army and much more after returning from Iraq. The applicant does not have many high school friends anymore. The applicant was tired of the friends asking questions. The applicant does not have a connection with people unless they have been deployed. The applicant included letters from family and friends to provide a more complete understanding of how the deployment affected the applicant. During service in Iraq, the battalion was constantly under attack. The most common threats were mortars, rockets, improvised explosive devices (IEDs) or explosively formed projectiles (EFPs), sniper and small arms fire. The applicant lost friends and acquaintances. Several of the applicant's friends lost limbs and all have been changed in some way. The applicant began the deployment like anyone else, not knowing what to expect. The applicant knew the applicant could be killed or injured, but it did not really mean much until it became real. The applicant further described their experiences during deployment. When the applicant returned home, the applicant experienced highs and lows. Alcohol seemed to help cope for a while, but the applicant did not want to be an alcoholic. Anger was a way to feel something. The applicant had a difficult time and did not care about anything. The applicant missed physical training some mornings and was on the bad side of their leadership, for good reason. The applicant was hard to deal with. The applicant had issues because of drinking. The applicant was not aware of any resources to cope with mental health. The culture in the military is against asking for help anyway. As time went on, it became more and more difficult until the command decided to separate the applicant. The applicant received an other than honorable discharge and does not want the black mark on their records anymore. The applicant is very proud of their military service and desires to be able to use the military experience to help find a career without being ashamed of the discharge. The applicant made mistakes, but did their job proudly.

b. Board Type and Decision: In a records review conducted on 5 September 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighing the applicant's offenses of AWOL, FTR, and disobeying lawful orders. 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: Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 7 November 2008

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 15 September 2008

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

The applicant on 19, 20, and 21 April 2007, and 7 July 2008, failed to go to the appointed place of duty, to wit: 0930 and 1000 (two occasions) work call, and PT formation;

The applicant on or about 23 April 2007, willfully disobeyed a lawful order to get out of bed and don their equipment;

The applicant on or about 23 April 2007, willfully disobeyed a lawful order to turn around and follow; and

The applicant on or about 8 July 2008, absent oneself from their place of duty at which the applicant was required to be, to wit: 0630 formation and did remain absent until on or about 14 July 2008.

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

(4) Legal Consultation Date: 30 September 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 October 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 May 2006 / 3 years, 8 weeks

b. Age at Enlistment / Education / GT Score: 24 / GED / 120

c. Highest Grade Achieved / MOS / Total Service: E-3 / 13F10, Fire Support Specialist / 3 years, 7 months, 6 days

d. Prior Service / Characterizations: USAR, 27 January 2004 – 15 May 2006 / NA
AD, 23 October 2004 – 17 March 2005 / HD

(Concurrent Service)

- e. **Overseas Service / Combat Service:** SWA / Iraq (11 March 2007 – 8 May 2008)
- f. **Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM-CS, OSR, AFRM-MD, ASR
- g. **Performance Ratings:** NA

h. Disciplinary Action(s) / Evidentiary Record: Company Grade Article 15, 4 May 2007, for failing to go at the time prescribed to the appointed place of duty (date illegible); on two occasions, willfully disobeying lawful orders from an NCO to get out of bed and don their equipment and to turn around and follow the NCO (23 April 2007). The punishment consisted of a reduction to E-1; forfeiture of \$326 pay; and extra duty and restriction for 14 days. The form is illegible, in part, including various specifications.

Company Grade Article 15, 24 July 2008, for failing to go at the time prescribed to the appointed place of duty (7 July 2008); and being absent without leave (between 8 and 14 July 2008). The punishment consisted of a reduction to E-1; forfeiture of \$314 pay; and extra duty and restriction for 14 days.

Chronological Record of Medical Care, 23 July 2008, reflects the applicant underwent a mental health screening for administrative separation. The evaluation determined 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.

Numerous Developmental Counseling Forms, for disrespecting noncommissioned officers (NCOs); missing multiple formations; failing to report to duty on multiple occasions; being recommended for Article 15; disobeying orders; missing movement; being absent without leave; receiving numerous Article 15s; being detained for damage to government property; and being drunk and disorderly; and pending separation.

i. Lost Time / Mode of Return: 8 days (NIF, 27 October 2008 – 3 November 2008) / NIF / AWOL for 7 days, 8 to 14 July 2008. This period is not annotated on the applicant's DD Form 214, block 29.

j. Behavioral Health Condition(s):

- (1) **Applicant provided:** None
- (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 Correction of Military Record; self-authored statement; three character references.

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 waivable. 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 contends being rated 70 percent disabled for PTSD and the condition affected behavior which led to the discharge. The applicant did not submit any evidence, other than the applicant's statement and third party letters from family members and a friend to support the contention the discharge resulted from any medical condition. The applicant's AMHRR contains no documentation of PTSD diagnosis. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 23 July 2008, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis. The MSE was considered by the separation authority.

The applicant contends good service, including a combat tour.

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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, Major Depressive Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed and service connected by the VA for PTSD and Major Depressive Disorder. Service connection establishes that the conditions existed during military service.

(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 discharge. Given the nexus between PTSD, Major Depressive Disorder, and avoidance, the FTRs and AWOL are mitigated. PTSD has a nexus with difficulty with authority, so the applicant's PTSD also mitigates disobeying lawful orders.

(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 Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's offenses of AWOL, FTR, and disobeying lawful orders.

b. Response to Contention(s):

(1) The applicant contends being rated 70 percent disabled for PTSD and the condition affected behavior which led to the discharge. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's offenses of AWOL, FTR, and disobeying lawful orders.

(2) The applicant contends good service, including a combat tour. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighing the applicant's offenses of AWOL, FTR, and disobeying lawful orders.

(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 Post Traumatic Stress Disorder and Major Depressive Disorder outweighing the applicant's offenses of AWOL, FTR, and disobeying lawful orders. 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 Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's offenses of AWOL, FTR, and disobeying lawful orders. Thus, the prior characterization is no longer appropriate.

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

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

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:



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