

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, after a second deployment, the applicant returned home having problems with sleep, being anxious, and being vigilant all the time. The applicant believed this was normal until they started having flash backs which were triggered by certain smells and sounds. The applicant still has flash backs to this day and has a hard time being in large crowds. While in service, the applicant tried to get help; however, the unit denied the applicant. The applicant was called all sorts of names and was not given the respect of a seasoned veteran. The applicant took it as long as they could; however, one day they could not take it any longer and stayed home. The applicant never left the house and did not run. The unit knew where the applicant was. The applicant started using drugs and drinking heavily to cope with the problems. When the applicant returned to the unit, they disowned the applicant. Shortly after, the applicant was informed of the discharge with an under other than honorable conditions characterization which the applicant does not believe they deserve. This discharge has ruined the applicant's life and has been hard for the applicant to make a transition into civilian life.

b. Board Type and Decision: In a records review conducted on 9 August 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD mitigates applicant's substance use and AWOL basis for separation. 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 voted the RE code will not change, due to applicant's PTSD diagnosis and substance use warranting consideration prior to reentry of military service.

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: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 8 June 2011

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

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

(2) Basis for Separation: NIF

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** NIF

(5) **Administrative Separation Board:** NIF

(6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 May 2006 / 3 years, 16 weeks / The Army Military Human Resource Record (AMHRR) is void of any DD Form 4 reflecting a reenlistment after the initial enlistment.

b. Age at Enlistment / Education / GT Score: 18 / High School Letter / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 12B10, Combat Engineer / 4 years, 9 months, 27 days

d. Prior Service / Characterizations: None / The applicant's DD Form 214 reflects in the remarks section; the applicant has completed the first full term of service; however, there are no DD Form 4's in the AMHRR to reflect this.

e. Overseas Service / Combat Service: Hawaii, SWA / Afghanistan (10 March 2007 – 25 May 2008); Iraq (2 January 2009 – 18 December 2009)

f. Awards and Decorations: ACM-CS, ARCOM, AAM, MUC, AGCM, NDSM, GWOTSM, GWOTSM, ICM-CS, ASR, OSR-2, NATOMDL, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Orders 139-0008, dated 19 May 2011, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 8 June 2011 from the Regular Army.

The applicant's DD Form 214, reflects the applicant had completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was not authenticated with the applicant's electronic signature. The applicant had lost time for the period 4 November 2010 to 11 January 2011 and 10 February 2011 to 9 March 2011.

i. Lost Time / Mode of Return: 95 days:

NIF, 4 November 2010 – 11 January 2011 / NIF

NIF, 10 February 2011 – 9 March 2011 / NIF

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 149; self-authored statement; DD Form 214.
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 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) 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.

(5) 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.

(6) 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.

(7) Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as

the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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-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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

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 electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of under other than honorable conditions.

The applicant contends after a second deployment, the applicant returned home having problems with sleep, being anxious, and being vigilant all the time. The applicant believed this was normal until they started having flash backs which were triggered by certain smells and sounds. 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 contains no documentation of PTSD diagnosis. The AMHRR does not contain a mental status evaluation.

The applicant contends the unit denied the applicant treatment for these mental health issues. The applicant was called all sorts of names and was not given the respect of a seasoned veteran. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends taking it as long as they could; however, one day they could not take it any longer and stayed home. The applicant never left the house and did not run. The unit knew where the applicant was. 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 using drugs and drinking heavily to cope with the problems. Army Regulation 600-85, paragraph 7-3 entitled voluntary (self) identification and referral, states voluntary (self) ID is the most desirable method of identifying substance use disorder. The individual whose performance, social conduct, interpersonal relations, or health becomes

impaired because of these problems has the personal obligation to seek help. Soldiers seeking self-referral for problematic substance use may access services through BH services for a SUD evaluation. The Limited Use Policy exists to encourage Soldiers to proactively seek help.

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 and TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that although not formally diagnosed, he has compelling evidence suggestive of PTSD found in army medical records, in addition to evidence of potential TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the basis of separation is not in file, but the applicant in essence is asserting AWOL and substance misuse (drugs and alcohol) Medical records contain reference to AWOL, and medical evidence also suggests applicant was pending chapter for substance misuse prior to AWOL. Should the Board accept simple substance misuse and AWOL as the basis of separation, the agency advisor opines there is evidence to support mitigation. Specifically, although never formally diagnosed with PTSD, the applicant in essence asserts the condition. The medical advisor finds the available medical records compelling for the diagnosis under liberal consideration guidelines given the history and symptoms described, especially in the absence of available documentation associated with a referenced full diagnostic evaluation for PTSD. The natural history and sequelae of PTSD is associated with both avoidance behaviors such as AWOL, and use of substances including illicit substances to self-medicate PTSD related distress. Therefore, there is a nexus between applicant's apparent psychiatric functioning and both AWOL and substance misuse. There is reference to possible TBI in the records, but ultimately there is insufficient evidence associated with its severity and sequelae to further consider as a mitigating condition.

(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 PTSD outweighed the substance use and AWOL basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends after a second deployment, the applicant returned home having problems with sleep, being anxious, and being vigilant all the time. The applicant believed this was normal until they started having flash backs which were triggered by certain smells and sounds. 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 PTSD fully outweighing the applicant's AWOL and substance use basis for separation.

(2) The applicant contends the unit denied the applicant treatment for these mental health issues. The applicant was called all sorts of names and was not given the respect of a seasoned veteran. 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 PTSD fully outweighing the applicant's AWOL and substance use basis for separation.

(3) The applicant contends taking it as long as they could; however, one day they could not take it any longer and stayed home. The applicant never left the house and did not run. The unit knew where the applicant was. 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 PTSD fully outweighing the applicant's AWOL and substance use basis for separation.

(4) The applicant contends using drugs and drinking heavily to cope with the problems. 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 PTSD fully outweighing the applicant's AWOL and substance use basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD mitigates applicant's substance use and AWOL basis for separation. 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 voted the RE code will not change, due to applicant's PTSD diagnosis and substance use warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's misconduct of substance use and AWOL. 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, due to applicant's PTSD diagnosis and substance use warranting consideration prior to reentry of military service.

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, paragraph 14-12a

Authenticating Official:

12/29/2023



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