

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the actions which led to the discharge were a direct reflection of post-traumatic stress disorder (PTSD) caused by traumatic experiences from combat. The applicant is 90 percent service-connected disabled and needs additional income. It is next to impossible to find steady and secure employment with this type of discharge, hindering the applicant's ability to provide for their children. The applicant served the country honorably and would do it again if possible. The applicant regrets their actions and was guilty, without a doubt, and their actions were unacceptable, but the applicant's children should not have to suffer because of the applicant's mistakes. The Department of Veterans Affairs (VA) benefits are not enough to financially support their family. The incidents occurred when the applicant was transitioning to civilian life. The applicant desires to become a contributing member of society and lead a normal and productive life. It has been almost five years since the commission of a serious offense. The applicant obtained a trade school degree and is enrolled in college to further the applicant's knowledge in their current trade. The applicant major involves working on federal facilities. The applicant is unable to claim veteran preference without obtaining an honorable discharge.

b. Board Type and Decision: In a records review conducted on 21 August 2024, and by a 5-0 vote, the Board, based on the applicant's PTSD mitigating the applicant's DUI and Failures To Report (FTRs) basis for separation. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it. The RE code will not change due to applicant's BH diagnoses 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, Paragraph 14-12c / JKQ / RE-3 / Honorable

b. Date of Discharge: 14 November 2012

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 26 September 2012

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant operated a motor vehicle under the influence of alcohol in the state of Florida and failed to report to the appointed place of duty on diverse occasions.

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

(4) Legal Consultation Date: On 11 October 2012, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 28 October 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 October 2008 / 5 years, 21 weeks

b. Age at Enlistment / Education / GT Score: 24 / HS Graduate / 113

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 4 years, 1 month, 14 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (16 August 2010 – 3 August 2011)

f. Awards and Decorations: ARCOM-2, NSDM, ACM-2CS, GWOTSM, ASR, OSR, NATOMDL, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Arrest Affidavit / First Appearance Form, 27 September 2011, reflects after being stopped for reckless driving, traveling at 110 miles per hour, on 27 September 2011, the applicant failed the field sobriety test and was placed under arrest for driving under the influence of alcohol. While conducting a search of the applicant's vehicle, the officer observed a plastic cup in the center console which was half full of what smelled of alcohol. The applicant was transported to jail, and two breath tests were conducted, which resulted in .184 percent and .188 percent.

General Officer Memorandum Of Reprimand, 4 November 2011, reflects the applicant was driving while impaired in Florida with a blood alcohol content of .184 percent on 27 September 2011.

Company Grade Article 15, 3 June 2012, for on four occasions failing to go at the time prescribed to the appointed place of duty (between 22 November 2011, 14 and 30 March and 7 May 2012). The punishment consisted of a reduction to E-2 (suspended); forfeiture of \$389 pay (suspended); and extra duty and restriction for 14 days.

Report of Medical History, 17 August 2012, the examining medical physician noted in the comments section: Severe chest pain and anxiety on bad days, related; does not sleep well; and Army Substance Abuse Program / Chapter.

Report of Mental Status Evaluation, 17 August 2012, reflects the applicant was cleared for chapter action. The applicant met medical retention requirements. The applicant had been screened for PTSD and mTBI, with negative results. The mental status examination was within normal limits and some previous psychiatric history was noted. The applicant's AMHRR is void of the first page of the mental status evaluation.

The applicant provided Department of Veterans Affairs letter, 30 November 2015, reflecting the applicant was rated 90 percent combined service-connected disability.

Numerous Developmental Counseling Forms, for failing to report to duty on several occasions; being arrested for speeding and DUI; failing the report for movement to field; failing to report to battalion staff duty; leaving place of duty without authority; indebtedness; and being recommended for Article 15 and separation.

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

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

(1) **Applicant provided:** Department of Veterans Affairs (VA) benefits letter, 14 May 2014, reflecting the applicant was rated 70 percent disabled for PTSD (claimed as anxiety).

(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; two Applications for the Review of Discharge; two VA letters; Premier Radiology medical report; and ADRB Case Number AR20140012540.

6. POST SERVICE ACCOMPLISHMENTS: The applicant obtained a trade school degree and is enrolled in college to further the applicant's knowledge in their current trade.

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) 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.

(4) 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.

(5) 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-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 current characterization of service for the period under review is honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends PTSD affected behavior, which led to the discharge, and the VA rated the applicant 90 percent service-connected disabled. The applicant provided medical documents reflecting the applicant was rated 70 percent disabled for PTSD and 90 percent combined. The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 17 August 2012, which cleared the applicant for chapter action. The record is void of the first page of the MSE. 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.

The applicant contends obtaining a trade school degree and enrolling in college to further the applicant's knowledge in their trade. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, PTSD.

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

(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 applicant was diagnosed in service with an Adjustment Disorder and is service connected by the VA for PTSD. Given the nexus between PTSD, self-medicating with substances, and avoidance, the DUI and FTRs that led to the applicant's separation are 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 PTSD outweighed the DUI and FTRs basis for separation.

b. Response to Contention(s):

(1) The applicant contends PTSD affected behavior, which led to the discharge, and the VA rated the applicant 90 percent service-connected disabled.

(2) The applicant contends good service, including a combat tour.

(3) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment.

(4) The applicant contends obtaining a trade school degree and enrolling in college to further the applicant's knowledge in their trade.

c. The Board determined, based on the applicant's PTSD diagnosis mitigating the applicant's DUI and FTRs basis for separation. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it. The RE code will not change due to applicant's BH diagnoses warranting

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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 determined the discharge is proper and equitable as the applicant's discharge Characterization is Honorable; therefore, no further relief is available.

(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 BH diagnosis warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214:** Yes
- b. Change Characterization to:** No Change
- 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:

10/28/2024

**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