

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 a narrative reason change.

The applicant seeks relief contending, in effect, they were to receive a medical discharge due to a traumatic brain injury (TBI), mood disorder, personality disorder, anxiety, depression, insomnia, migraine headaches, and tinnitus. The applicant states after involvement in a shooting incident, and despite their mental health issues, they were separated under Chapter 14-12c.

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 Major Depressive Disorder, Anxiety, TBI, and Mood Disorder mitigating applicant's DUI basis for separation, determined the narrative reason for the applicant's separation is now inequitable. 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 diagnosis 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 / Honorable

b. Date of Discharge: 5 October 2012**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 30 July 2012

(2) Basis for Separation: The applicant was informed of the following reasons: In August 2011, the applicant entered the Army Substance Abuse Program in Korea by self-referral.

On 3 January 2012, the applicant was diagnosed with Alcohol Dependency and level III treatment was recommended at Joint Base Langley-Eustis, Virginia.

On 10 April 2012, the applicant was assigned a case manager and individual meetings were scheduled due to lack of motivation and to adapt to limitations.

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On 5 May 2012, the applicant was pulled over by a Newport News Police officer for reckless driving. Upon further investigation, it was found the applicant was driving while intoxicated. A breathalyzer was administered and revealed a blood alcohol content of .19 grams per 210 liters of breath.

(3) Recommended Characterization: General (Under Honorable Conditions) / One of the intermediate commanders recommended an under other than honorable conditions discharge.

(4) Legal Consultation Date: 31 July 2012

(5) Administrative Separation Board: / The intermediate commanders recommended an under other than honorable conditions discharge. The company commander informed the applicant they may submit a conditional waiver. On 30 January 2012 the applicant acknowledged receipt of the foregoing notice from their commander which informed the applicant of the basis for the contemplated action to separate them under AR 635-200, Chapter 14-12c, and of the rights available to them. The applicant stated they have been advised of their right to consult with counsel prior to submitting their Election of Rights. They understand unless an extension is granted, failure to respond within 7 duty days would constitute a waiver of the rights in paragraphs 6, 7, 8 and 9 of the notice. The applicant's wavier was not available for review.

(6) Separation Decision Date / Characterization: 18 September 2012 / General (Under Honorable Conditions) / The separation authority did not find the disability of the applicant, was the cause or substantial contributing cause of their misconduct, or other circumstances of their case warranted disability processing instead of further processing for administrative separation IAW AR 635-40. Therefore, the separation authority directed continued processing under provisions of AR 635-200, Chapter 14-12b.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 7 October 2010 / 3 years
- b. **Age at Enlistment / Education / GT Score:** 21 / GED / 118
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 88H10, Cargo Specialist / 3 years, 6 months, 11 days
- d. **Prior Service / Characterizations:** USAR, 7 February 2009 – 6 October 2010 / NA
- e. **Overseas Service / Combat Service:** KDSM / None
- f. **Awards and Decorations:** AAM, NDSM, GWOTSM, KDSM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Desk Blotter report, the previous offenses: 13 February 2012, Traffic Collision; 12 June 2012, Driving while intoxicated and reckless driving.

Memorandum for Commander, Rehabilitation Treatment Failure letter, 21 May 2012, reflects the applicant received Army Substance Abuse Treatment (ASAP) in Korea from August to October 2011, as self-referral. Level II treatment was recommended but was not available prior to their

PCS. The applicant was seen for evaluation on 3 January 2012, at Fort Eustis. The applicant was given the diagnosis of Alcohol Dependence and recommended to Level III treatment. The applicant was directed to attend Preparation for Change Group while awaiting Level III admission. On 10 April 2012, the treatment team met and agreed the applicant would meet with their case manager individually for treatment to improve motivation and adapt to some limitations due to Traumatic Brain Injury. The applicant informed the ASAP they had received a DUI on 5 May 2012. The applicant had poor prognosis as evidenced by their continued use of alcohol and showed poor motivation for rehabilitation and should be considered for administrative action as deemed necessary by the Command.

Military Police Desk Blotter report, 1 July 2012, reflects, the applicant was charged with: Unlawfully discharge of a firearm into an occupied building; Discharge a firearm in a public place, does not result in injury; Carrying a concealed weapon; Brandish or point a firearm; Reckless handling of a firearm; Wrongful damaging of private property and drunk in public.

General Officer Memorandum Of Reprimand, 13 July 2012, reflects on 4 May 2012, the applicant was pulled over by a Newport News Police Officer for reckless driving. The applicant was suspected of driving under the influence. A breathalyzer test was administered, and their blood alcohol content was found to be .19 grams per 210 liters of breath. The applicant was arrested for driving under the influence. In accordance with Army Regulation 27-10, paragraph 3-3b, and Army Regulation 190-5, paragraph 2-7a(3).

Four Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Confined by Civil Authorities (CCA), effective 29 June 2012;
From Confined by Civil Authorities (CCA) to Present for Duty (PDY), effective 27 July 2012;
and
From Present for Duty (PDY) to Confined by Civil Authorities (CCA), effective 17 September 2012;

Four Developmental Counseling Forms, for pending elimination; driving while intoxicated and reckless driving; failure to pay and failure to be at appointed place of duty.

i. Lost Time / Mode of Return: 46 days:

CCA, 29 June 2012 – 27 July 2012 / Released from Confinement
CCA, 17 September 2012 – 5 October 2012 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: McDonald Army Health Center report, printed on 30 April 2012, reflects a medical diagnosis.

Department of Veterans Affairs Disability Evaluation System Rating, 19 July 2012, reflects an evaluation of 50 percent and a medical diagnosis.

Department of Veterans Affairs Benefits letter, 23 January 2013, reflects an evaluation of 60 percent and a medical diagnosis.

(2) AMHRR Listed: Compensation and Pension exam, 9 May 2012, reflects a medical diagnosis.

Medical Evaluation Board Proceedings, 21 June 2012, reflects the applicant had two medical diagnoses.

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; three Department of Veterans Affairs Rating letters.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for their mental health from the VA.

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 600-85 (The Army Substance Abuse Program), paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes: Results of command-directed drug or alcohol testing that are inadmissible under the MRE; Results of a drug or alcohol test collected solely as part of a safety mishap investigation undertaken for accident analysis and the development of countermeasures; Information concerning drug or alcohol abuse or possession of drugs incidental to personal use, including the results of a drug or alcohol test, collected as a result of a Soldier's emergency medical care solely for an actual or possible alcohol or other drug overdose; A Soldier's self-referral to BH for SUD treatment; Admissions and other information concerning alcohol or other drug abuse or possession of drugs incidental to personal use occurring prior to the date of initial referral to treatment and provided by Soldiers as part of their initial entry into SUD treatment; Drug or alcohol test results, if the Soldier voluntarily submits to a DoD or Army SUD treatment before the Soldier has received an order to submit for a lawful drug or alcohol test; and, the results of a drug or alcohol test administered solely as a required part of a DoD or Army SUD treatment program.

e. 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.

f. 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).

g. 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 a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends they should have been medically discharged. The applicant provided a McDonald Army Health Center report, reflecting a medical diagnosis. A Department of Veterans Affairs Disability Evaluation System Rating, 19 July 2012, reflects an evaluation of 50 percent and a medical diagnosis. Evidence in the applicant's AMHRR shows the separation authority did

not find the disability of the applicant, was the cause or substantial contributing cause of their misconduct, or other circumstances of their case warranted disability processing instead of further processing for administrative separation IAW AR 635-40. Therefore, the separation authority directed continued processing under provisions of AR 635-200, Chapter 14-12b. All the medical documents in the AMHRR were considered by the separation authority. Paragraph 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member 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.

The applicant contends seeking treatment for their mental health from the VA. 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, Major Depressive Disorder, Anxiety, TBI, Mood Disorder Due to a General Medical Condition.

(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, Major Depressive Disorder, Anxiety, TBI, and Mood Disorder Due to a General Medical Condition, and the VA has service connected the Major Depressive Disorder.

(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, Major Depressive Disorder, Anxiety, TBI, and Mood Disorder Due to a General Medical Condition, and the VA has service connected the Major Depressive Disorder. Given the nexus between Major Depressive Disorder, Anxiety, TBI, Mood Disorder, and self-medicating with substances, the DUI that led to the applicant's separation 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, Anxiety, TBI, and Mood Disorder outweighed the DUI basis for separation.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board determined that this contention was valid and voted to upgrade the characterization of service due to Major Depressive Disorder, Anxiety, TBI, and Mood Disorder mitigating the applicant's DUI charges.

(2) The applicant contends should have been medically discharged. The Board considered this contention and determined that the applicant's requested change to the DD Form 214 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 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization

(3) The applicant contends seeking treatment for their mental health from the VA. The Board considered this contention and determined the criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. After liberally considering all the evidence, including the VA determination, the Board found that the applicant's Major Depressive Disorder, Anxiety, TBI, and Mood Disorder mitigate the applicant's DUI basis for separation.

c. The Board, based on the applicant's Major Depressive Disorder, Anxiety, TBI, and Mood Disorder mitigating applicant's DUI basis for separation, determined the narrative reason for the applicant's separation is now inequitable. 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 diagnosis 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 determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Characterization of Honorable; therefore no further relief is available.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions), 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.

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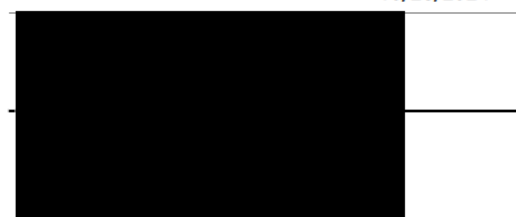
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10. BOARD ACTION DIRECTED:

- 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