

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, believes they did not deserve the discharge received, believes it was unfair, and the harsh affect it has on the applicant's future. The Article 15 received was for talking to a noncommissioned officer in a disrespectful tone. The applicant did not receive any corrective training, no verbal or written warnings, and no negative counseling statements. No other noncommissioned officer has ever complained about the applicant. Shortly after the Article 15, the applicant received a counseling statement because the roommate attacked the applicant; however, the applicant was accused of starting the fight and fighting the roommate back. The applicant was beaten unconscious and was not afforded the opportunity to run away. The applicant suffered a concussion, a black eye, and bumps and bruises. The applicant believes they were the victim of the roommate's rage and should not have been punished so harshly because they did not pick the roommate. The roommate also attacked two other Soldiers on two different occasions. The applicant was moved to a different part of the unit and while adjusting to the changes was late to formation which they were counseled for and completed corrective training. Three months after the counseling the noncommissioned officer from the prior part of the company pushed the paperwork through to the new chain of command even though the applicant had not been late or had any other problems since the last counseling statement and the new battalion commander signed the paperwork. The applicant served for three years and never had any problems and believes all the good they did for the first three years of service are being overlooked. Since being discharged, the applicant has found two steady jobs and is willing to work hard. As the applicant applies for better jobs, they find the discharge is standing in the way and making it harder to find a higher paying job.

b. Board Type and Decision: In a records review conducted on 21 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service, post-service accomplishments, applicant's depression and anxiety outweighing the applicant's failure to report (FTR) for duty, disrespect towards a noncommissioned officer and involvement in a physical altercation with another Soldier basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable 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: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 4 October 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 22 April 2013 and undated

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant showed a total disregard for military rules and regulations as evidenced by failing to report for duty on 16 January 2013; disrespecting a noncommissioned officer on 8 March 2013; and involvement in a physical altercation with another Soldier which resulted in both going to the hospital on 23 March 2013. Due to the seriousness of the circumstances, the applicant's retention would have an adverse impact of military discipline, good order, and morale.

(3) Recommended Characterization: The company commander recommended general (under honorable conditions); the battalion commander recommended retention; and the brigade commander directed the applicant be separated, but the separation be suspended for a period of 12 months with a characterization of general (under honorable conditions).

(4) Legal Consultation Date: 23 April 2013 and 27 August 2013

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 19 September 2013 / General (Under Honorable Conditions) / The Separation Authority reviewed the vacation of the suspension and immediately executed the approved Chapter 14-12b.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 September 2010 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Letter / 88

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88N10, Transportation Management Coordinator / 3 years, 14 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: NDSM, GWOTSM, KDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 21 March 2013, on or about 8 March 2013, did treat with contempt, SGT S. M. a noncommissioned officer, then known by the applicant to be a noncommissioned officer, who was then in the execution of their office, by speaking to SGT S. M. in a disrespectful tone. The punishment consisted of extra duty for 7 days.

MPR# 00244-2013-MPC022, 23 March 2013, reflects a complaint was received via telephone stating the applicant committed an offense of Simple Assault – Consummated by a Battery (Article #128, UCMJ) (On Post).

Report of Proceedings by Investigating Officer, 16 April 2013, reflects the investigating officer found: Based on the testimony and evidence gathered, the greater weight of the evidence supports the conclusion the applicant-initiated contact. It was recommended the applicant be considered for UCMJ action. The chain of command did not believe there was a pattern of violent behavior; however, this isolated event shows evidence of misconduct and poor judgment and warrants appropriate action to maintain order and discipline within the unit. It was recommended the applicant be required to complete training on conflict resolution, anger management, and Army Core Values. The applicant be kept in separate living quarters and separate working quarters to minimized contact with PFC A.

Several Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Southside Regional Medical Center Discharge Instructions, 23 March 2013, reflects the applicant was diagnosed and treated in Emergency Medical Care. The instructions reflect the applicant's conditions.

(2) AMHRR Listed: Report of Medical History, 10 April 2013, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Medical Examination, 10 April 2013, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation (MSE), 15 April 2013, reflects 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. The applicant had been screened for PTSD and mTBI with negative results. The evaluation reflects a diagnosis.

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: Application for the Review of Discharge; self-authored statement; Certificate of Release or Discharge from Active Duty; partial separation packet.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has obtained two steady jobs and is willing to work hard.

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

The applicant contends good service. The applicant served for three years and never had any problems and believes all the good they did for the first three years of service are overlooked. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28

The applicant contends they did not deserve the discharge received and believes it was unfair, because of its harsh effect on the applicant's future. The Article 15 received was for talking to a noncommissioned officer in a disrespectful tone. The applicant received no corrective training, no verbal or written warnings, or no negative counseling statements. No other noncommissioned officer has ever complained about the applicant. After the Article 15, the applicant received a counseling statement because their roommate attacked the applicant; however, the applicant was accused of starting the fight and fighting the roommate back. The applicant was moved within the unit and while adjusting to the changes was late to formation, counseled, and completed corrective training. Three months after the counseling, the noncommissioned officer from the prior part of the company, pushed paperwork through to the applicant's new chain of command, even though the applicant had not been late or had any other problems since the last counseling statement. The new battalion commander signed the paperwork. The AMHRR contains Report of Proceedings by Investigating Officer, 16 April 2013 which reflects the investigating officer found: Based on the testimony and evidence gathered, the greater weight of the evidence supports the conclusion the applicant-initiated contact. It was recommended the applicant be considered for UCMJ action. The chain of command did not believe there was a pattern of violent behavior; however, this isolated event shows evidence of misconduct and poor judgment and warrants appropriate action to maintain order and discipline within the unit. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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.

Since the discharge, the applicant has obtained two steady jobs and is willing to work hard. 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, Depression, Anxiety.

(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, Depression, and Anxiety.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder, Depression, and Anxiety which provide partial mitigation for the basis of separation. Given the nexus between Depression, Anxiety, and avoidance, the applicant's BH conditions more likely than not contributed to the FTR, so it is mitigated. However, there is no natural sequela between an Adjustment Disorder, Anxiety, or Depression and disrespecting an NCO or being involved in a physical altercation since none of these conditions have a nexus with difficulty with authority, aggression, or interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression, and Anxiety outweighed the basis for applicant's separation – disrespect towards a noncommissioned officer and involvement in a physical altercation with another Soldier.

b. Response to Contention(s):

(1) The applicant contends good service. The applicant served for three years and never had any problems and believes all the good they did for the first three years of service are being overlooked. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(2) The applicant contends they did not deserve the discharge received and believes it was unfair because of its harsh effect on the applicant's future. The Article 15 received was for talking to a noncommissioned officer in a disrespectful tone. The applicant received no corrective training, no verbal or written warnings, and no negative counseling statements. 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 length of service, post-service accomplishments, applicant's depression and anxiety outweighing the applicant's FTR, disrespect towards a noncommissioned officer, and involvement in a physical altercation with another Soldier basis for separation.

(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.

(4) Since the discharge, the applicant has obtained two steady jobs and is willing to work hard. 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 length of service, post-service accomplishments, applicant's depression and anxiety outweighing the applicant's FTR, disrespect towards a noncommissioned officer, and involvement in a physical altercation with another Soldier basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length of service, post-service accomplishments, applicant's depression and anxiety outweighing the

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210000916**

applicant's FTR, disrespect towards a noncommissioned officer and involvement in a physical altercation with another Soldier basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnoses warranting consideration prior to reentry of military service.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length of service, post-service accomplishments, applicant's depression and anxiety outweigh the applicant's FTR, disrespect towards a noncommissioned officer and involvement in a physical altercation with another Soldier basis for separation. 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.

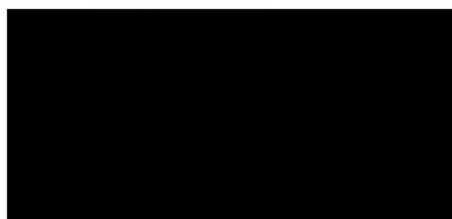
(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214:** Yes
- b. Change Characterization to:** 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:

10/28/2024



AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs