

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, a desire to use education benefits. The applicant believes their medical condition caused them to act the way they did. The applicant also believed the supervisor had no concept of the applicant's disability. The applicant should have been receiving treatment instead of being pressured.

b. **Board Type and Decision:** In a records review conducted on 16 July 2024, and by a 5-0 vote, the Board, based on the applicant's length and quality of service, to include combat service, and partial medical mitigation of the applicant's misconduct, 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.

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 / General (Under Honorable Conditions)

b. **Date of Discharge:** 7 March 2013

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 14 February 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was apprehended on 20 January 2013 by the State of Alaska for driving under the influence and having a weapon in their possession.

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

(4) **Legal Consultation Date:** On 14 February 2013, the applicant waived legal counsel.

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

(6) Separation Decision Date / Characterization: 19 February 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 May 2009 / 5 years, 23 weeks

b. Age at Enlistment / Education / GT Score: 19 / High School Transcript / 102

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92F10, H7 Petroleum Supply Specialist / 3 years, 9 months, 18 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Alaska, SWA / Pakistan (5 September 2010 – 23 December 2010)

f. Awards and Decorations: AAM, AGCM, NDSM, GWOTSM, HSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 23 October 2012, on or about 26 and 28 September 2012, without authority, fail to go at the time prescribed to the appointed place of duty. The punishment consisted of a reduction to E-3; forfeiture of \$462 pay (suspended); extra duty for 14 days; and oral reprimand.

CG Article 15, 31 January 2013, on or about 21 November 2012, with intent to deceive make to CPT N. L., an official statement; and on or about 21 November 2012, without authority, fail to go at the time prescribed to the appointed place of duty. The punishment consisted of a reduction to E-2; and oral reprimand.

District Court for the State of Alaska, Forth Judicial District at Fairbanks Court Document, 20 January 2013, reflects the applicant was charged with Driving While Under the Influence of an Alcoholic Beverage, Intoxicating Liquor, Inhalant, or any Controlled Substance and Misconduct Involving Weapons in the Fourth Degree.

Three Developmental Counseling Forms, for failure to obey order or regulation; failure to report x2.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status (MSE) Evaluation, 30 January 2013, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings. The applicant had been screened for PTSD and mTBI with negative results. The evaluation does not contain 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:** DD Form 293 and 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 (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 14-12c 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 applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends a medical condition caused them to act the way they did. The applicant believes the supervisor had no concept of the applicant's disability. The applicant should have been receiving treatment instead of being pressured. 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 AMHRR shows the applicant underwent a mental status evaluation (MSE) on 30 January 2013, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings. The applicant had been screened for PTSD and mTBI with negative results. The evaluation does not contain a diagnosis. All the medical documents contained in the AMHRR were considered by the Separation Authority. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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: Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with Anxiety Disorder NOS.

(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's behavioral health conditions partially mitigated the discharge. Given the nexus between Anxiety Disorder and use of substances to self-medicate, the DUI is mitigated by the

diagnosis of Anxiety Disorder NOS. The misconduct characterized by FTR is also mitigated given the nexus between Primary Hypersomnia and oversleeping. However, the wrongful possession of a weapon offense is not mitigated as it is not natural sequela of anxiety disorder. Nor is the making a false official statement mitigated, as the behavior is not natural sequela of either condition.

(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 Anxiety Disorder outweighed the applicant's medically unmitigated offenses of making a false official statement and wrongful possession of a weapon.

b. Response to Contention(s):

(1) The applicant contends a medical condition caused them to act the way the applicant did. The applicant believes the supervisor had no concept of the applicant's disability. The applicant should have been receiving treatment instead of being pressured. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Anxiety Disorder outweighed the applicant's medically unmitigated offenses of making a false official statement and wrongful possession of a weapon. However, the Board found that the applicant's record of service and the partial medical mitigation of the applicant's misconduct warranted a change to the narrative reason for separation.

(2) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

c. The Board, based on the applicant's length and quality of service, to include combat service, and partial medical mitigation of the applicant's misconduct, 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. 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 not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's Anxiety Disorder did not outweigh the medically unmitigated offenses of making a false official statement and wrongful possession of a weapon. The Board also considered the applicant's contentions regarding the applicant's behavioral health condition and found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore,

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the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) due to partial medical mitigation of applicant's misconduct and the applicant's record of service, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

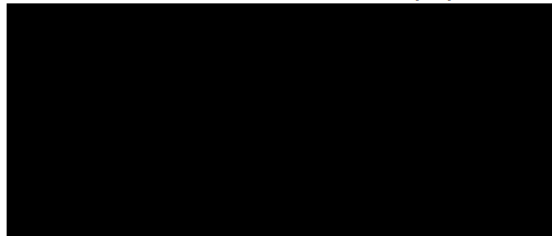
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

7/25/2024



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