

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, the applicant desires to further their education and believes they qualify for education benefits. The applicant was a stellar Soldier; however, after a year and a half, their performance began to decline. The applicant went to the medical office and was diagnosed with attention deficit disorder (ADD) and depression. Recently the applicant learned they have bi-polar depression and is currently being treated successfully with medication. The applicant believed they were being discharged for medical reasons and believes the recent diagnosis warrant a review of the discharge status.

b. **Board Type and Decision:** In a records review conducted on 18 July 2024, and by a 5-0 vote, the Board, based on the applicant's length of service, and the circumstances surrounding the discharge (while the applicant's Major Depression existed prior to service, it is the Board's Medical Advisor's opinion that the condition was exacerbated by military service. Given the nexus between Major Depression, avoidance, and low motivation, the Failure to Report incidents are mitigated. There is no natural sequela between an Adjustment Disorder, Major Depression, or Anxiety Disorder Not Otherwise Specified and disobeying an NCO or making a false official statement since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant's asserted Bipolar Disorder was diagnosed seven years post-service and there is no evidence that it existed during military service, so it provides no mitigation. Finally, the applicant's Attention Deficit Hyperactivity Disorder was a pre-existing condition and provides no mitigation), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and 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 RE Code 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)
- b. **Date of Discharge:** 19 October 2007
- c. **Separation Facts:**

(1) Date of Notification of Intent to Separate: 1 August 2007

(2) Basis for Separation: The applicant was informed of the following reasons:

On or about 4 June 2007, the applicant willfully disobeyed a noncommissioned officer;

On or about 8 June 2007, the applicant willfully disobeyed a noncommissioned officer;

On or about 8 June 2007, the applicant failed to go to the appointed place of duty;

On or about 8 June 2007, with intent to deceive, made a false official statement;

On or about 16 July 2007, the applicant failed to go to the appointed place of duty; and,

On or about 30 July 2007, the applicant failed to go to the appointed place of duty.

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

(4) Legal Consultation Date: undated

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 18 September 2007 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 December 2004 / 4 years

b. Age at Enlistment / Education / GT Score: 30 / Associate Degree / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 / 68W10, Health Care Specialist / 2 years, 9 months, 20 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Hawaii / None

f. Awards and Decorations: GWOTSM, NCOPDR, ASR

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 6 July 2007, on or about 8 June 2007, without authority, failed to go at the time prescribed to the appointed place of duty. The continuation sheet was void from the AMHRR; however, the Commander's Report reflects the applicant violated Articles 86, 91, and 107. The punishment consisted of a reduction to E-3; forfeiture of \$416 pay per month for one month.

The Commander's Report also reflects the applicant received a CG Article 15, 20 July 2007, for violation of Article 86. The punishment consisted of reduction to E-1.

Several Developmental Counseling Forms, for various acts of misconduct.

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

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

(1) **Applicant provided:** Health Record, Chronological Record of Medical Care, 19 June 2007, reflects a medical condition.

Discharge Summaries, 27 June 2014, the summary reflects a diagnosis.

Problem List, 28 June 2014, the documents include a diagnosis.

(2) **AMHRR Listed:** Physical Profile, 2 May 2007, reflects the applicant had medical conditions limiting their duties. The profile reflects a condition.

Report of Mental Status Evaluation (MSE), 19 June 2007, reflects the applicant was psychiatrically 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; and needed further examination. The evaluation contains a diagnosis.

Discharge Notes, 29 June 2007, the notes reflect a diagnosis.

Report of Medical Examination, 9 July 2007, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation, 31 July 2007, 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 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 149; self-authored statement; health record; problem lists; discharge summaries.

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 14-12b, 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 Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends after serving for a year and a half, their performance started to decline. The applicant went to the medical office and was diagnosed with having ADD and depression. The applicant was recently diagnosed with bi-polar depression. The applicant believed they were being discharged for medical reasons. The applicant provided Health Record, Chronological Record of Medical Care, 19 June 2007, reflecting a medical condition. Discharge Summaries, 27 June 2014, and Problem List, 28 June 2014, both reflect a diagnosis. The applicant's AMHRR contains Physical Profile, 2 May 2007, which reflects the applicant had medical conditions limiting their duties. A Report of Mental Status Evaluation, 19 June 2007, reflects the applicant was psychiatrically 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; and needed further examination. The evaluation contains a diagnosis. Discharge Notes, 29 June 2007, reflect a diagnosis. A Report of Medical Examination, 9 July 2007, the examining medical physician noted the applicant's medical conditions in the comments section. A Report of Mental Status Evaluation, 31 July 2007, 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 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 (BMA), 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 Depression, Anxiety Disorder Not Otherwise Specified. Additionally, the applicant asserts Bipolar Disorder, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant had in service diagnoses of an Adjustment Disorder, Major Depression, and Anxiety Disorder Not Otherwise Specified (NOS). While the applicant's Major Depression existed prior to service, it is the BMA's opinion that the condition was exacerbated by military service. The applicant's asserted Bipolar Disorder was diagnosed seven years post-service and there is no evidence that it existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor (BMA) applied liberal consideration and opined that the applicant had in service diagnoses of an Adjustment Disorder, Major Depression, and Anxiety Disorder

NOS. While the applicant's Major Depression existed prior to service, it is the BMA's opinion that the condition was exacerbated by military service. Given the nexus between Major Depression, avoidance, and low motivation, the Failure to Report incidents are mitigated. There is no natural sequela between an Adjustment Disorder, Major Depression, or Anxiety Disorder NOS and disobeying an NCO or making a false official statement since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant's asserted Bipolar Disorder was diagnosed seven years post-service and there is no evidence that it existed during military service, so it provides no mitigation. Finally, the applicant's ADHD was a pre-existing condition and provides no mitigation.

(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 while the applicant's Major Depression existed prior to service, it is the Board's Medical Advisor's opinion that the condition was exacerbated by military service. Given the nexus between Major Depression, avoidance, and low motivation, the Failure to Report incidents are mitigated. There is no natural sequela between an Adjustment Disorder, Major Depression, or Anxiety Disorder Not Otherwise Specified and disobeying an NCO or making a false official statement since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant's asserted Bipolar Disorder was diagnosed seven years post-service and there is no evidence that it existed during military service, so it provides no mitigation. Finally, the applicant's Attention Deficit Hyperactivity Disorder was a pre-existing condition and provides no mitigation.

b. Response to Contention(s):

(1) The applicant contends good service.

(2) The applicant contends after serving for a year and a half, their performance started to decline. The applicant went to the medical office and was diagnosed with having ADD and depression. The applicant was recently diagnosed with bi-polar depression. The applicant believed they were being discharged for medical reasons. The Board liberally 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 and the applicant's Major Depression exacerbated by military service fully outweighing the applicant's Failure to Report basis for separation. The remaining unmitigated misconduct was relatively minor in nature.

(3) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board liberally 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 and the applicant's Major Depression exacerbated by military service fully outweighing the applicant's Failure to Report basis for separation.

c. The Board, based on the applicant's length of service, and the circumstances surrounding the discharge, (specifically - the applicant's Major Depression existing prior to service, it is the Board's Medical Advisor's opinion that the condition was exacerbated by military service. Given the nexus between Major Depression, avoidance, and low motivation, the Failure to Report incidents are mitigated. There is no natural sequela between an Adjustment Disorder, Major Depression, or Anxiety Disorder Not Otherwise Specified and disobeying an NCO or making a false official statement since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant's asserted Bipolar Disorder was diagnosed seven years post-service and there is no evidence that it existed during military service, so it provides no mitigation. Finally, the applicant's Attention Deficit Hyperactivity Disorder was a pre-existing condition and provides no mitigation),

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determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and 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 RE Code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Major Depression exacerbated by military service mitigated the applicant's misconduct of Failure to Report. Thus, given the remaining misconduct is somewhat minor, 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.

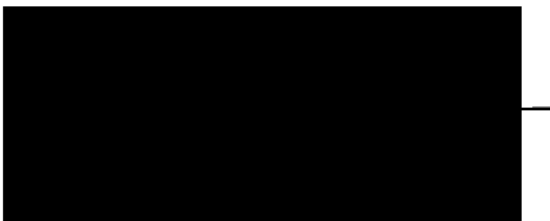
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

8/12/2024



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