

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, requesting an upgrade for work and school. The applicant has not been in any trouble since being discharged. The applicant has been diagnosed with PTSD and believes this was the reason for the misconduct. The applicant has been in weekly counseling.

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 and quality of service, to include combat service, and the circumstances surrounding the discharge (the applicant is diagnosed and service connected by the VA for Post Traumatic Stress Disorder (PTSD) which provides partial mitigation for the basis of separation. Given the nexus between PTSD and self-medicating with substances, the applicant's PTSD likely contributed to the driving while intoxicated (DWI) and it is therefore, mitigated. However, it is less likely than not that the applicant's PTSD contributed to being charged with discharging a firearm from a vehicle that was later reduced to improper exhibition of a weapon. Electing to have a weapon in a vehicle and exhibiting it and/or discharging it reflects motivation and a conscious choice that is non-spontaneous, as opposed to a sudden or impulsive action that may be associated with a re-enactment of a traumatic event associated with PTSD. As such, being charged with the offense of discharging a firearm from a vehicle is not mitigated), 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:** 23 September 2005

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** undated

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(2) Basis for Separation: The applicant was informed of the following reasons: On 22 May 2005, the applicant was arrested for driving while intoxicated (DWI) in Killeen, Texas. As a result of this DWI offense, the applicant violated the terms of their probation from the State of Florida in which the applicant received on 29 September 2004 for the offense of discharging a firearm from a vehicle. On 30 August 2004, the applicant was arrested in Clay County Florida for the offense of discharging a firearm from a vehicle.

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

(4) Legal Consultation Date: In an undated memorandum, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 31 August 2005 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 April 2004 / 6 years

b. Age at Enlistment / Education / GT Score: 22 / GED / 99

c. Highest Grade Achieved / MOS / Total Service: E-4 / 63B10, Wheeled Vehicle Mechanic / 3 years, 6 months, 1 day

d. Prior Service / Characterizations: RA, 6 February 2002 – 1 April 2004 / HD

e. Overseas Service / Combat Service: SWA / Iraq (26 March 2003 – 18 April 2004)

f. Awards and Decorations: ARCOM, NDSM, ASR, GWOTSM, ICM

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: State of Florida Court Document, Order of Probation, 29 September 2004, reflects the applicant entered a plea of guilty and was ordered and adjudged the adjudication of guilt was hereby withheld and the applicant be placed on probation for a period of 12 months under the supervision of the Department of Corrections, Subject to Florida law.

Serious Incident Report, 5 May 2005, reflects the applicant was stopped by the Texas State Trooper and charged with Driving While Intoxicated. The applicant was arrested and charged. The applicant made their own bail to get out.

Texas Department of Public Safety, Traffic Law Enforcement Division, Offense Report, 22 May 2005, reflects the applicant was arrested and charged with DWI 1st Class B PC 9.04.

Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Confined by Civilian Authorities (CCA) effective 5 July 2005; and,

From CCA to PDY, effective 22 August 2005.

Developmental Counseling Form, for driving while intoxicated.

i. Lost Time / Mode of Return: 47 days (CCA, 5 July 2005 – 21 August 2005) / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; two third-party letters; 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 14-12b, 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 being diagnosed with PTSD and believes it was the reason for the misconduct. The applicant has not been in any trouble since being discharged and has been in weekly counseling. 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 does not contain a Mental Status Evaluation. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends 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.

The third-party statements provided with the application reflect the applicant's character, integrity and leadership while serving and since being discharged.

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: Post Traumatic Stress Disorder (PTSD).

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed and service connected by the VA for Post Traumatic Stress Disorder (PTSD) which provides partial mitigation for the basis of separation. Given the nexus between PTSD and self-medicating with substances, the applicant's PTSD likely contributed to the driving while intoxicated (DWI) and it is therefore, mitigated. However, it is less likely than not that the applicant's PTSD contributed to being charged with discharging a firearm from a vehicle that was later reduced to improper exhibition of a weapon. Electing to have a weapon in a vehicle and exhibiting it and/or discharging it reflects motivation and a conscious choice that is non-spontaneous, as opposed to a sudden or impulsive action that may be associated with a re-enactment of a traumatic event associated with PTSD. As such, being charged with the offense of discharging a firearm from a vehicle is not 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 Post Traumatic Stress Disorder outweighed the driving while intoxicated (DWI) basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD and believes it was the reason for the misconduct. The applicant has not been in any trouble since being discharged and has been in counseling weekly. 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 Post Traumatic Stress Disorder outweighing the applicant's driving while intoxicated (DWI) basis for separation.

(2) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. 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 Post Traumatic Stress Disorder outweighing the applicant's driving while intoxicated (DWI) basis for separation.

(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 Post Traumatic Stress Disorder outweighing the applicant's driving while intoxicated (DWI) basis for separation.

(4) The third-party statements provided with the application reflect the applicant's character, integrity and leadership while serving and since being discharged. 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 Post Traumatic Stress Disorder outweighing the applicant's driving while intoxicated (DWI) basis for separation.

c. The Board determined based on the applicant's length and quality of service, to include combat service, and the circumstances surrounding the discharge (the applicant is diagnosed and service connected by the VA for Post Traumatic Stress Disorder (PTSD) which provides partial mitigation for the basis of separation). Given the nexus between PTSD and self-medicating with substances, the applicant's PTSD likely contributed to the driving while intoxicated (DWI) and it is therefore, mitigated. However, it is less likely than not that the applicant's PTSD contributed to being charged with discharging a firearm from a vehicle that was later reduced to improper exhibition of a weapon. Electing to have a weapon in a vehicle and exhibiting it and/or discharging it reflects motivation and a conscious choice that is non-spontaneous, as opposed to a sudden or impulsive action that may be associated with a re-enactment of a traumatic event associated with PTSD. As such, being charged with the offense of discharging a firearm from a vehicle is not mitigated, given this one incident of misconduct 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 Post Traumatic Stress Disorder mitigated the applicant's misconduct of driving while intoxicated (DWI). 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, 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:

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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