

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is honorable. The applicant requests a narrative reason change.

The applicant seeks relief contending, in effect, the discharge was because of a domestic altercation between the applicant and the applicant's spouse. The spouse suffered from bipolar disorder and was on medication, which was ineffective. The applicant's unit was not worried about the reasons for the altercation and just discharged the applicant. The discharge was because of circumstances beyond the applicant's control. The applicant has letters from the applicant's and spouse's mental health counselors, as well as the social worker.

b. Board Type and Decision: In a records review conducted on 2 July 2024, and by a 3-2 vote, the Board determined, based on the applicant's Major Depressive Disorder (MDD), Adjustment Disorder with Anxiety and Depressed Mood, and Anxiety Disorder mitigated the applicant's unlawfully striking N. E. in the chest and thigh with a closed fist basis for separation, that the narrative reason for the applicant's separation is now improper. 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 voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / Honorable

b. Date of Discharge: 12 March 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 13 February 2013

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant unlawfully struck N. E. in the chest and thigh with a closed fist.

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

(4) Legal Consultation Date: 13 February 2013

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 27 February 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 July 2010 / 5 years

b. Age at Enlistment / Education / GT Score: 28 / HS Graduate / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 / 91L10, Construction Equipment Repairer / 2 years, 8 months, 6 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 4 September 2012, reflects the applicant was apprehended for: family domestic violence act; and assault consummated by battery (on post). The applicant's spouse was apprehended for family domestic violence act; assaults within maritime and territorial jurisdiction; and suicidal gesture (on post). Investigation revealed the applicant, and the spouse were involved in a physical altercation when both began hitting each other with closed fist. The applicant's injury consisted of a bite mark to the forearm. The spouse's injuries consisted of bruises to the chest and thigh. After the altercation the spouse made a suicidal gesture. The applicant made a statement describing what led to the altercation. The spouse invoked the rights.

Field Grade Article 15, 20 December 2012, for unlawfully striking N. E. in the chest and thigh with a closed fist. The punishment consisted of a reduction to E-3; forfeiture of \$934 pay per month for two months (suspended); extra duty for 45 days; and restriction for 45 days (suspended).

Memorandum, subject: [Applicant], 6 February 2013, reflects the applicant was enrolled in outpatient treatment at the Community Behavioral Health Clinic.

Horizon Behavioral Health letter, 15 February 2013, reflecting the applicant and the applicant's spouse were patients. The spouse was being treated for various mental health conditions which made it difficult to handle the spouse when upset. On 4 September 2012, the applicant and the spouse had an altercation because of a change in the spouse's medication which significantly impacted the spouse's mood.

Letter, 25 February 2013, reflecting the applicant requested to be retained based on the domestic incident being an isolated incident; the applicant's work ethics; and future plans to pursue a bachelor's degree. The applicant contends the applicant did not intend to hurt the spouse on the night of the incident, but to prevent the spouse from hurting self or someone else.

Two Developmental Counseling Forms, for pending separation for physical altercation with spouse and domestic dispute on 4 September 2012.

Letter, 22 May 2013, reflecting the applicant and the spouse received counseling while on active duty at Fort Stewart. The couple had an extra-ordinary amount of stressors and had suffered the loss of a child. The spouse stopped taking the medication for the mental health issues, which impacted the domestic incident.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 14 January 2013, reflects the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was diagnosed with major depressive disorder.

Report of Medical History, 24 January 2013, the examining medical physician noted in the comments section: The applicant was treated and released at Behavioral Health Clinic because of depression, sleeping difficulty, and anxiety.

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 214; DD Form 293; self-authored letter to Commander, 3rd Sustainment Brigade, Fort Stewart; Horizon Behavioral Health letter; two third party character statements; and spouse's letter.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

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

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

The applicant contends the spouse's mental health issues led to the applicant's discharge and was beyond the applicant's control. The applicant provided evidence, including third party letters from health care professionals, reflecting the applicant's spouse suffered from mental health

issues, which impacted the incident which led to the discharge. The applicant provided a third party letter from the spouse which explained the incident resulted from the spouse's actions and not the applicant's. The applicant's AMHRR reflects the applicant and the applicant's spouse were apprehended during the domestic disturbance and both suffered from an injury and/or injuries.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends the leadership did not care about the issues leading to the event which led to the discharge. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statements provided with the application speak highly of the applicant. They all recognize the many efforts the applicant made to cope with the spouse's mental health conditions.

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: MDD, Adjustment Disorder with Anxiety and Depressed Mood, Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent Service Connected (SC) for MDD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is 100 percent SC for MDD and has potentially mitigating diagnosis of Anxiety Disorder, and Adjustment Disorder with Anxiety and Depressed Mood. Records also reflects the applicant's spouse had BH conditions that directly contributed to the DV incident to include a letter from the spouse's treating provider stating the spouse was being treated for various mental health conditions which made it difficult to handle the spouse when upset, and that the altercation occurred because of a change in the spouse's medication which significantly impacted her mood. Records also reflects the couple experienced significant stress and grief secondary to their twins being stillborn in January 2012. While MDD typically does not mitigate assault/battery, given the totality of the circumstance surrounding the misconduct, there were sufficient evidence to offer mitigation of the misconduct.

(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 MDD, Adjustment Disorder with Anxiety and Depressed Mood, and Anxiety Disorder outweighed the unlawfully striking N. E. in the chest and thigh with a closed fist basis for separation.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined a change to the narrative reason is warranted due to applicant's MDD, Adjustment Disorder with Anxiety and Depressed Mood, and Anxiety Disorder outweighed the unlawfully striking N. E. in the chest and thigh with a closed fist basis for separation.

(2) The applicant contends the spouse's mental health issues led to the applicant's discharge and was beyond the applicant's control. The Board considered this contention and determined the applicant's family circumstances were factored into the Board's vote to upgrade the narrative reason for discharge. The Board voted to change the narrative reason to Misconduct (Minor Infractions).

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. 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 MDD, Adjustment Disorder with Anxiety and Depressed Mood, and Anxiety Disorder outweighed the unlawfully striking N. E. in the chest and thigh with a closed fist basis for separation.

(4) The applicant contends the leadership did not care about the issues leading to the event which led to the discharge. 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 MDD, Adjustment Disorder with Anxiety and Depressed Mood, and Anxiety Disorder outweighed the unlawfully striking N. E. in the chest and thigh with a closed fist basis for separation.

c. The Board determined, based on the applicant's MDD, Adjustment Disorder with Anxiety and Depressed Mood, and Anxiety Disorder mitigated the applicant's unlawfully striking N. E. in the chest and thigh with a closed fist basis for separation, that the narrative reason for the applicant's separation is now improper. 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 voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Characterization of Honorable; therefore no further relief is available.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

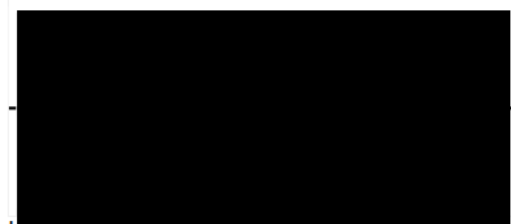
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10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

12/16/2024



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