

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, a narrative reason change, and SPD code change.

The applicant seeks relief contending, in effect, being involved in one incident, driving under the influence (DUI). Although the applicant was charged by civilian court for the offense, the unit reduced the applicant to Private and discharged the applicant with the narrative reason, Misconduct (Serious offense). The applicant was told the applicant could return in six months with a waiver. The narrative reason makes it impossible to obtain a waiver and bars the applicant for life from serving in the government. The applicant requests the narrative reason be changed to "Miscellaneous/General Reasons," and the separation code to "KND." The applicant desires to return to the Army to finish what the applicant started. The applicant further details the contentions in a self-authored statement submitted with the application.

b. **Board Type and Decision:** In a records review conducted on 13 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and MST mitigating the applicant's DUI basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and a change to the reentry eligibility (RE) code to 1.

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 / General (Under Honorable Conditions)

b. **Date of Discharge:** 3 October 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 9 September 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant committed a serious offense for which the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or closely related offense under the Manual for Courts-Martial (MCM). Specifically, a North Pole police officer observed the applicant fail to utilize a required turn signal. Upon contact, the applicant appeared to be in a state of confusion, had bloodshot watery eyes, and an odor of alcohol. The applicant had a Breathalyzer Alcohol Content of .131 percent.

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

(4) **Legal Consultation Date:** 9 September 2013

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

(6) **Separation Decision Date / Characterization:** 11 September 2013 / General (Under Honorable Conditions) / The applicant's AMHRR is void of the separation memorandum, but the document was provided by the applicant.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 28 January 2013 / 3 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 24 / Associate's Degree / 94

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 8 months, 6 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** Alaska / None

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

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** State of Alaska Court documents, 27 July 2013, reflect the applicant was scheduled to appear in court on 16 September 2013 for the misdemeanor complaint of driving under the influence. The complaint was based upon on 27 July 2013, Police Officers were dispatched after receiving a report of an intoxicated driver departing the area operating a vehicle. The caller informed the dispatcher one of the driver's friends yell at the intoxicated driver telling the person not to drive. The Officer observed the applicant's vehicle turned, but failed to utilize required turn signal. The vehicle pulled onto the right shoulder of the roadway and stopped. Upon contact, the applicant appeared to be in a state of confusion similar to an intoxicated person. The applicant failed a series of performance tests and subsequent DataMaster test revealed a reading of .131 percent breath alcohol content (BrAC). The applicant was arraigned and pled not guilty.

Executive Summary (EXSUM), 27 July 2013, reflects similar information contained in the State of Alaska Court documents, with the exception, the applicant's BrAC registered .96 percent.

Developmental Counseling Form, 31 July 2013, for driving under the influence of alcohol.

The applicant's Enlisted Record Brief (ERB), 12 September 2013, reflects the applicant was flagged for Involuntary Separation or Discharge (Field Initiated) (BA), effective 29 July 2013, and Punishment Phase (HA), effective 9 September 2013; and was ineligible for reenlistment because of Conscientious Objector (Does not apply to CMF 68) (9S). The Assignment Eligibility Availability code reflects the applicant was temporarily ineligible for reassignments due to medical, convalescence, confinement due to trial by court martial, enrollment in Track III ASAP, or local bar to reenlistment. The applicant was reduced from E-3 to E-1 effective 9 September 2013.

General Officer Memorandum of Reprimand, 13 September 2013, reflects the applicant was driving under the influence of alcohol. North Pole Police Officers were dispatched after receiving a report of an intoxicated driver departing the area operating a vehicle matching the applicant's vehicle's description. The applicant failed a series of Standardized Field Sobriety Tests and provided a breath sample resulting in a BrAC of .131 percent.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 9 August 2013, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for post-traumatic stress disorder (PTSD) and mild traumatic brain injury (mTBI). The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with alcohol abuse.

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: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; self-authored statement; Mental Status Evaluation Request; EXSUM; separation documents; Army Substance Abuse Program (ASAP) letter; Fairbanks ASAP letter to Fairbanks Probation Office; GOMOR; and Commanding General Policy Number 0-18, mandatory initiation of separation for DUI offenses.

6. POST SERVICE ACCOMPLISHMENTS: The applicant worked as a Su Chef at a restaurant, worked on a farm, and has done what was required by the courts for the DUI charge.

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) 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.

(5) Paragraph 3-9 states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

(6) 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.

(7) 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.

(8) 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.

(9) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

(10) Glossary defines entry-level status for RA Soldiers is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

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-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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 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 a general (under honorable conditions) 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 separation code (SPD) should be changed. Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c, is "JKQ."

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 being punished by civilian court and by Article 15; there was no requirement to discharge the applicant; and the characterization was too harsh. The applicant's AMHRR reflects the applicant was pending civilian court proceedings for DUI; the applicant was reduced from E-3 to E-1, and the applicant's favorable personnel actions were suspended because the applicant was in the punishment phase, effective 9 September 2013; however, the AMHRR is void of any Article 15 proceedings. The record does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service.

The applicant contends other Soldiers with similar offenses were not discharged. The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an

applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

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 working as a Su Chef at a restaurant and working on a farm, and is doing what is required by the courts for the DUI charge. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, MDD, Brain Injury Traumatic.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant 70 percent SC for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has a BH condition that mitigates his misconduct as outlined in the BoS. The applicant is 70 SC for PTSD secondary to MST. Given the nexus between PTSD/MST and using substances to self-medicate, the applicant's misconduct characterized by DUI is mitigated by his SC diagnosis of PTSD.

(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 PTSD and MST outweighed the DUI 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 that this contention was valid and voted to upgrade the narrative reason for discharge to Secretarial Authority due to applicant's PTSD and MST mitigating the applicant's DUI charges.

(2) The applicant contends the separation code (SPD) should be changed. The Board considered this contention and determined the narrative reason for discharge warrants a

change due to applicant's PTSD and MST mitigating the applicant's DUI charges. Accordingly, the SPD code will change to JFF.

(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 PTSD and MST fully mitigating the applicant's DUI basis for separation.

(4) The applicant contends being punished by civilian court and by Article 15; there was no requirement to discharge the applicant; and the characterization was too harsh. 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 PTSD and MST fully mitigating the applicant's DUI basis for separation.

(5) The applicant contends good service. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(6) The applicant contends other Soldiers with similar offenses were not discharged. 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 PTSD and MST fully mitigating the applicant's DUI basis for separation.

(7) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities

(8) The applicant contends working as a Su Chef at a restaurant and working on a farm and is doing what is required by the courts for the DUI charge. 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 PTSD and MST fully mitigating the applicant's DUI basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD and MST mitigating the applicant's DUI basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and a change to the reentry eligibility (RE) code to 1.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD and MST mitigated the applicant's misconduct of DUI. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The Board voted to change the RE code to RE-1.

10. BOARD ACTION DIRECTED:

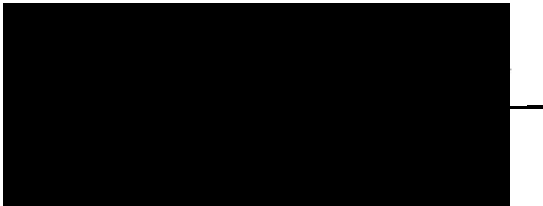
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001007

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** RE-1
- e. **Change Authority to:** AR 635-200, Chapter 15

Authenticating Official:

8/22/2024



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