

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 discharge is inequitable because the character of their service for over three years was more than satisfactory. The applicant states they enlisted as a private and, within three years, obtained the rank of sergeant; the applicant had no derogatory counseling statements or any disciplinary actions. The applicant contends after their deployment to Iraq, things were different. The applicant was going through a separation from their spouse, who had custody of their children and was using drugs. The applicant was diagnosed with an adjustment disorder with anxiety, which turned out to be Post Traumatic Stress Disorder (PTSD). The applicant contends their behavior was due to their PTSD.

b. **Board Type and Decision:** In a records review conducted on 16 July 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's offenses of missing movement and AWOL. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 8 August 2008

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 9 July 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 9 August 2007, the applicant went AWOL from their unit and remained so absent until on or about 14 February 2008. The applicant through design, missed the movement of their unit to Iraq on or about 5 September 2007. The applicant was tried, pled guilty to, and were found guilty of those charges by Summary Court-Martial on 3 June 2008. The applicant punishment was reduction E-4,

Forfeiture of \$1,299 pay for one month and restriction for 60 days. This type of misconduct would not be tolerated by the unit or the Army.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 10 July 2008

(5) Administrative Separation Board: On 21 May 2008, the applicant conditionally waived consideration of the case before an administrative separation board resulting from the charges preferred by CPT M. B., on 6 March 2008. The applicant also waived their personal appearance before such a board should separation be initiated. The waiver was conditioned on the acceptance and execution by the Convening Authority of the Offer to Plead Guilty (OTPG) attached hereto and executed contemporaneously with the memorandum. Upon acceptance of the OTPG and execution of the Summary Court Martial pursuant to the OTPG, the waiver of their right to a separation board would become unconditional even if their chain of command decides to separate them with an other-than-honorable discharge.

On 21 May 2008, the applicant unconditionally waived consideration of the case before an administrative separation board as part of an Offer to Plead Guilty in a Summary Court-Martial proceedings.

On 10 July 2008, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 5 August 2008 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 19 October 2006 / 2 years

b. **Age at Enlistment / Education / GT Score:** 22 / GED / 98

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 19D20, Calvary Scout / 4 years, 1 month, 22 days / The applicant extended for three months with a new ETS Date of 18 January 2009.

d. **Prior Service / Characterizations:** RA, 22 December 2004 – 18 October 2006 / HD

e. **Overseas Service / Combat Service:** SWA / Iraq (11 August 2005 – 18 July 2006)

f. **Awards and Decorations:** AAM, AGCM, NDSM, GWOTSM, ASR, OSR, CAB, ICM-2BS

g. **Performance Ratings:** NIF

h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 9 August 2007, reflects the applicant was apprehended for: Desertion surrendered to military/ civilian authorities (on post).

Record of Trial by Summary Court-Martial, reflects the applicant was charged with:

Charge I: Violation of the UCMJ, Article 86, The Specification: on or about 9 August 2007, without authority, absent oneself from their unit and did remain so absent until on or about 14 February 2008. Plea: Guilty, Finding: Guilty.

Charge II: Violation of the UCMJ, Article 87, The Specification: on or about 5 September 2007, through design, miss the movement of 1st Battalion, 71st Cavalry Regiment with which the applicant was required in the course of duty to move. Plea: Not Guilty, Finding: Guilty.

The sentence adjudged: Reduction to E-4; forfeiture \$1,299 pay per month for one month; restriction 60 days.

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 9 August 2007;
From AWOL to Dropped From Rolls (DFR), effective 8 September 2007; and
From Dropped From Rolls (DFR) to Present for Duty (PDY), effective 14 February 2008.

Developmental Counseling Forms, for AWOL, Desertion and Missing Movement.

i. Lost Time / Mode of Return: 6 Months, 5 days (AWOL, 9 August 2007 – 14 February 2008) / Return to Military Authorities

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record of Medicare Care, 28 March 2008, reflects a medical diagnosis.

(2) AMHRR Listed: Chronological Record of Medicare Care as described in previous paragraph 4j(1).

Report of Medical History, 3 March 2008, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a diagnosis.

Report of Mental Status Evaluation, 19 March 2008, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant is psychiatrically cleared for UCMJ action, but their ultimate disposition may be through medical channels depending on legal situation. The evaluation included 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 214; DD Form 293; two Army Achievement Medal Certificates; Task Force Courage Operation Iraqi Freedom III Certificate of Achievement; Certificate of Promotion to Sergeant; Enlisted Record Brief; five letters of support; medical records; Army Times articles.

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) 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) 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.

(6) 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.

(7) 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 waivable. 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 their behavior was due to PTSD. The applicant provided a Chronological Record of Medicare Care, 28 March 2008, reflecting a medical diagnosis. The applicant provided four third party letters from their peers which described the applicant's change in behavior after returning from combat and supported the applicant's contention. The AMHRR includes a Report of Medical History, 3 March 2008, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a diagnosis and a Report of Mental Status Evaluation, 19 March 2008, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was psychiatrically cleared for UCMJ action, but their ultimate disposition may be through medical channels depending on legal situation. The evaluation included a diagnosis. All the medical documents in the AMHRR were considered by the separation authority.

The applicant contends family issues affected behavior and ultimately caused the discharge. 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 good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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, Adjustment Disorder with Anxiety.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 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 the applicant's PTSD mitigates the discharge as there is a nexus between PTSD and avoidant behavior, including AWOL.

(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 applicant's offenses of missing movement and AWOL.

b. Response to Contention(s):

(1) The applicant contends their behavior was due to PTSD. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's offenses of missing movement and AWOL.

(2) The applicant contends family issues affected behavior and ultimately caused 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 Post Traumatic Stress Disorder outweighing the applicant's offenses of missing movement and AWOL.

(3) The applicant contends good service, including a combat tour. 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 Post Traumatic Stress Disorder outweighing the applicant's offenses of missing movement and AWOL.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's offenses of missing movement and AWOL. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is 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 outweighed the applicant's offenses of missing movement and AWOL. 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.

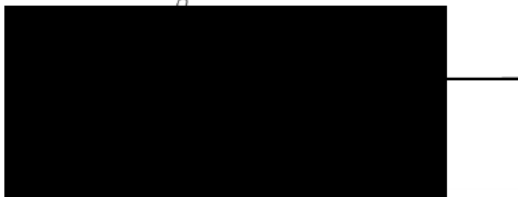
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

7/23/2024



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