

**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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, they were not thinking clearly due to their mental condition, and their JAG Counsel recommended the Chapter 10 discharge. Traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD) contributed to the behavior which led to the circumstances surrounding their discharge. The applicant desires an upgrade to obtain and keep a job which pays well and to be eligible for veteran's benefits. The applicant claims their health problems were brought on by Operation Iraqi Freedom.

b. **Board Type and Decision:** In a records review conducted on 6 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD, depression, Psychosis and Bipolar Disorder mitigating applicant's multiple AWOL incidents basis of separation (BOS). 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. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of the applicant's BH conditions.

*Please see Section 9 of this document for more details regarding the Board's decision. Board member names available upon request.*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 30 July 2013

**c. Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 29 May 2009, the applicant was charged with:

Charge I: Violating Article 85, UCMJ, for being in desertion on or about 20 May 2009, without authority and with intent to remain away therefrom permanently, absent oneself from unit to wit and did remain so absent in desertion.

Charge II: Violating Article 86, UCMJ, for being AWOL from on or about 21 April 2009, without authority, absent oneself from their unit to wit and did remain so absent until.

On 13 December 2011, the applicant was charged with:

Charge I: Violating Article 85, UCMJ, for being in desertion on or about 11 December 2012, without authority, and with the intent to stay from there permanently, absent oneself from their unit to wit and did absent until on or about.

Charge II: Violating Article 86, UCMJ, for being AWOL from on or about 10 December 2012, without authority and with intent to stay here from permanently, absent from their unit to wit and did remain absent until or about.

On 23 May 2013, the applicant was charged with:

Charge I: Violating Article 85, UCMJ

Specification 1: on or about 21 April 2009, without authority and with intent to remain away therefrom permanently, absent oneself from their unit to wit and did remain in desertion until apprehended, on or about 13 September 2012.

Specification 2: on or about 10 December 2012, without authority and with the intent to remain away therefrom permanently, absent oneself from their unit to wit, and did remain so absent in desertion, until they were apprehended, on or about 19 May 2013.

Charge II: Violating Article 86, UCMJ, for being AWOL from on or about on or about 28 February 2008, without authority, absent oneself from their unit and did remain so absent until on or about 6 October 2008.

**(2) Legal Consultation Date:** 23 May 2013

**(3) Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

**(4) Recommended Characterization:** NIF

**(5) Separation Decision Date / Characterization:** 27 June 2013 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 26 June 2006 / 5 years

**b. Age at Enlistment / Education / GT Score:** 23 / NIF / 104

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 19D10 D3, Calvary Scout / 4 years, 7 months, 4 days

**d. Prior Service / Characterizations:** RA, 13 April 2004 – 25 June 2006 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (7 March 2005 – 10 March 2006)

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

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Charge sheet as described in previous paragraph 3c.

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

- From PDY to AWOL, effective 28 February 2008;
- From AWOL to DFR, effective 31 March 2008;
- From DFR to PDY, effective 6 October 2008;
- From PDY to AWOL, effective 21 April 2009;
- From AWOL to DFR, effective 20 May 2009;
- From DFR to CCA, effective 13 September 2012;
- From CCA to PDY, effective 12 October 2012;
- From PDY to AWOL, effective 10 December 2012;
- From AWOL to DFR, effective 11 December 2012;
- From DFR to CCA, effective 19 May 2013;
- From CCA to PDY, effective 21 May 2013;
- From PDY to CMA, effective 21 May 2013; and
- From CMA to PDY, effective 28 June 2013.

**i. Lost Time / Mode of Return:** 4 years, 4 months, 9 days:

- AWOL, 28 February 2008 – 5 October 2008 / NIF
- AWOL, 7 January 2009 – 3 February 2009 / NIF
- AWOL, 21 April 2009 – 19 May 2009 / Apprehended by Civil Authorities
- AWOL, 20 May 2009 – 12 September 2012 / NIF
- CCA, 13 September 2012 – 11 October 2012 / Released from Confinement
- AWOL, 10 December 2012 – 10 December 2012 / NIF
- AWOL, 11 December 2012 – 18 May 2013 / NIF
- CCA, 19 May 2013 – 20 May 2013 / Released from Confinement
- CMA, 21 May 2013 – 27 June 2013 / Released From Confinement

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

**(1) Applicant provided:** Medical Discharge Summary, 13 June 2014, reflects a medical diagnosis.

**(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 214; DD Form 293; medical records and a letter of support.

**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)** Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

**(5)** Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

**(6)** Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

**(7)** Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

**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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

**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-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA

imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD) contributed to the behavior which led to the circumstances surrounding their discharge. The applicant claims their health problems were brought on by Operation Iraqi Freedom. The applicant provided a Medical Discharge Summary, 13 June 2014, reflecting a medical diagnosis. The third-party statement provided with the application reflects, the applicant's prolonged periods of direct enemy fire affected the applicant's behavior and likely their health. The AMHRR is void of a mental status evaluation.

The applicant contends they were not thinking clearly due to their mental condition, and their JAG Counsel recommended the Chapter 10 discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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 of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

#### **9. BOARD DISCUSSION AND DETERMINATION:**

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

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

Adjustment Disorder, Depression, Psychosis, Bipolar Disorder, and PTSD. Additionally, the applicant asserts TBI, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Depression and there is evidence that Psychosis and Bipolar Disorder also existed during military service. In addition, the applicant is diagnosed and service connected by the VA for PTSD, and the applicant self-asserts TBI.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple BH conditions that mitigate the AWOLs that led to the separation. The applicant was diagnosed in service with an Adjustment Disorder and Depression and there is evidence that Psychosis and Bipolar Disorder also existed during military service. In addition, the applicant is diagnosed, and service connected by the VA for PTSD, and the applicant self-asserts TBI. Given the nexus between PTSD, Depression, and avoidance, as well as the nexus between Psychosis, Bipolar Disorder, and impaired thinking and decision-making, the applicant's BH conditions mitigate the multiple incidents of AWOL. The applicant's asserted TBI is inconsequential given the full mitigation based on the other documented conditions.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's PTSD, depression, Psychosis and Bipolar Disorder outweighed the BOS.

**b. Response to Contention(s):**

(1) The applicant contends traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD) contributed to the behavior which led to the circumstances surrounding their discharge. The applicant claims their health problems were brought on by Operation Iraqi Freedom. The Board considered this contention and confirmed the BH diagnoses, but ultimately did not address it further due to an upgrade being granted based on the applicant's PTSD, depression, Psychosis and Bipolar Disorder outweighing the BOS.

(2) The applicant contends they were not thinking clearly due to their mental condition, and their JAG Counsel recommended the Chapter 10 discharge. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's PTSD, depression, Psychosis and Bipolar Disorder outweighing the BOS.

(3) 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.

(4) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do 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.

**c.** The Board determined the discharge is inequitable based on the applicant's PTSD, depression, Psychosis and Bipolar Disorder mitigating multiple AWOL BOS. 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. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant’s BH conditions. The applicant may request a personal appearance hearing to address further issues before a 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 voted to change the applicant’s characterization of service to Honorable because the applicant’s BH conditions mitigated the BOS misconduct. 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.

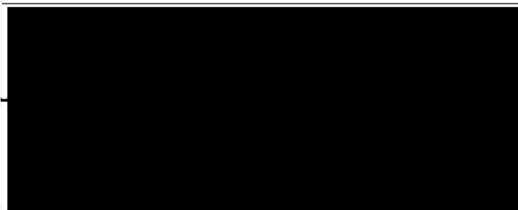
(3) The RE code will not change due to applicant’s BH diagnoses warranting consideration prior to reentry of military service.

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, paragraph 14-12a

Authenticating Official:

9/4/2024



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