

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, before becoming a nursing student they were a commercial driver. The applicant claims during their three-year service, they were a model Soldier who received awards; were patriotic; respected the constitution and behaved honorably in the Army. The applicant goes on to say the Army informed them they would not be going to Iraq with the unit, and they should get ready for civilian life. The applicant was also advised they would be released from the Army due to their impending ETS date. The applicant and another Soldier did not find out about their new orders until they went to the reenlistment office to propose six months of extended duty, which is how their extensions were turned down. The applicant claims, it was very hard on them to watch as their comrades in arms deployed to Iraq without them while they stayed in a supportive capacity. Before preparing oneself for civilian life, the applicant first went to their section sergeant and others from their team to ask for their blessing. After being told they had served well and should go home, they began to shift into a civilian mentality. The applicant began by committing to the person they loved and landed a good job as a landscaper. They moved into a house on Vashon Island, and began planning their life together. The applicant took the order and planned accordingly. The applicant claims after learning of the stop loss/movement, they were confused and furious. They remember having a brief discussion with MAJ P., to discuss how stressed they were and how it was impacting them. The applicant claims to have expressed themselves and used some expletives to show their displeasure with the stop loss/movement. The applicant contends, as recorded by doctors, they were feeling much stress, anxiety, and depression because of the situation destroying them, and they needed it to stop. The applicant further contends, the remarks to the doctor were not taken seriously by their command. The applicant states they were sent away after they informed their first sergeant they could not be around weapons or rounds based on the doctor's orders. The applicant contends, MAJ P., whom the applicant never met prior to the meeting, took it upon themselves to characterize the applicant's service as general (under honorable conditions) with the reasoning of misconduct. The applicant contends this was an isolated incident and is in no way in line with the rest of their service; the classification is unjust and malicious; and they would like for their education benefits to be reinstated.

b. Board Type and Decision: In a records review conducted on 9 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service outweighing the applicant's misconduct. 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 /AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 10 March 2004

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 18 February 2004

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant told Captain H., on 17 December 2003, they would kill the people responsible for sending the applicant to Iraq.

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

(4) Legal Consultation Date: 18 February 2004

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 24 February 2004 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 February 2001 / 3 years

b. Age at Enlistment / Education / GT Score: 18 / GED / 117

c. Highest Grade Achieved / MOS / Total Service: E-3 / 19D10, Calvary Scout / 3 years, 1 month, 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Memorandum For Record, Letter of Reprimand, 13 January 2004, in November the applicant was notified by their chain of command the Army had implemented a Stop-Loss Policy which was going to affect the applicant and about 140 other people in the Brigade by causing them to be involuntarily extended in the Army until the current deployment in Iraq is complete. The applicant was also notified by their chain of command on how to submit a legitimate exception to policy request to the Department of the Army if they felt they had reason to be allowed to continue to ETS. Rather than submit a legitimate request the applicant chose to threaten to kill anyone who sent them to Iraq and possibly even kill oneself. This was unacceptable behavior and certainly would not be tolerated by the commander or anyone else in the Army.

FG Article 15, 14 January 2004, on or about 17 December 2003, wrongfully communicate to Captain H., a threat to kill the people responsible for sending them to Iraq. The punishment consisted of a reduction to E-1; forfeiture of \$575; and extra duty and restriction for 14 days.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 22 January 2004, 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.

Report of Medical History, 26 January 2004, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a medical 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; self-authored letter; two letters of support.

6. POST SERVICE ACCOMPLISHMENTS: The applicant was a commercial driver before becoming a nursing student.

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, 1 January 2004, 0 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 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, as recorded by doctors, they were feeling much stress, anxiety, and depression. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The AMHRR includes a Report of Mental Status Evaluation, 22 January 2004, reflecting 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. A Report of Medical History, 26 January 2004, reflects the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a medical diagnosis. The separation authority considered all the medical documents.

The applicant contends the event which led to the elimination 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 good service. The third-party statements provided with the application reflect the applicant performed admirably during a stressful time as the nation entered the war against terrorism. During their service, the applicant proved time and time again they were responsible and a dependable Soldier. The applicant displayed exemplary professionalism and commitment to the accomplishment of the mission.

The applicant contends, the remarks from the doctor were not taken seriously by their command. The applicant states they were sent away after they informed their first sergeant they could not be around weapons or rounds based on the doctor's orders. The applicant contends, MAJ P., whom the applicant never met prior to the meeting, took it upon themselves to characterize the applicant's service as general (under honorable conditions) with the reasoning of misconduct. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends in the remarks section of their DD Form 214, reads member has not completed first full term of service. The applicant states they completed 3 years, 1 month and 3 days. The applicant's requested change to the DD Form 214 does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends obtaining employment and going to school to be a nurse. 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: Major Depressive Disorder.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that Major Depressive Disorder is a condition that can impact mood, motivation, concentration, appetite, and sleep, but does not have a natural sequela with making threats to kill people. The applicant's service-connected Major Depressive Disorder did not contribute to the misconduct that led to his separation, so there is no mitigation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Major Depressive Disorder outweighed the applicant's medically unmitigated offense of communicating a threat.

b. Response to Contention(s):

(1) The applicant contends, as recorded by doctors, the applicant was feeling a much stress, anxiety, and depression. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Major Depressive Disorder outweighed the applicant's medically unmitigated offense of communicating a threat. However, the Board did find that applicant's length and quality of service did outweigh the misconduct, given the circumstance of the Stop Loss order and the vague nature of the applicant's threat. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered the totality of the applicant's service record in its decision to upgrade the discharge.

(3) The applicant contends good service. The Board considered this contention and factored the applicant's good service in its decision to upgrade the applicant's discharge.

(4) The applicant contends the remarks to the doctor were not taken seriously by their command. The applicant states they were sent away after they informed their first sergeant they could not be around weapons or rounds based on the doctor's orders. The applicant contends, MAJ P, whom the applicant never met prior to the meeting, took it upon themselves to characterize the applicant's service as general (under honorable conditions) with the reasoning of misconduct.

(5) The applicant contends in the remarks section of their DD Form 214, reads member has not completed first full term of service. The applicant states the applicant completed 3 years, 1 month and 3 days. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(6) The applicant contends an upgrade would allow educational benefits through the GI Bill. 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.

(7) The applicant contends obtaining employment and going to school to be a nurse. The Board considered this contention, but ultimately did not address it due to an upgrade being granted based on the applicant's length and quality of service as discussed in 9b(1) above.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service outweighing the applicant's misconduct. 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 length and quality of service outweighed the applicant's offense of communicating a threat. 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.

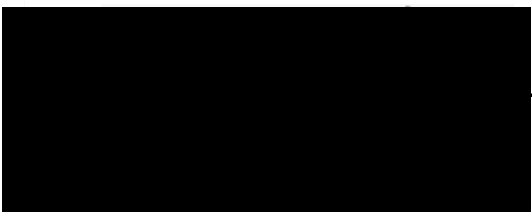
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

6/11/2024



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)

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001053

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