

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, having an alleged DUI while on active duty; however, it was not substantiated, and it was reduced to a Class C misdemeanor. The applicant had another alleged DUI at the gate of Fort Hood and it was dismissed with no alcohol involved. The applicant believes they were unreasonably singled out by the toxic leadership. The applicant went to ASAP as directed, the counselor said the applicant had no reason to be there and did not have an alcohol problem.

The applicant did not deploy and stayed in Rear D where the leadership continually harassed the applicant. The applicant had two hospital stays due to the unjust treatment. The applicant received an Article 15 which reduced the applicant's rank, was fined, and did 45 days of extra duty. The applicant was not allowed the time necessary to out process and the applicant had to get the Chaplain involved to assist in the matter. Transportation or no one else did not have the time to react and assist the applicant. Until the applicant left post, they did everything possible to unjustifiably harass the applicant. The applicant was traumatized by the treatment received while at Fort Hood and later found out the unit was notorious for maltreatment of Soldiers. The applicant was so tired of the mistreatment, they signed the paperwork to get out of the Army as soon as possible. The applicant received a discharge for alcohol rehabilitation when there was not alcohol involved in any of the alleged incidents.

b. **Board Type and Decision:** In a records review conducted on 4 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Major Depressive Disorder outweighing the applicant's DUI and Drunk and Disorderly offenses. 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, and the reentry code to RE-3.

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:** Alcohol Rehabilitation Failure / AR 635-200, Chapter 9 / JPD / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 28 October 2013

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) includes partial facts and circumstances concerning the events which led to the discharge from the Army.

(1) **Date of Notification of Intent to Separate:** 28 October 2012

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** NIF

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

(6) **Separation Decision Date / Characterization:** 4 October 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 7 March 2011 / 4 years

b. **Age at Enlistment / Education / GT Score:** 22 / High School Graduate / NIF

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 25L10, Cable Systems Installer/Maintainer / 2 years, 7 months, 22 days

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

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

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

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Orders 289-0106, 16 October 2013, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 28 October 2013 from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, Chapter 9, with a narrative reason of Alcohol Rehabilitation Failure. The DD Form 214 was not authenticated with the applicant's electronic signature.

The applicant provided United States District Court Western District of Texas Waco Division Order, 25 November 2013, which reflects the applicant was found not guilty by the Court during the Bench Trial. It was Ordered the applicant was acquitted, discharged, and any bond exonerated.

The applicant provided Judgment of Reduction, 13 May 2014, which reflects the applicant waived trial by jury and submitted the cause to the Court. As part of a plea agreement, the County Attorney moved to proceed on a lesser-included offense charged in the information and the applicant plead Nolo Contendere.

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

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

(1) **Applicant provided:** None

(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 293; third-party letter; Letter to Fort Hood IG Office; Judgement of Reduction; court order.

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) Chapter 9 outlines the procedures for discharging individuals because of alcohol or other drug abuse. A member who has been referred to the Army Substance Abuse Program (ASAP) for alcohol or drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

(5) Paragraph 9-4, stipulates the service of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600-85.

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 "JPD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 9, for alcohol rehabilitation failure.

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 applicant's Army Military Human Resources Record (AMHRR) includes partial facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 9, by reason of Alcohol Rehabilitation Failure, with a characterization of service of general (under honorable conditions).

The applicant contends receiving an alleged DUI; however, it was not substantiated, and it was reduced to a Class C misdemeanor. The applicant had another alleged DUI at the gate of Fort Hood and it was dismissed with no alcohol involved. The applicant went to ASAP as directed, the counselor said the applicant had no reason to be there and did not have an alcohol problem. The applicant received a discharge for alcohol rehab failure when there was no alcohol involved in any of the alleged incidents. The applicant provided United States District Court Western District of Texas Waco Division Order, 25 November 2013, which reflects the applicant was found not guilty by the Court during the Bench Trial. It was Ordered the applicant was acquitted, discharged, and any bond exonerated. Judgment of Reduction, 13 May 2014, which reflects the applicant waived trial by jury and submitted the cause to the Court. As part of a plea agreement, the County Attorney moved to proceed on a lesser-included offense charged in the information and the applicant plead Nolo Contendere.

The applicant contends they were unreasonably singled out by the toxic leadership. The leadership continually harassed the applicant while assigned there and had two hospital stays due to the unjust treatment. The applicant was traumatized by the treatment received while at Fort Hood and later found out the unit was notorious for maltreatment of Soldiers. The applicant was so tired of the mistreatment, they signed the paperwork to get out of the Army as soon as possible. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statement provided with the application was provided by the applicant's parent which outlines the applicant's issues they had at Fort Hood. The parent is a retired 1SG and serves in the civil service community and endorses an upgrade for the applicant.

9. BOARD DISCUSSION AND DETERMINATION:

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

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

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

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions mitigate the discharge. As there is a nexus between the applicant's DUI and Drunk and Disorderly offenses and the applicant's Major Depressive Disorder.

(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 Major Depressive Disorder outweighed the applicant's DUI and Drunk and Disorderly offenses.

b. Response to Contention(s):

(1) The applicant contends they were unreasonably singled out by the toxic leadership and was continually harassed. The applicant had two hospital stays due to the unjust treatment. The applicant was traumatized by the treatment received while at Fort Hood and later found out the unit was notorious for maltreatment of Soldiers. The applicant was so tired of the mistreatment, they signed the paperwork to get out of the Army as soon as possible. The Board considered this contention but found insufficient evidence to substantiate the applicant's assertion that leadership was toxic or otherwise harassed the applicant. However, the Board also liberally considered the applicant's behavioral health records and determined that the applicant's Major Depressive Disorder outweighed the applicant's DUI and Drunk and Disorderly offenses. Therefore, a discharge upgrade is warranted based on medical mitigation.

(2) The applicant contends receiving an alleged DUI; however, it was not substantiated, and it was reduced to a Class C misdemeanor. The applicant had another alleged DUI at the gate of Fort Hood and it was dismissed with no alcohol involved. The applicant went to ASAP as directed, the counselor said the applicant had no reason to be there and did not have an alcohol problem. The applicant received a discharge for alcohol rehab failure when there was no alcohol involved in any of the alleged incidents. The Board considered this contention during proceedings but ultimately did not address the contention upon determining that the applicant's misconduct was medically mitigated by the applicant's behavioral health condition.

c. The Board determined the discharge is inequitable based on the applicant's Major Depressive Disorder outweighing the applicant's DUI and Drunk and Disorderly offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of

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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, and the reentry code to RE-3:

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Major Depressive Disorder outweighed the applicant's DUI and Drunk and Disorderly offenses. 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.

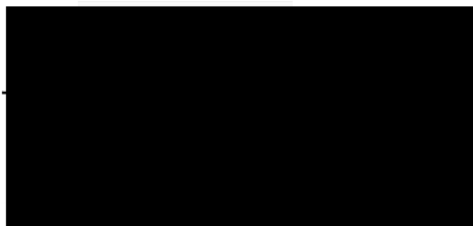
(3) The RE code will change to RE-3.

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: RE-3**
- e. Change Authority to: AR 635-200**

Authenticating Official:

6/21/2024



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