

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 impeccable service until Afghanistan and being hit by an IED and subsequently receiving a Purple Heart. The applicant had a hard time adjusting after returning from deployment. The applicant still has night terrors and extreme trouble sleeping since returning from deployment. The applicant is trying to get help through VA and is currently in treatment for these problems. When the applicant first came home, they tried self-medicating by using alcohol and other substances to help sleep and try to get the horrible images of war the applicant experienced out of their head. Ten days prior to the applicant's 21st birthday, the applicant had a couple of beers with the roommate and made the poor choice to drive off post and get some food. On the way back the applicant struck another vehicle while driving around a sharp turn. The applicant's new vehicle was totaled and rolled into a ditch and the applicant suffered massive head trauma, lacerations and a shattered ankle which required surgery. The other driver was not injured. The applicant was tested and blew a .04 which was under the legal limit; however, the applicant was still ten days away from being of age and was charged with Operating While Intoxicated. The chain of command decided to chapter the applicant out of the Army. The applicant was treated poorly by the superiors and people were told not to associate with the applicant. The 1SG received a DUI before the unit deployed and it was disregarded. The applicant was a young Purple Heart Veteran which fought for the country and had proven so, was being kicked out immediately rather than trying to help the applicant. The applicant realizes what they did was wrong and should have been punished; however, kicking the applicant out immediately rather than trying to help the applicant. The applicant would like to go to school and pursue a career in the medical field to become a paramedic. With the current discharge status, the applicant is unable to use the GI Bill. The applicant desires to further their education in life and go forth with a new field in helping people.

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 Post Traumatic Stress Disorder outweighed the applicant's misconduct of underage drinking and DUI. 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: 13 July 2012

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 21 June 2012

(2) Basis for Separation: The applicant was informed of the following reasons: On 24 May 2012, the applicant received a Field Grade Article 15 for drinking underage and operating a motor vehicle while drunk.

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

(4) Legal Consultation Date: 21 June 2012

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 27 June 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 26 April 2010 / 3 years, 16 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 104

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1P, Infantryman / 2 years, 2 months, 18 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (27 May 2011 – 28 February 2012)

f. Awards and Decorations: ARCOM, PH, AAM, NATOMDL, NDSM, ACM-2CS, GWOTSM, ASR, OSR, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: The Commander's Report reflects the applicant received the following:

FG Article 15, 28 March 2011, for violation of Article 92, UCMJ: Violation of a Lawful General Regulation. The punishment consisted of a reduction to E-2; forfeiture of \$822 pay per month for two months (suspended); and extra duty and restriction for 45 days.

FG Article 15, 24 May 2012, for Violations of Article 92, UCMJ: Violation of a Lawful General Regulation; and Article 111, UCMJ: Drunken Operation of a Motor Vehicle. The punishment consisted of a reduction to E-1; forfeiture of \$745 pay per month for two months; and extra duty and restriction for 45 days.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of VA Intake Assessment, 6 June 2014, the assessment reflects a diagnosis.

Department of VA Rating Decision, 10 March 2015, reflects the applicant was granted service-connected disability. The rating decision reflects a 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 293; self-authored statement; DD Form 214; VA Intake Assessment; Montgomery GI Bill Act; DD Form 369; Permanent Order 302-19; ARCOM Certificate; DA Form 638; separation packet; SGLV 8286; DD Form 93; VA Rating Decision.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is currently in treatment for their problems.

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 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.

(5) 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.

(6) 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends good service, including a combat tour and receiving the Purple Heart. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends being wounded when an IED exploded under the truck. The applicant received shrapnel wounds, a severe ankle sprain, as well as traumatic brain injury. Upon returning from deployment the applicant was self-medicating by using alcohol and other substances to help sleep and try to get the horrible images of war out of their head. The applicant has been diagnosed with PTSD by the VA. The applicant provided Department of VA Intake Assessment, 6 June 2014, reflecting a diagnosis. A Department of VA Rating Decision, 10 March 2015, reflects the applicant was granted service-connected disability and a diagnosis. The AMHRR does not contain a mental status evaluation.

The applicant contends ten days prior to the applicant's 21st birthday, the applicant had a couple of beers with the roommate and made the poor choice to drive off post and get some food. On the way back the applicant struck another vehicle while driving around a sharp turn. The applicant was tested and blew a .04 which was under the legal limit; however, the applicant was still ten days away from being of age and was charged with Operating While Intoxicated. The chain of command decided to chapter the applicant out of the Army. The applicant was treated poorly by the superiors and people were told not to associate with the applicant. The 1SG received a DUI before the unit deployed and it was disregarded. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review. 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 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 is currently in treatment for their problems. 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: Post Traumatic Stress Disorder, Anxiety Disorder, mild Traumatic Brain Injury.

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

(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 partially mitigate the discharge. As there is a nexus between PTSD and comorbid substance abuse, the applicant's misconduct of underaged drinking and DUI.

(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 misconduct of underaged drinking and DUI.

b. Response to Contention(s):

(1) The applicant contends being wounded when an IED exploded under the truck. The applicant received shrapnel wounds, a severe ankle sprain, as well as traumatic brain injury. Upon returning from deployment the applicant was self-medicating by using alcohol and other substances to help sleep and try to get the horrible images of war out of their head. The applicant has been diagnosed with PTSD by the VA. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's misconduct of underaged drinking and DUI. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service, including a combat tour and receiving the Purple Heart. The Board considered the totality of the applicant's service record but ultimately did not address this contention due to an upgrade being granted based on medical mitigation.

(3) The applicant contends ten days prior to the applicant's 21st birthday, the applicant had a couple of beers with the roommate and made the poor choice to drive off post and get some food. On the way back the applicant struck another vehicle while driving around a sharp turn. The applicant was tested and blew a .04 which was under the legal limit; however, the applicant was still ten days away from being of age and was charged with Operating While Intoxicated. The chain of command decided to chapter the applicant out of the Army. The applicant was treated poorly by the superiors and people were told not to associate with the applicant. The 1SG received a DUI before the unit deployed and it was disregarded. The Board considered this contention but ultimately did not address it due to an upgrade being granted based on medical mitigation

(4) 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.

c. The Board determined the discharge is inequitable based on the Post Traumatic Stress Disorder outweighed the applicant's misconduct of underaged drinking and DUI. 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 misconduct of underaged drinking and DUI . 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:

6/21/2024


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