

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the narrative reason for separation indicates the applicant was discharged for misconduct, but it was not the reason for the discharge. The applicant was discharged because the applicant failed the Army Substance Abuse Program (ASAP). The applicant's record reflects the applicant had never had any misconduct behavior. The applicant requests an upgrade to ensure the applicant and other veterans receive fair treatment; the applicant receives all the veterans benefits; and for better employment opportunities.

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 length and quality of service (to include combat service) and post service accomplishments. 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 determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnoses warranting consideration prior to reentry of military service.

*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:** Misconduct (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 29 October 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 29 August 2013

(2) **Basis for Separation:** Under the provisions of Army Regulation 635-200, paragraph 14-12c, Commission of a Serious Offense the applicant was informed, of the following reasons: The applicant was arrested, charged with, and convicted of driving while intoxicated by the Virginia Beach General District Court. The applicant subsequently received a general officer memorandum of reprimand (GOMOR) for this offense. On a later occasion, the applicant was arrested for driving while intoxicated and refusal of blood/breath test. The applicant subsequently

missed the court appearance for this charge. Lastly the applicant was arrested, charged with, and convicted of disturbing the peace by the Virginia Beach general District Court.

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

**(4) Legal Consultation Date:** 20 September 2013

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

**(6) Separation Decision Date / Characterization:** 10 October 2013 / General (Under Honorable Conditions) / The separation authority approved the applicant's separation under the provisions of Army Regulation, 635-200, paragraph 14-12c, Commission of a Serious Offense.

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 9 March 2012 / 3 years

**b. Age at Enlistment / Education / GT Score:** 27 / HS Graduate / 96

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 88H10, Cargo Specialist / 3 years, 11 months, 26 days

**d. Prior Service / Characterizations:** RA, 4 November 2009 – 8 March 2012 / HD

**e. Overseas Service / Combat Service:** SWA / Afghanistan (23 March 2012 – 9 September 2012)

**f. Awards and Decorations:** ACM-CS, ARCOM, AAM-3, AGCM, NDSM, GWOTSM, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Army Substance Abuse Program (ASAP) Enrollment form, 7 February 2011, reflects the applicant was command-referred in the ASAP.

Letter Of Reprimand, 28 March 2011, reflects the applicant was driving while intoxicated. On 6 February 2011, the applicant was arrested by the Virginia Beach police and charged with driving while intoxicated (DWI) and failing to maintain the applicant's vehicle in the appropriate lane. The applicant's blood alcohol content (BAC) was .16 grams per 210 liters of breath.

Personnel Action form reflects the applicant's duty status changed from Present for Duty (PDY) to Confined by Civil Authorities (CCA), effective 4 June 2013.

Military Police Report, 5 June 2013, reflects the applicant was apprehended for: civil charge: driving while intoxicated (2nd); refusal of blood/breath test; reckless driving; obstruction/resisting arrest; and disturbing the peace (off post). The civil liaison received a Serious Incident Report which indicated the applicant was arrested by the Virginia Beach Police for DWI (2nd) and refusal of blood/breath test on 3 June 2013. Further investigation revealed additional charges that had not been reported to the military police by the applicant or the unit:

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001083**

On 9 January 2011, the applicant was charged by the Virginia Beach Police Department for reckless driving. On 22 February 2011, the applicant appeared in Virginia Beach General District Court for reckless driving and the charges were dismissed.

On 6 February 2011, the applicant was charged by the Virginia Beach Police Department for DWI (1st). On 25 May 2011, the applicant appeared at the Virginia Beach General District Court and found guilty. The applicant was sentenced to 365 days, 360 days suspended; two years unsupervised probation; licensed restricted for 12 months; a fine of \$250 with a \$196 court cost, and ASAP.

On 10 March 2013, the applicant was charged by the Virginia Beach Police Department for obstruction/ resisting arrest and disturbing the peace. On 14 May 2013, the applicant appeared in Virginia Beach General District Court and was found not guilty of obstruction/resisting arrest.

On 14 May 2013, the applicant appeared at the Virginia General District Court and was found guilty of disturbing the peace and fined \$30 with an \$86 court cost.

Memorandum, subject Summary of Rehabilitation Efforts [Applicant], 14 June 2013, reflects the applicant was evaluated on 5 June 2013, after being arrested for DWI. The applicant was previously enrolled in the Army Substance Abuse Program (ASAP) for treatment after a DWI in February 2011 and successfully completed the program in June 2011. The ASAP counselor in coordination with the command determined the applicant was a rehabilitation failure.

General Officer Memorandum of Reprimand, 15 July 2013, reflects on 3 June 2013, the applicant was cited by the Virginia Beach Police for driving while intoxicated, refusal of blood/breath test, reckless driving, disturbing the peace, and obstruction/resisting arrest. This was the second recent DWI. The applicant had a previous DWI on 6 February 2011. The applicant was also convicted of disturbing the peace on 14 May 2013, for an incident that occurred in Virginia Beach on 11 March 2013. The applicant submitted a rebuttal statement.

Three Developmental Counseling Forms, for, on two occasions, driving while intoxicated and reckless driving; favorable actions being suspended; pending separation; submitting packet for AR 635-200, Chapter 9, ASAP failure (counselor, company commander); and failing to report for accountability formation.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant had completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was authenticated with the applicant's electronic signature.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 21 August 2013, reflects the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for post-traumatic stress disorder (PTSD) and mild traumatic brain injury (mTBI), with negative results. The applicant was diagnosed with depressive disorder, not otherwise specified (NOS).

*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.

**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 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 the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the applicant was discharged for failing the Army Substance Abuse Program. The applicant's AMHRR reflects the applicant was determined to be a rehabilitation failure and the commander counseled the applicant on a DA Form 4856 (Developmental Counseling Form), the commander was going to pursue separation under the provisions of Army Regulation 635-200, Chapter 9, Alcohol or Drug Rehabilitation Failure. The applicant was notified under Army Regulation 635-200, paragraph 14-12c, Commission of a Serious Offense; the applicant acknowledged the notification; consulted with counsel; and electronically signed the DD Form 214. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends never having any misconduct behavior. The applicant's AMHRR reflects the applicant was arrested on two occasions for DWI; appeared in court for one DWI and for disturbing the peace and found guilty of the charges; and the applicant received two reprimands for DWI.

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.

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.

## 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: Depression and PTSD.

(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 Depression and is diagnosed and service connected by the VA for combat-related PTSD. Service connection establishes that the applicant's PTSD also existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of BH conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with Depression and is diagnosed and service connected by the VA for combat-related PTSD. Given the nexus between PTSD, Depression, and self-medicating with substances, the second DUI that occurred in June 2013 is mitigated. The first DUI that occurred in February 2011 is not mitigated since it occurred prior to combat which is the index trauma for the PTSD and because the applicant's Depression was diagnosed over two years after this DUI with no evidence that the Depression existed at the time of the first DUI or contributed in any way. Finally, there is no natural sequela between PTSD or Depression and being convicted of disturbing the peace since neither condition interferes with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD and Depression outweighed the full basis for (1 x DUI and disturbing the peace).

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined the applicant's narrative reason for discharge warrants a change. The Board voted to upgrade the narrative reason to Misconduct (Minor Infractions) due to applicant's length and quality of service (to include combat service) and post service accomplishments outweighing the applicant's medically unmitigated DUI and disturbing the peace misconduct.

(2) The applicant contends being discharged for failing the Army Substance Abuse Program. The Board considered this contention and determined the applicant was discharged for being arrested, charged with, and convicted of driving while intoxicated by the Virginia Beach General District Court. The applicant subsequently received a general officer memorandum of reprimand (GOMOR) for this offense. On a later occasion, the applicant was arrested for driving while intoxicated and refusal of blood/breath test. The applicant subsequently missed the court appearance for this charge. Lastly the applicant was arrested, charged with, and convicted of disturbing the peace by the Virginia Beach general District Court.

(3) The applicant contends never having any misconduct behavior. The Board considered this contention and determined the applicant was discharged for misconduct as stated above in 9b(2).

(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.

(5) 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.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service (to include combat service) and post service accomplishments outweighing the applicant's medically unmitigated DUI and disturbing the peace 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. 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 applicant's BH diagnoses warranting consideration prior to reentry of military service. However, 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 length and quality of service, to include combat service, and post service accomplishments outweigh the applicant's DUI and disturbing the peace misconduct that was not mitigated by the BH conditions. 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 diagnosis 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



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