

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 and a change to the narrative reason for separation.

The applicant seeks relief contending, in effect, being denied the rights available to the applicant in the administrative discharge proceedings and finds the discharge to be improper. The applicant was not being paid while on active duty which led to financial hardship. The applicant was suffering from a mental illness in which they were not being treated but suspected the command was aware of. The applicant was constantly telling the chain of command they were not being paid but was denied taking any kind of leave to fix the personal or financial problems. The command withheld accolades about the applicant's excellent performance on special details and the applicant was suppressed to make rank so they would be forced out the military maximizing time in grade. In fear of retaliation, the applicant did not contact their congressman about the pay issue until they were on terminal leave. The VA has granted the applicant 60 percent for bipolar starting 23 January 2006, the applicant was discharged on 22 January 2006. The VA has since compensated the applicant 100 percent for the bipolar disorder.

b. **Board Type and Decision:** In a records review conducted on 13 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Bipolar Disorder outweighing the applicant's alcohol-related offenses as well as the offenses of FTR, failing to comply with Army Standards, making false official statements, driving without a license, and larceny. 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 22 January 2006

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 6 October 2005

(2) **Basis for Separation:** The applicant was informed of the following reasons:

The applicant was cited for driving under the influence of alcohol, larceny, wrongfully possessing a controlled substance, and driving without a license;

The applicant was found drunk on duty and had made false official statements on two separate occasions;

The applicant failed to report to the appointed place of duty on numerous occasions; and,

The applicant had been counseled on several occasions due to involvement in numerous altercations and still failed to comply with Army standards.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 28 October 2005

(5) Administrative Separation Board: On 28 October 2005, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: 3 November 2005 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 3 January 2003 / 4 years

b. **Age at Enlistment / Education / GT Score:** 35 / High School Graduate / 116

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 42A10, Human Resources Specialist / 10 years, 11 months, 5 days

d. **Prior Service / Characterizations:** USN, 16 September 1985 – 15 September 1989 / GD / The DD Form 214 reflects transferred to the USNR; however, there is no further record in the AMHRR.

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

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

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 13 November 2003, reflects the applicant was apprehended for: Drunken driving (Article #111, UCMJ) (Off Post); traffic accident with damage to private property, other moving violations (failure to maintain control) (Art #70, JRTL) (Off Post); and unauthorized use of a motor vehicle (Art 1905) (Off Post).

FG Article 15, 1 December 2003, on or about 12 November 2003, at an intersection physically control a vehicle, while drunk. The punishment consisted of a reduction to E-2; forfeiture of \$300 pay per month for two months (suspended); extra duty for 15 days and restriction for 30 days.

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Military Police Report, 6 September 2004, reflects the applicant was apprehended for: Obtaining services under false pretenses (Article #134, UCMJ) (On Post); traffic accident with damage to private property, unsafe lane change; (Ref: Art #26-2, JRTL) (Off Post); fail to obey general order – failure to identify to law enforcement (Article #92, UCMJ)(Off Post); false swearing (Article #134, UCMJ) (Off Post); obstruction of justice (Article #134, UCMJ) (Off Post); resisting apprehension (Military) (Article #95, UCMJ) (Off Post); traffic violations, and driving while driver's license is under suspension (Ref: Art #64, JRTL) (Off Post).

CG Article 15, 1 December 2004, on or about 5 September 2004, fail to obey a lawful general regulation; and on or about 5 September 2004, with intent to deceive, make to Tokyo Metro police an official statement, which statement was totally false, and was then known by the applicant to be false. The punishment consisted of a reduction to E-1; forfeiture of \$278.46, suspended; and extra duty for 14 days.

CG Article 15, 15 September 2005, on or about 29 May 2005, with intent to deceive, make to TSgt G. S., an official statement, which statement was totally false, and was then known by the applicant to be so false; on or about 22 March 2005, was found drunk while on duty at sick call; on or about 29 May 2005, wrongfully possessed Vicodin, a Schedule III controlled substance; and on or about 29 May 2005, steal the property of PO2 A. F. Q. a value of about \$365. The punishment consisted of forfeiture of \$288 pay, suspended; and extra duty and restriction for 14 days.

Several Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 1 July 2005, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation, 15 August 2005, reflects there was no evidence of any psychiatric condition which would warrant disposition through medical channels. The applicant was cleared psychiatrically for any administrative action deemed appropriate by the command.

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 and DD Form 214.

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 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly 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 being denied the rights available to them in the administrative discharge proceedings and finds the discharge to be improper. The AMHRR reflects on 28 October 2005, the applicant voluntarily waived consideration of the case by an administrative separation board contingent upon receiving a characterization of service or description of separation no less favorable than general (under honorable conditions). On 3 November 2005, the separation authority approved the separation and issued a general (under honorable conditions) discharge.

The applicant contends being diagnosed with bipolar by the VA and granted 100 percent disability. The applicant was suffering from untreated mental illness. The discharge should have been for medical reasons. 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 contains Report of Medical History, 1 July 2005, wherein the examining medical physician noted the applicant's medical conditions in the comments section. A Report of Mental Status Evaluation, 15 August 2005, reflects there was no evidence of any psychiatric condition which would warrant disposition through medical channels. The applicant was cleared psychiatrically for any administrative action deemed appropriate by the command. Both documents were considered by the separation authority.

The applicant contends not being paid while on active duty and being denied any kind of leave to fix personal or financial problems. The applicant was in fear of retaliation and did not contact the congressman until being on terminal leave. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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: Bipolar 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 Bipolar Disorder, which establishes that the condition existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between Bipolar Disorder and self-medicating with substances, the applicant's repeated alcohol offenses are mitigated. Bipolar Disorder can also result in significant impairment in daily

functioning and judgement, as well as mood lability with the potential for both depressive (i.e., avoidance, decreased motivation) and manic symptoms (i.e., irritability, increased aggression, being out of touch with reality). The applicant's Bipolar Disorder likely contributed to the FTRs and failing to comply with Army Standards, as well as the additional misconduct of making false official statements, driving without a license, and larceny. All of this misconduct is mitigated by the applicant's Bipolar 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 Bipolar Disorder outweighed the applicant's alcohol-related offenses as well as the offenses of FTR, failing to comply with Army Standards, making false official statements, driving without a license, and larceny.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with bipolar by the VA and granted 100 percent disability. The applicant was suffering from untreated mental illness and the discharge should have been for medical reasons. The Board liberally considered this contention and determined that the applicant's Bipolar Disorder outweighed the applicant's alcohol-related offenses as well as the offenses of FTR, failing to comply with Army Standards, making false official statements, driving without a license, and larceny.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined that it was valid based on medical mitigation of the applicant's misconduct.

(3) The applicant contends being denied the rights available to them in the administrative discharge proceedings and finds the discharge to be improper. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Bipolar Disorder outweighing the applicant's alcohol-related offenses as well as the offenses of FTR, failing to comply with Army Standards, making false official statements, driving without a license, and larceny.

c. The Board determined the discharge is inequitable based on the applicant's Bipolar Disorder outweighing the applicant's alcohol-related offenses as well as the offenses of FTR, failing to comply with Army Standards, making false official statements, driving without a license, and larceny. 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 Bipolar Disorder outweighed the applicant's alcohol-related offenses as well as the offenses of FTR, failing to comply with Army Standards, making false official statements, driving without a license, and larceny. 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.

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(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:

7/17/2024



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