

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, encountering several improvised explosive devices (IED); explosions and shootings because the military occupational specialty 12B, Combat Engineer; and responsible for completing route clearances. The applicant was 18 years old and had little experience from being away from home, which led to post-traumatic stress disorder (PTSD); head trauma; anxiety; and sleeping disorder. The only good thing resulting from the situation was the applicant was awarded the Purple Heart. When the applicant returned from Afghanistan, the applicant caused several problems and acted out of order. The applicant was punished severely and learned valuable lessons on why Soldiers should always display integrity outside of the uniform, and most importantly, about life. Being a civilian has made the applicant realize the applicant's actions. The applicant was wrong and only wanted to do great things for the country such as the applicant's parent and grandparent. The applicant would not change the Army experience for all the gold in the world. The applicant is not seeking sympathy but requests a second chance at life to do better as a civilian.

b. **Board Type and Decision:** In a records review conducted on 28 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's anxiety disorder mitigating the applicant's DUI, speeding, possessing an open container while operating a motor vehicle, and failure to maintain lane basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, 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 diagnosis warranting consideration prior to reentry of military service.

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, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 21 December 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 October 2012

(2) Basis for Separation: The applicant was informed of the following reasons: On 2 June 2012 the applicant received a driving under the influence (DUI) with a blood alcohol content level (BAC) of .096; a citation for going 37 miles over the posted speed limit; and a citation for possessing an open container while operating a motor vehicle, all for which the applicant received a Field Grade Article 15. On 11 May 2012, at or near Statesboro, Georgia, the applicant received a DUI for a BAC of .152 and received a citation for failure to maintain lane.

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

(4) Legal Consultation Date: 10 October 2012

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 30 October 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 November 2009 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 89

c. Highest Grade Achieved / MOS / Total Service: E-4 /12B10, Combat Engineer / 3 years, 1 month, 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (15 March 2011 – 14 March 2012)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Three Georgia Uniform Traffic Citations, Summons, and Accusation, 11 May 2012, reflect the applicant was cited for DUI, with a BAC of .152; improper left or right turn; and failure to maintain lane in Statesboro, GA.

Three Armed Forces Traffic Tickets, 2 June 2012, for DUI; excessive speeding; littering; failing to display license in lawful demand; open container in Fort Stewart.

Field Grade Article 15, 16 July 2012, for physically controlling a passenger car while the alcohol concentration in the breath was 0.96 percent grams of alcohol per 210 liters; operating a vehicle at a speed of 72 miles per hour; and possessing an open container of an alcoholic beverage while operating a motor vehicle (2 June 2012). 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.

General Officer Memorandum Of Reprimand, 19 July 2012, reflects the applicant was driving under the influence of alcohol. A Statesboro Police Officer observed the applicant operating a vehicle while intoxicated. A breathalyzer test showed the applicant's BAC, at the time, was .080.

Five Developmental Counseling Forms, for being separated for substandard performance, DUIs; failing Army Substance Abuse Program (ASAP); driving license being suspended for DUI; being recommended for bar to reenlistment; and pending separation.

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

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

(1) **Applicant provided:** Department of Veteran Affairs (VA) letter, undated, reflecting the VA rated the applicant 30 percent service-connected disabled for traumatic brain injury (TBI) with post-traumatic headaches, and 30 percent for a specified anxiety disorder claimed as insomnia, a combined rating of 50 percent.

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 20 June 2012, reflects the applicant was cleared for any administrative or judicial actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with occupational problem.

Report of Medical History, 2 July 2012, the examining medical physician noted the comments section: The applicant reported a concussion in Afghanistan; insomnia, DUI counseling.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; self-authored statement Ogeechee Technical College letter; VA benefits letter; U.S. Army Veterans webpage for Purple Heart; PH orders; U.S. Army Human Resources Command letter; and three character references.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has maintained employment, has been accepted into the Radiology PACS program, and is actively involved in the community as a volunteer.

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 PTSD; head trauma; anxiety; and a sleeping disorder, affected behavior which led to the discharge. The applicant provided medical documents reflecting the VA rated the applicant 30 percent service-connected disabled for TBI, with post-traumatic headaches, and 30 percent for a specified anxiety disorder (claimed as insomnia). The applicant's AMHRR reflects the applicant underwent a mental status evaluation (MSE) on 20 June 2012, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant was diagnosed with occupational problems. The applicant underwent a medical

examination on 2 July 2012, and reported a concussion while in Afghanistan; and insomnia. The MSE and medical examination were considered by the separation authority.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

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

The applicant contends maintaining employment, being accepted into the Radiology PACS program, and being actively involved in the community as a volunteer. 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.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good moral character and/or good military service.

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: Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 30 percent service connected (SC) for Anxiety Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that A review of the records shows the applicant in 30 percent SC for Anxiety Disorder and a positive history of mTBI. As there is an association between Anxiety Disorder and comorbid substance abuse, there is a nexus between the applicant's SC BH diagnosis and his misconduct characterized by DUI, such that the misconduct is mitigated by the disorder. There is no evidence that the applicant's mTBI was of a severity to result in a change in behavior, cognition, or judgement.

(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 anxiety disorder outweighed the DUI, speeding, possessing an open container while operating a motor vehicle, and failure to maintain lane basis for separation basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends PTSD; head trauma; anxiety; and a sleeping disorder, affected behavior which led to the discharge. The Board considered this contention during proceedings, and upgraded the discharge based on the applicant's anxiety disorder fully outweighing the applicant's DUI, speeding, possessing an open container while operating a motor vehicle, and failure to maintain lane basis for separation.

(2) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. 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 anxiety disorder fully outweighing the applicant's DUI, speeding, possessing an open container while operating a motor vehicle, and failure to maintain lane basis for separation.

(3) The applicant contends good service, including a combat tour. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(4) The applicant contends maintaining employment, being accepted into the Radiology PACS program, and being actively involved in the community as a volunteer. 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 anxiety disorder fully outweighing the applicant's DUI, speeding, possessing an open container while operating a motor vehicle, and failure to maintain lane basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's anxiety disorder mitigating the applicant's DUI, speeding, possessing an open container while operating a motor vehicle, and failure to maintain lane basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed 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 diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the 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 anxiety disorder mitigated the applicant's misconduct of DUI, speeding, possessing an open container while operating a motor vehicle, and failure to maintain lane basis. 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001126

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:

8/31/2024



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