

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, during a crucial period while in military service, the applicant did not receive adequate support. The spouse cheated on the applicant, and a grandparent died during the same time. The applicant asked the NCOICs for assistance but was turned down. The applicant took it upon oneself to seek therapy at the Behavioral Health Center at Fort Drum. The NCOICs did not approve, and the applicant was written up as a result. The applicant claims being unjustly adjudged and railroaded out of the Army because of not meeting the NCOICs' standards. The applicant was denied the opportunity to rehabilitate into a career Soldier, but the command did not provide the support.

b. **Board Type and Decision:** In a records review conducted on 18 April 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, PTSD, adjustment disorder, and Major Depressive Disorder (MDD) outweighing the applicant's dereliction in the performance of duties, failure to pay a debt on different occasions, and disrespect towards a noncommissioned officer and a commissioned officer basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable. Accordingly, changed to the separation authority to AR 635-200, paragraph 14-12a, and the narrative reason for separation 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 PTSD 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 25 September 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 6 September 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was derelict in the performance of duties as a Soldier, failed to pay a debt on different occasions, and disrespected a noncommissioned officer and a commissioned officer.

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

(4) **Legal Consultation Date:** 6 September 2012

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

(6) **Separation Decision Date / Characterization:** 13 September 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 13 December 2010 / 3 years

b. **Age at Enlistment / Education / GT Score:** 20 / High School Graduate / 86

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 5 years, 5 months, 26 days

d. **Prior Service / Characterizations:** USAR, 20 March 2007 – 29 May 2008 / NIF RA, 30 May 2008 – 12 December 2010 / HD

e. **Overseas Service / Combat Service:** SWA / Iraq (15 October 2009 – 28 June 2010)

f. **Awards and Decorations:** AAM, MUC, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CIB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Seven Developmental Counseling Forms for disrespecting a superior commissioned officer and a noncommissioned officer; driving without an appropriate insurance; failing to obey an order or regulation; dishonorably failing to pay debts; failing to bring personal equipment from a training exercise; and conduct unbecoming.

CG Article 15, 23 August 2012, for being derelict in the performance of duties on 3 August 2012; conduct being disorderly on 3 August 2012; being indebted to PVT I. B., in the sum of \$60, from 9 to 13 July 2012; and being indebted to PFC J. S., in the sum of \$300, from 15 to 25 June 2012. The punishment consisted of a reduction to E-3; forfeiture of \$462 pay (suspended); extra duty and restriction for 14 days; and an oral reprimand.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 13 August 2012, reflects the applicant was cleared for any administrative separation. 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, with a positive result for PTSD. 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 evaluation included a diagnosis of an Adjustment Disorder with Depressed Mood.

Report of Medical History, 17 August 2012, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: the applicant was currently seeing behavioral health.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(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 3-5c states the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(5) 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.

(6) Paragraph 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(7) 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.

(8) 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 family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends the leaders were not supportive and provided no assistance. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment.

The applicant contends seeking therapy with the behavioral health center. 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 applicant's AMHRR contains documentation which supports an in-service diagnosis of an adjustment disorder with depressed mood. The record shows the applicant underwent a mental status evaluation (MSE) on 13 August 2012, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

The applicant contends being unjustly judged and discharged because of not meeting the leadership standards. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being denied the opportunity to rehabilitate into a career Soldier. Army Regulation 635-200, paragraph 1-17d(2), entitled counseling and rehabilitative requirements,

states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality Soldier.

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: Adjustment Disorder, PTSD, MDD.

(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 an Adjustment Disorder and is diagnosed and service connected by the VA for PTSD and MDD. Service connection establishes that the applicant's PTSD and MDD existed during military service.

(3) Does the condition or experience actually 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 an Adjustment Disorder and is diagnosed and service connected by the VA for PTSD and MDD. Given the nexus between MDD and decreased concentration, the applicant's MDD more likely than not contributed to being derelict in performance of duties when the applicant failed to bring personal equipment back from a training exercise. Therefore, being derelict in the performance of duties is mitigated by the MDD. Given the nexus between PTSD and difficulty with authority, the applicant's PTSD mitigates the disrespect. There is no natural sequela between an Adjustment Disorder, MDD, or PTSD and failing to pay debts since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. Therefore, failing to pay debts is not mitigated by any of the applicant's BH conditions.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, and MDD outweighed the basis for applicant's separation – failure to pay a debt on different occasions.

b. Response to Contention(s):

(1) The applicant contends family issues affected behavior and ultimately caused 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 length and quality of service, to include combat service, PTSD, adjustment disorder, and MDD fully outweighing the applicant's dereliction in the performance of duties, failure to pay a debt on different occasions, and disrespect towards a noncommissioned officer and a commissioned officer basis for separation.

(2) The applicant contends the leaders were not supportive and provided no assistance. 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 length and

quality of service, to include combat service, PTSD, adjustment disorder, and MDD fully outweighing the applicant's dereliction in the performance of duties, failure to pay a debt on different occasions, and disrespect towards a noncommissioned officer and a commissioned officer basis for separation.

(3) The applicant contends seeking therapy with the behavioral health center. The Board considered this contention and determined the applicant was seeking therapy with BH during service and was diagnosed with Adjustment Disorder, PTSD, and MDD. Ultimately the Board voted to upgrade the discharge based on the applicant's length and quality of service, to include combat service, PTSD, adjustment disorder, and MDD fully outweighing the applicant's dereliction in the performance of duties, failure to pay a debt on different occasions, and disrespect towards a noncommissioned officer and a commissioned officer basis for separation.

(4) The applicant contends being unjustly judged and discharged because of not meeting the leadership standards. 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 length and quality of service, to include combat service, PTSD, adjustment disorder, and MDD fully outweighing the applicant's dereliction in the performance of duties, failure to pay a debt on different occasions, and disrespect towards a noncommissioned officer and a commissioned officer basis for separation.

(5) The applicant contends being denied the opportunity to rehabilitate into a career Soldier. 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 length and quality of service, to include combat service, PTSD, adjustment disorder, and MDD fully outweighing the applicant's dereliction in the performance of duties, failure to pay a debt on different occasions, and disrespect towards a noncommissioned officer and a commissioned officer basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, PTSD, adjustment disorder, and MDD outweighing the applicant's dereliction in the performance of duties, failure to pay a debt on different occasions, and disrespect towards a noncommissioned officer and a commissioned officer basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable. Accordingly, changed to the separation authority to AR 635-200, paragraph 14-12a, and the narrative reason for separation 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 PTSD 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 length and quality of service, to include combat service, PTSD, adjustment disorder, and MDD outweighing the applicant's misconduct of being derelict in the performance of duties, failure to pay a debt on different occasions, and disrespect towards a noncommissioned officer. Thus, the prior characterization is no longer appropriate.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001134

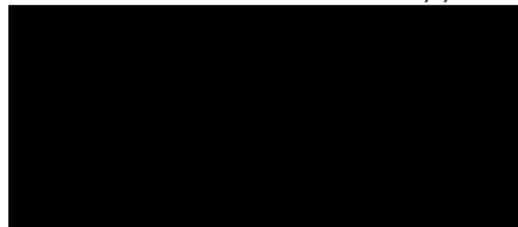
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The Board voted not to change the RE code due to applicant's PTSD 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:

7/5/2024


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