

1. Applicant's Name: [REDACTED]

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

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

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

The applicant seeks relief contending, in effect, having been discharged with a persistent drug problem. The applicant states the misconduct was caused by inadequate treatment at ASAP, mistreatment issues, and symptoms associated with the post-traumatic stress disorder and a traumatic brain injury sustained during a helicopter crash while deployed in 2011. After being injured in a helicopter crash in Afghanistan on 24 June 2011, the applicant was redeployed to Hawaii and left with no clear path upon realizing the career as an infantryman had ended. The crash and other experiences during deployment had a psychological and emotional impact on the applicant. The applicant started experiencing PTSD symptoms and was battling with mental intrusions and turned to drugs as a coping mechanism. When caught, the applicant received UCMJ punishment. The applicant was not aware of PTSD or its symptoms. Following 13 months of continuous VA care, the applicant is now 80 percent disabled and drug-free. Reconsideration of the previously denied application should be based on the Hagel Memo and the responses to four questions presented by the Kurta Memo, as well as medical treatment records, supporting statements, and other documented evidence. The applicant holds an associate and bachelor's degree and has been on the dean's and president's lists. The applicant made sacrifices and nearly died in the process. The final months of the military service continue to haunt the applicant. An upgrade would allow the applicant to feel proud. The applicant further details the contentions in the allied self-authored statements provided with the applications.

b. **Board Type and Decision:** In a records review conducted on 27 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighing the applicant's illegal substance abuse. 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 changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

Please see Section 9 of this document for more detail regarding the Board's decision.

Board member names available upon request.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 1 August 2013

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file.

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NIF
- (6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 13 July 2010 / 3 years, 16 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 3 years, 19 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (1 April 2011 – 19 August 2011)
- f. **Awards and Decorations:** PH, AGCM, NDSM, ACM-2CS-2, GWOTSM, ASR, OSR-2, CIB / The applicant's AMHRR reflects award of an ARCOM, however, the award is not reflected on the DD Form 214. Additionally, the applicant's documentary evidence contains an award of the NATOMDL, which is not reflected on the DD Form 214.
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not 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. The applicant had no lost time.

Orders 200-0003, 19 July 2013, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 1 August 2013 from the Regular Army.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Medical Record (Encounters History), 17 August 2011 to 3 August 2012, reflect the applicant being treated for TBI headaches, concussion, TBI, memory lapses or loss, sleep disturbances, insomnia, post-traumatic headache; and OND/OEF Concussion Screen.

Department of Veterans Affairs claim for benefits letter, 2 September 2014, reflecting the applicant was rated 70 percent disabled for PTSD and adjustment disorder, and 10 percent disabled for TBI.

Department of Veterans Affairs summary of benefits letters, 6 January 2021, reflecting a combined service-connected evaluation of 80 percent.

(2) AMHRR Listed: None

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (7 October 2014); self-authored statement; DD Form 214; ACES benefits statement; two VA letters; VA Form 21-8940; and 12 third-party letters. Additional Evidence: DD Form 293 (23 October 2021) with listed enclosed documents (Item 23); DD Form 214; self-authored statement; Discharge Related Questions (self-authored personal statement questions); listed documents 1 through 13; VA summary of benefits letter; two third-party letters; AAS certificate; two Certificates of Academic Excellence; two Certificates of Completion; ARCOM certificate; NATO Medal certificate; Certificate of Training; CIB Orders; ARBA letter; and medical records (Encounters History).

6. POST SERVICE ACCOMPLISHMENTS: Documentary evidence indicates the applicant obtained an employment; completed the PTSD Residential and Domiciliary Programs; attained academic excellences; and earned an Associate in Applied Science degree and a Bachelor of Business Administration degree.

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, provides 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 14-12c 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's AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions).

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 drug abuse and misconduct were caused by receiving minimal treatment at ASAP, mistreated issues, and symptoms related to post traumatic stress disorder and a traumatic brain injury sustained during a helicopter crash while deployed in 2011. The applicant provided several medical documents indicating diagnoses and treatments for TBI and PTSD. The applicant provided a third-party letter describing the applicant's changes in behavior and ongoing challenges with the TBI after returning from combat and supported the applicant's contention. The applicant's AMHRR contains no documentation of PTSD diagnosis.

The applicant contends experiencing the symptoms of PTSD and while struggling with the mental intrusions sought ways to cope and began abusing drugs, which 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's third-party statements reflect on the applicant's 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 identifies issues with a previous ADRB decision and contends reconsideration should be according to the Hagel and the Kurta memoranda. The board applied the Department of Defense guidance regarding liberal consideration of possible mitigating factors, such as PTSD, TBI, and other related mental health conditions.

The applicant contends obtaining employment and earning an associate degree and a bachelor's degree. 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 reflect the applicant was counted on as a leader within a squad, never failed with overloaded responsibilities, was provided no real care with the TBI needs, set example for peers to emulate, one of the most motivated and competent Soldiers in the company, and lived the Warrior Ethos by placing the mission first.

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: TBI, 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 a TBI, and the VA has service connected the applicant for the TBI as well as combat-related PTSD, establishing that both conditions existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that while the full facts and circumstances of the separation are not contained in the service record, the medical record reveals that the basis of separation was possession of Spice. Given the nexus between PTSD, TBI, and self-medicating with substances, the Spice abuse offense is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighed the applicant's illegal substance abuse.

b. Response to Contention(s):

(1) The applicant contends the drug abuse and misconduct were caused by receiving minimal treatment at ASAP, mistreated issues, and symptoms related to post traumatic stress disorder and a traumatic brain injury sustained during a helicopter crash while deployed in 2011. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighed the applicant's illegal substance abuse. Therefore, a discharge upgrade is warranted.

(2) The applicant contends experiencing the symptoms of PTSD and while struggling with the mental intrusions sought ways to cope and began abusing drugs, which ultimately caused the discharge. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighing the applicant's misconduct.

(3) The applicant's third-party statements reflect on the applicant's good service, including a combat tour. The Board considered this contention and the entirety of the service record, but ultimately did not address it in further detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighing the applicant's misconduct.

(4) The applicant identifies issues with a previous ADRB decision and contends reconsideration should be according to the Hagel and the Kurta memoranda. The Board considered this contention during proceedings and found creditability. The Board applied current and applicable regulations/guidance for discharge upgrades as part of its decision.

(5) The applicant contends obtaining employment and earning an associate degree and a bachelor's degree. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighing the applicant's misconduct.

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c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighing the applicant's illegal substance abuse. 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 changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighed the applicant's illegal substance abuse. 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.

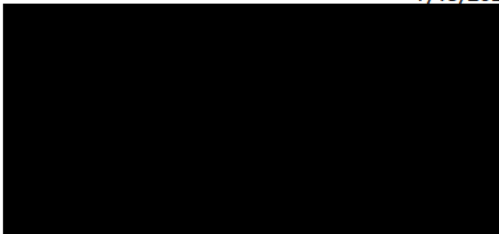
(3) The RE code will not change considering the BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

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:

7/15/2024



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