

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, being diagnosed by the Department of Veterans Affairs (VA) with post-traumatic stress disorder (PTSD). This condition was not recognized at the time of the applicant's discharge. The Secretary of Defense has published a memorandum, 3 September 2014, to supplement guidance to military boards for considering corrections of discharges because of the diagnosis of PTSD. At the time of the applicant's discharge, the applicant was suffering from symptoms associated with PTSD, and the condition should be considered as a mitigating factor for the misconduct.

b. **Board Type and Decision:** In a records review conducted on 11 June 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's PTSD mitigating the applicant's DUI, fleeing the scene of an accident with injuries, open container, and additional misconduct of AWOL. 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:** Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 23 October 2009

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 16 September 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 19 July 2009, the applicant was charged with driving under the influence (DUI), fleeing the scene of an accident with injuries, and an open container in a vehicle. In addition, the applicant was absent without leave from 31 July to 2 August 2009.

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

(4) **Legal Consultation Date:** On 23 September 2009, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** Undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 18 August 2008 / 5 years

b. **Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 108

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 42A10, Human Resources Specialist / 3 years, 8 months, 12 days

d. **Prior Service / Characterizations:** ARNG, 10 February 2006 – 25 July 2007 / NA
RA, 26 July 2007 – 17 August 2008 / HD

e. **Overseas Service / Combat Service:** SWA / Afghanistan (21 March 2008 – 11 March 2009)

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

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report (Blotter Report), undated, reflects the applicant was apprehended by the Clarksville Police Department for: DUI (off post). Investigation revealed on 20 June 2009, after being stopped for reckless driving, the applicant performed a series of sobriety tests, which the applicant performed poorly. The applicant was arrested and submitted to a breath test, with a test result of a blood alcohol content (BAC) of .216.

Army Substance Abuse Program (ASAP) Enrollment Form, 10 July 2009, reflects the applicant self-referred to the ASAP because of a pattern of alcohol related offenses, indicating a DUI arrest on 19 June 2009, and a fight in Nashville on 4 July 2009.

General Officer Memorandum Of Reprimand, 13 July 2009, reflects the applicant was driving while impaired in the state of Tennessee on 20 June 2009, with a blood alcohol content of .216.

Tennessee Uniform Traffic Crash Report, 19 July 2009, reflects the applicant was arrested by Clarksville Police Department for DUI and leaving the scene with injury. Investigation revealed the applicant, while driving, drifted off the highway and struck a guardrail. The applicant was intoxicated and left the scene. The passenger of the vehicle had a laceration on the left eyebrow and possible head injury.

Military Police Report (Blotter Report), 19 July 2009, reflects the applicant was apprehended by the Clarksville Police Department for: DUI, fleeing the scene of a traffic accident, and open container.

Field Grade Article 15, 18 August 2009, for without authority, being absent from the unit (between 31 July and 2 August 2009). The punishment consisted of a reduction to E-1; forfeiture of \$699 pay per month for two months; and extra duty and restriction for 45 days.

General Officer Memorandum Of Reprimand, 18 August 2009, reflects the applicant was driving under the influence.

Two Developmental Counseling Forms, for being indebted to the government and being arrested for DUI.

i. **Lost Time / Mode of Return:** 3 days (AWOL, 31 July 2009 – 2 August 2009) / NIF

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

(1) **Applicant provided:** Department of Veterans Affairs Progress Notes, 4 December 2014, reflecting the applicant was diagnosed with PTSD; anxiety disorder with comorbid depression; general anxiety disorder; and depressive disorder. The applicant had worked in commercial fencing for the last three years and is a crew leader.

(2) **AMHRR Listed:** Report of Behavioral Health Evaluation, 4 August 2009, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The applicant was diagnosed with alcohol dependence.

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; medical progress notes; and Hagel Memo.

6. **POST SERVICE ACCOMPLISHMENTS:** The applicant has worked in commercial fencing for the last three years and is a crew leader as described in the VA Progress Notes.

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 600-85, (The Army Substance Abuse Program), paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes a Soldier's self-referral to BH for SUD treatment.

e. 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.

f. 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.

g. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the VA diagnosed the applicant with PTSD, and the condition affected behavior which led to the discharge. The applicant provided VA medical documents reflecting the applicant was diagnosed with PTSD; anxiety disorder with comorbid depression; general anxiety disorder; and depressive disorder. The applicant's AMHRR contains documentation which supports an in-service diagnosis. The record shows the applicant underwent a behavioral health evaluation (BHE) on 4 August 2009, which indicates the applicant was mentally responsible. The applicant was diagnosed with alcohol dependence. The BHE was considered by the separation authority.

The applicant contends working in commercial fencing for the last three years and is a crew leader. 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.

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: PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that after reviewing all the available information, the applicant was diagnosed in service with Alcohol Dependence and is service connected by the VA for PTSD. Given the nexus between PTSD and self-medicating and PTSD and avoidance, the applicant's misconduct secondary to intoxication (e.g., DUI, fleeing the scene, and open container), and misconduct characterized by AWOL is mitigated by the SC condition.

(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 PTSD outweighed the DUI, fleeing the scene of an accident with injuries, open container basis for separation, and additional misconduct of AWOL found in the applicant's file.

b. Response to Contention(s):

(1) The applicant contends the VA diagnosed the applicant with PTSD, and the condition affected behavior which led to the discharge. The Board considered this contention and determined the applicant is diagnosed with PTSD and the PTSD mitigates the applicant's DUI, fleeing the scene of an accident with injuries, open container basis for separation, and additional misconduct of AWOL found in the applicant's file.

(2) The applicant contends working in commercial fencing for the last three years and is a crew leader. 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 PTSD fully outweighing the applicant's DUI, fleeing the scene of an accident with injuries, open container basis for separation, and additional misconduct of AWOL found in the applicant's file.

c. The Board determined the discharge is inequitable based on the applicant's PTSD mitigating the applicant's DUI, fleeing the scene of an accident with injuries, open container, and additional misconduct of AWOL. 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. 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 PTSD mitigated the applicant's misconduct of DUI, fleeing the scene of an accident with injuries, open container basis for separation, and additional misconduct of AWOL found in the applicant's file. Thus, the prior characterization is no longer appropriate.

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

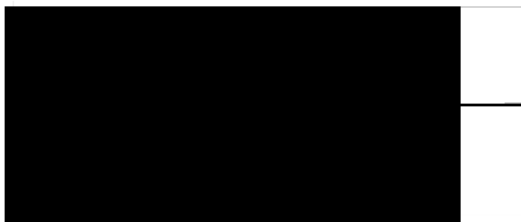
(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

9/18/2024



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