

1. Applicant's Name: [REDACTED]

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

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

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

The applicant seeks relief contending, in effect, a major accident caused the applicant to change mentally and physically. The applicant was a great Soldier before the accident. It has been over six months. The applicant was clearly physically unable to control the negative situations, which occurred while in the military because of the applicant's medical circumstances. The applicant was not given due process at the time of the separation. The applicant incurred multiple head injuries on two different occasions, sustaining a traumatic brain injury (TBI), short-term memory loss, concussions, neck injuries, and severe chronic headaches. The applicant was denied acute recovery time and given an Article 15 for missing two appointments, which the applicant did not attend because of overwhelming medical circumstances. This was included in the separation packet, but the applicant believes the allegations were unjust and unethical. The applicant states difficulty in attaining employment with the characterization and is denied the GI Bill to further education. The applicant is unable to receive proper medical care without an honorable discharge. The applicant further details the contentions in the self-authored statements submitted with the application.

b. **Board Type and Decision:** In a records review conducted on 16 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service and medical mitigation of a majority of the applicant's misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it. *Please see Section 9 of this document for more detail regarding the Board's decision.*

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 31 March 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 4 March 2014

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

Between 22 July 2013 and 11 February 2014, the applicant failed to obey multiple orders and general regulations on numerous occasions.

Between 22 August and 4 September 2013, the applicant failed to be at the appointed place of duty on numerous occasions.

On 28 October 2013, the applicant wrongfully took sensitive information to the applicant's place of residence.

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

(4) Legal Consultation Date: 7 March 2014

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 March 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 May 2011 / 4 years

b. Age at Enlistment / Education / GT Score: 24 / 1 Year College / 102

c. Highest Grade Achieved / MOS / Total Service: E-4 / 36B10, Financial Management Technician / 2 years, 10 months, 15 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Memorandum for Record, 16 August 2013, reflects the applicant's detachment sergeant recommended a summarized Article 15 for continuous misconduct and failure to complete corrective training.

Summarized Article 15, 12 September 2013, for failing to go at the time prescribed to the appointed place of duty (2 August 2013); and on two occasions, willfully disobeying a lawful order from Staff Sergeant (SSG) S. T., a noncommissioned officer (NCO), (22 July and 7 August 2013). The punishment consisted of extra duty for 14 days.

Field Grade Article 15, 23 January 2014, for, on two occasions, failing to go at the prescribed time to the appointed place of duty (27 August and 4 September 2013); being derelict in the performance of duties (28 October 2013); and dishonorably failing to pay just debt (18 April 2013). The punishment consisted of a reduction to E-2; and extra duty and restriction for 30 days.

Report of Mental Status Evaluation, 28 January 2014, reflects the applicant was cleared for administrative separation under Army Regulation 635-200, paragraph 14-12b. The applicant could understand and participate in administrative proceedings; could appreciate the difference

between right and wrong; and met medical retention requirements. The applicant was screened for PTSD and TBI. The mental status evaluation did not reflect a diagnosis.

Family Child Care Home Visit, 10 February 2014, reflects the applicant was using unauthorized childcare and living with the boyfriend in government housing.

Ten Developmental Counseling Forms, for disobeying an order; failing to report because of misplaced identification card; missing two medical appointments; taking sensitive private documents with personal identifiable information to residence; receiving a speeding ticket which became a warrant; wrongfully cohabitating; and pending separation.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: University Medical Center of El Paso Emergency Department Clinical Summary, 4 June 2013, reflecting the applicant was treated for an injury caused by a motor vehicle accident (MVA).

Chronological Record of Medical Care, 24 July 2013, reflects the applicant was assessed with cervicalgia; history of concussion (personal history of TBI, not GWOT related, unknown level of severity); late effect of intracranial injury; and dizziness. Provisional diagnosis: History of TBI. The applicant reported blunt head trauma while playing football in April 2013, and a roll over motor vehicle accident on 4 June 2013.

Department of Veterans Affairs (VA) letter, 28 September 2021, reflecting the VA rated the applicant 100 percent service-connected combined disability: TBI (claimed as post-concussion syndrome and TBI memory), 40 percent; post-concussion headaches, 50 percent; degenerative arthritis of spine with intervertebral disc syndrome (IVDS) (claimed as cervicalgia), 30 percent; radiculopathy (lower radicular group nerve), right upper extremity (dominant), 40 percent; and other specified trauma and stressor related disorder (previously rated as anxiety disorder, not otherwise specified (NOS), with symptoms of PTSD), 70 percent.

(2) AMHRR Listed: Report of Medical Examination, 11 February 2014, the examining medical physician noted in the summary of defects and diagnoses section: PTSD; TBI; memory loss; chronic right foot pain; and cervicalgia.

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; two DD Forms 293; two self-authored statements; four Developmental Counseling Forms; Chronological Record of Medical Care; University Medical Center of El Paso Emergency Department Clinical Summary; District Court of El Paso County, Texas, Agreed Final Decree of Divorce; VA letter with Disabilities Dashboard; and a third party support statement.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National

Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and

composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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

(7) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of

Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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

The applicant requests an upgrade to honorable.

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends PTSD; TBI; short-term memory loss; stress; depression; and other medical issues affected behavior which led to the discharge. The applicant submitted medical documents reflecting the VA rated the applicant 40 percent service-connected disabled for TBI; 50 percent for post-concussion headaches; 70 percent for other specified trauma and stressor related disorder (previously rated as anxiety disorder, NOS, with symptoms of PTSD). The VA rated the applicant 100 percent service-connected combined, which included medical conditions: IVDS; radiculopathy; and right upper extremity. The applicant provided a third party letter from a friend which described the applicant's medical issues, change in work performance, and the issues with the command. The applicant's AMHRR reflects the applicant underwent a mental status evaluation on 28 January 2014, which shows the applicant could appreciate the difference between right and wrong; and met medical retention requirements. The mental status evaluation did not reflect a diagnosis. The applicant underwent a medical examination on 11 February 2014, which reflects the applicant was diagnosed with PTSD; TBI, memory loss; chronic foot pain; and cervicalgia. The MSE and medical examination were considered by the separation authority.

The applicant contends being denied acute recovery time for injuries and being counseled for situations beyond the applicant's control. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service.

The applicant contends an upgrade would allow educational benefits through the GI Bill and other veterans benefits. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

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. Additionally, the applicant asserts Depression, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(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 TBI and PTSD. Service connection establishes that the PTSD also existed in service. The applicant also self-asserts Depression 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 the applicant's behavioral health conditions partially mitigate the misconduct. Individuals with a TBI can experience memory problems, particularly with short-term memory, difficulty organizing tasks, and problems with attention and concentration. Given these symptoms associated with a TBI, it is more likely than not that the applicant's TBI contributed to several of the incidents of misconduct that led to the separation. Given the nexus between memory problems and TBI, FTRs due to missing medical appointments, failing to bring equipment as ordered, and taking sensitive information to her place of residence are mitigated. Failing an order to complete a 1500 word essay is also mitigated given the nexus between TBI and problems with attention and concentration. There is no natural sequela between a TBI and failing to obey a lawful order to have an unauthorized co-habitant vacate the applicant's government quarters since a TBI does not interfere with the ability to follow an order of this nature, so this misconduct is not mitigated. The applicant's response to the counseling statement on this misconduct also supports that it was an intentional and willful choice to disobey this order. The applicant also self-asserts Depression, but there is no medical evidence to support that the applicant received a diagnosis of Depression or experienced depressive symptoms during military service. Due to the lack of medical evidence to substantiate the applicant's asserted Depression, this condition provides no mitigation.

(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 Traumatic Brain Injury, Post Traumatic Stress Disorder, and Depression outweighed the applicant's medically unmitigated offense of failure to obey a lawful order.

b. Response to Contention(s):

(1) The applicant contends PTSD, TBI, short-term memory loss, stress, depression, and other medical issues affected behavior which led to the discharge. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Traumatic Brain Injury, Post Traumatic Stress Disorder, and Depression outweighed the applicant's medically unmitigated offense of failure to obey a lawful

order. However, the Board found that the applicant's length of service outweighed the lone medically unmitigated offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined that it was valid for the reasons discussed above in 9b(1).

(3) The applicant contends being denied acute recovery time for injuries and being counseled for situations beyond the applicant's control. The Board considered this contention during proceedings but ultimately did not address the contention due to an upgrade being granted based on partial medical mitigation of the applicant's misconduct and the applicant's length of service.

(4) The applicant contends good service. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on partial medical mitigation of the applicant's misconduct and the applicant's length of service.

(5) The applicant contends an upgrade would allow educational benefits through the GI Bill and other veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(6) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

c. The Board determined the discharge is inequitable based on the applicant's length of service and medical mitigation of a majority of the applicant's misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length of service and medical mitigation of a majority of the applicant's misconduct. 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, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001172

- 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:

6/11/2024



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