

**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, falling on hard times when the applicant's spouse left the applicant for their best friend and cleaned out the applicant's bank account. A fellow Soldier suggested they break into a home and steal some items to gain some funds. The applicant and the Soldier did this knowing it was wrong and were caught. The applicant and the other Soldier served jail time and paid fines. When the applicant returned to the unit the applicant was referred to a mental health professional, who diagnosed the applicant with depression and insomnia. After a few months of treatment, the doctor suggested to the applicant's superiors the applicant return to civilian life and continue the treatment with a civilian doctor. The applicant's superiors informed the applicant they would be discharged for medical reasons; however, during the separation process, the applicant was informed the applicant would be discharged for misconduct and the other Soldier would receive an honorable discharge. The applicant believed it to be unjust and voiced the applicant's opinion, but it fell on deaf ears. The applicant accepted the discharge and continued with the mental health treatments. In 2018, the applicant was diagnosed with post-traumatic stress disorder (PTSD) from the trauma of the airborne operation injury.

The applicant had the criminal charges expunged, attained an associate degree, a bachelor degree, and is pursuing a master's degree. The applicant fixed their financial issues and has become a police officer. The discharge type and characterization were unjust and will continue to have everlasting negative impacts on the applicant's future. The charge was the only offense the applicant has ever committed, and it has been expunged. The applicant hopes to have the charge expunged on the military side as well. The applicant requests the discharge be changed to reflect for medical reasons. The applicant further details the contentions in the application and self-authored statements submitted with the application.

b. **Board Type and Decision:** In a records review conducted on 16 May 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's quality of service outweighing 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:**

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001175**

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

**b. Date of Discharge:** 3 November 2009

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 8 October 2009

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant was being charged with one count of Burglary, contrary to Section 2911.12(A)(3) of the Revised Code, a felony of the third degree.

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

**(4) Legal Consultation Date:** 8 October 2009

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

**(6) Separation Decision Date / Characterization:** 15 October 2009 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 19 June 2008 / 4 years, 19 weeks

**b. Age at Enlistment / Education / GT Score:** 21 / 1 Year College / 115

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 11B1P, Infantryman / 1 year, 4 months, 15 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** NDSM, GWOTSM, ASR, EIB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Common Pleas Court of Darke County, Ohio, Judgement Entry, Arraignment, Plea, and Sentencing, 15 July 2009, reflects the applicant was charged with one count of Burglary, contrary to Section 2911.12(A)(3) of the Revised Code, a felony of third degree; and found guilty, consistent with the applicant's plea. The sentence includes: To serve community sanction for 12 months; 19 days in jail; report as ordered; pay court costs; pay a fine of \$250; abstain from alcohol and illicit drugs; submit to random urinalysis; pay restitution of \$1775; and abide by the rules of the Adult Probation Department.

Developmental Counseling Form, 22 September 2009, being convicted of burglary by civilian court in Ohio.

The applicant provided Common Pleas Court of Darke County, Ohio, Judgment Entry Granting Motion for Sealing of Record, 7 November 2013, reflecting the court granted the applicant's request to seal the record of conviction.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Behavioral Health Evaluation, 17 September 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 was diagnosed with adjustment disorder with depressed mood.

Report of Medical Examination, undated, the examining medical physician noted the applicant's medical conditions in the summary of defects and diagnoses section: Depression with anxiety; insomnia.

*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; Infantry School Diploma; Airborne Course Diploma; Radio Telephone Operator Certificate of Training; Commons Pleas Court of Darke County, Ohio, Judgment Entry Granting Motion for Sealing of Record; college transcripts; Associate in Applied Science, General Business Degree; twelve certificates related to law enforcement training; and Criminal Watch Dog Criminal Check.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant fixed their financial issues; had the criminal charges expunged, attained an associate degree, a bachelor degree, is pursuing a master's degree, and became a police officer.

**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 14-3 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.

(7) 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 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 depression, insomnia, family issues, and undiagnosed PTSD affected behavior which led to the discharge. The applicant's AMHRR contains documentation which supports an in-service diagnosis. The record shows the applicant underwent a behavioral health evaluation (BHE) on 17 September 2009, which indicates the applicant was mentally responsible; and met medical retention requirements. The applicant was diagnosed with adjustment disorder with depressed mood. The BHE was considered by the separation authority.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends the other Soldier involved in the burglary was discharged with an honorable discharge. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command. The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case.

The applicant contends the discharge should have been for medical reasons. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

The applicant requests a medical discharge. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The applicant requests expunction of a criminal record. The applicant's request does not fall within the purview of this Board. The applicant may apply to the US Army Crime Record Center (CRC) to request the removal of titling from Army Records. If the CRC directs the removal of the titling action, it will also inform the National Crime Records Center to take action regarding its records derived from CRC's records. If the CRC denies the request, the applicant may appeal to the Army Board for Correction of Military Records using the DD Form 149 or online application to request removal of the titling. Include with the application a photocopy of all documents sent to the CRC and the reply from the CRC.

The applicant contends fixing their financial issues; having the criminal charges expunged, attaining an associate degree, a bachelor degree, pursuing a master's degree, and becoming a police officer. 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: Adjustment Disorder. Additionally, the applicant asserts Depression and PTSD, 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 an Adjustment Disorder. The applicant self-asserts Depression during military service and asserts PTSD post-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate the misconduct. There is no natural sequela between an Adjustment Disorder or Depression and burglary since neither condition interferes with the ability to distinguish between right and wrong and act in accordance with the right. The applicant also self-asserts a post-service diagnosis of PTSD associated with military service. There is no medical evidence to substantiate that the applicant had PTSD during military service and furthermore, burglary is not characteristic of PTSD and would provide no mitigation even with medical evidence.

(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, or self-asserted Depression and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated burglary offense.

b. Response to Contention(s):

(1) The applicant contends depression, insomnia, family issues, and undiagnosed PTSD 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 Adjustment Disorder, or self-asserted Depression and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated burglary offense.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention and determined that it was valid. The Board factored the applicant's otherwise good service into its decision to upgrade the discharge.

(3) The applicant contends the other Soldier involved in the burglary was discharged with an honorable discharge. The Board considered this contention and determined that it was valid. The Board found that the facts of the applicant's offense were not as severe as "burglary" offenses are generally understood to be.

(4) The applicant contends the discharge should have been for medical reasons. The Board determined that the applicant's request for a medical discharge does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be

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obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(5) The applicant contends fixing the financial issues; having the criminal charges expunged, attaining an associate degree, a bachelor degree, pursuing a master's degree, and becoming a police officer. The Board is glad to hear of the applicant's post-service accomplishments but ultimately did not address this contention due to an upgrade being granted based on the reasons discussed in 9b(2-3).

c. The Board determined the discharge is inequitable based on the applicant's quality of service outweighing 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 quality of service outweighing 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.

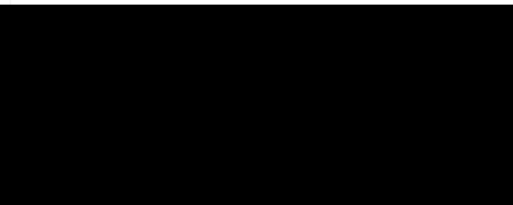
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- 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



**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



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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