

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 discharged for driving while intoxicated in December 2013, the applicant was not convicted of the offense until November 2014. The offense was the sole negative incident on record. The applicant desires to attend college but is prevented by the current discharge. Throughout the service career, the applicant never received any negative counseling, until the DUI. The applicant was arrested on 21 December 2013, but was never penalized until November 2014. The incident did not cause the applicant to have a poor work ethic or a lack of respect for the superiors. The applicant was advised of being retained, but it changed in one day and about a year later. The applicant attended the NTC in May 2014 and completed all the required training to deploy with the unit. A first lieutenant initiated the separation, despite having a DUI which went unpunished. The applicant had no history of any wrongdoing and had always gone above and above to outperform the peers, even after the DUI. The applicant's squad leader had three DUI offenses and was never punished for the actions. Many others with DUI offenses were overlooked. The applicant's punishment was unfair because other offenders received lighter punishments.

b. **Board Type and Decision:** In a records review conducted on 28 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service and the one-time incident outweighing the DUI basis for separation. Accordingly, the Board voted to upgrade the characterization of service to Honorable and changed the narrative reason for separation to Misconduct (Minor Infractions) per AR 635-200, paragraph 14-12a, with a corresponding separation code of JKN. The Board determined the reentry eligibility (RE) code was proper and equitable given the Alcohol Dependence diagnosis.

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:** 25 November 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 2 September 2014

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 21 December 2013 the applicant wrongfully drove drunk.

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

(4) **Legal Consultation Date:** 18 September 2014

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

(6) **Separation Decision Date / Characterization:** 12 November 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 13 March 2012 / 3 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 22 / High School Graduate / 97

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 2 years, 8 months, 13 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:** Five Developmental Counseling Forms for: being recommended for an administrative separation, being arrested, and charged with a DUI; being command referred to ASAP; being barred from reenlistment; being pulled over by a civilian police officer for a routine traffic violation; and being administered a field sobriety test.

Military Police Report, 21 December 2013, reflects the applicant was apprehended for: driving under the influence of alcohol or drugs and defective tail lamps (off post).

General Officer Memorandum Of Reprimand, 31 January 2014, reflects the applicant was driving while under the influence of alcohol. After being stopped for a broken taillight on 21 December 2013, and detection of an odor of alcoholic beverage emitting from the applicant, a subsequent intoximeter test administered revealed a BAC of .157.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 31 July 2014, reflects the applicant was psychiatrically cleared for an administrative separation under Chapter 14-12c. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI, which indicated a positive screening for PTSD. The

conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The examining medical physician commented the positive screening for PTSD was not deployment related because the applicant had not deployed.

Report of Medical History, 22 August 2014, the examining medical physician commented the applicant was cleared by behavioral health for chapter separation.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely the document listed in 4j(2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored statement; DD Form 214; Information sheet; and Municipal Court Diversion packet.

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 14-2c, 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.

(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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the offense, which led to the discharge, was the only offense on record. 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 being unable to attend college because of the current discharge. Eligibility for veterans' 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 to have no other history of wrongdoings and has always strived to outperform the peers, even after the DUI offense. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the punishment was unfair because other offenders were either overlooked or received lighter punishments. The DODI 1332.28 provides each case must be decided on its individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

The applicant's AMHRR contains documentation which indicates a positive screening for PTSD. The record shows the applicant underwent a mental status evaluation (MSE) on 31 July 2014, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The examining medical physician indicated the positive PTSD was not deployment related because the applicant had not deployed. The MSE was considered by the separation authority.

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? **No.** The Board's Medical Advisor, a voting member, reviewed DoD and VA medical records and found the applicant had no mitigating BH diagnoses. The applicant provided no documents or testimony of an in-service condition or experience that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **N/A.**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.**

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends the offense which led to the discharge was the only offense on record, with no history of wrongdoings and having always strived to outperform peers, even after the DUI offense. The Board determined that this contention was valid and voted to upgrade the characterization of service due to the applicant's length of service and the one-time incident outweighing the DUI basis of separation.

(2) The applicant contends being unable to attend college because of the current discharge. The Board considered this contention and determined that eligibility for Veteran's benefits 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.

(3) The applicant contends the punishment was unfair because other offenders were either overlooked or received lighter punishments. The Board considered this contention and found no evidence of command inequities in the current evidentiary record. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the contention(s) that the discharge was improper or inequitable.

c. The Board determined the discharge is inequitable based on the applicant's length of service and the one-time incident outweighing the DUI basis of separation. Accordingly, the Board voted to upgrade the characterization of service to Honorable and changed the narrative reason for separation to Misconduct (Minor Infractions) per AR 635-200, paragraph 14-12a, with a corresponding separation code of JKN. The Board determined the reentry eligibility (RE) code was proper and equitable given the Alcohol Dependence diagnosis.

d. Rationale for Decision:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001203

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length of service and the one-time incident outweigh the DUI basis for separation. 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.

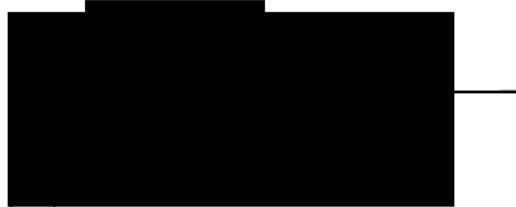
(3) The RE code will not change, as the applicant's Alcohol Dependence diagnosis warrants consideration/waiver prior to reentering military service.

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:

5/18/2024



Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral Health (Issues)
OMPF – Official Military Personnel File
PTSD – Post-Traumatic Stress Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized Discharge
UOTHC – Under Other Than Honorable Conditions
VA – Department of Veterans Affairs