

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, although the separation decision was not a wrong decision, because of making some very careless mistakes which cost the life of another Soldier, the applicant lives with the tragedy daily and has accepted all punishment given at the time. As a Soldier, the applicant did not fully comprehend why fighting for the country was the most important move someone could take, but when the applicant returned to the civilian life, the applicant recognized being a Soldier was in their heart. An upgrade would allow the applicant to join the Air Force Reserve, regain the focus and structure of being a Soldier, and rejoin the fellow brothers and sisters in arms. The applicant relished the opportunity to have served the country.

b. **Board Type and Decision:** In a records review conducted on 29 February 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's length of service, accountability for misconduct and applicant's PTSD diagnosis outweighing applicant's failure to report, leaving the appointed place of duty, derelict in the performance of the duties, and negligently operating a motor vehicle causing the death of another Soldier basis for separation. 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, and the narrative reason for separation 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 PTSD 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, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 10 September 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 11 March and 29 July 2013

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

The applicant negligently operated a motor vehicle causing the death of another Soldier.

The applicant failed to go at the time prescribed to the appointed place of duty on numerous occasions, left the appointed place of duty, and was derelict in the performance of the duties.

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

(4) **Legal Consultation Date:** 12 March 2013

(5) **Administrative Separation Board:** None

(6) **Separation Decision Date / Characterization:** 9 August 2013 / General (Under Honorable Conditions) / The separation suspended on 20 April 2013 was vacated.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 1 October 2010 / 4 years

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 97

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92A10, Automated Logistical Specialist / 2 years, 11 months, 10 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:** Nine Developmental Counseling Forms for failing to go at the time prescribed to the appointed place of duty on numerous occasions; being AWOL twice; disobeying a commissioned officer and an NCO; departing place of duty without authority; lying to an NCO; violating profile; and failing to inform supervisor of an appointment.

FG Article 15, 1 August 2013, for unlawfully killing PFC M. S. K. by negligently driving a motor vehicle in excess speed and causing a roll-over incident on 23 October 2011. The punishment consisted of a reduction to E-2 and forfeiture of \$835 pay (suspended); and an oral reprimand.

CG Article 15, 24 January 2013, for being derelict in performance of duties by failing to sign out on leave on 21 December 2012. The punishment consisted of a reduction to E-3; forfeiture of \$443 pay (suspended); and extra duty for 14 days.

Record Of Supplementary Action Under Article 15, UCMJ, 14 February 2013, reflects the suspended portion of the punishment imposed on 24 January 2013, was vacated for: Article 86, failure to repair on 3 February 2013.

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

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

(1) **Applicant provided:** None

(2) AMHRR Listed: Report of Mental Status Evaluation, 5 February 2013, reflects the applicant was cleared for administrative separation. 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 with positive results. 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.

Report of Medical History, 4 July 2019, the applicant noted receiving counseling because of a military vehicle accident and the examining medical physician noted in the comments section: Counseling for personal issues after death of a person.

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

5. APPLICANT-PROVIDED EVIDENCE: Two DD Forms 293; DD Form 214; and résumé.

6. POST SERVICE ACCOMPLISHMENTS: A résumé reflects the applicant performing as a drummer and being employed as a cook.

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 14-12b 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.

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

The applicant contends making some very careless mistakes which cost the life of another Soldier and having to live with the tragedy daily. The applicant's AMHRR contains documentation which supports the applicant receiving counseling for personal issues after the death of a person. The record shows the applicant underwent a mental status evaluation (MSE) on 5 February 2013, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

The applicant desires to rejoin the Military Service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The applicant's résumé reflects performing as a drummer and being employed as a cook. 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 that the applicant is diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed, and service connected by the VA for PTSD that provides partial mitigation for the basis of separation. Given the nexus between PTSD and avoidance, the FTRs, leaving an appointed place of duty, and being derelict in the performance of duties are mitigated. There is no natural sequela between PTSD and negligently operating a motor vehicle. Furthermore, the applicant's service-connected PTSD is associated with the motor vehicle accident, so the applicant's PTSD did not exist prior to the accident and therefore, was not contributory. As a result, negligently operating a motor vehicle causing a death of another soldier is not mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** There is no natural sequela between PTSD and negligently operating a motor vehicle. Furthermore, the applicant's service connected PTSD is associated with the motor vehicle accident, so the applicant's PTSD did not exist prior to the accident and therefore, was not contributory. As a result, negligently operating a motor vehicle causing a death of another soldier is not mitigated.

b. Response to Contention(s):

(1) The applicant contends making some very careless mistakes which cost the life of another Soldier and having to live with the tragedy daily. The Board determined that this contention was valid and voted to upgrade the characterization of service due to applicant's length of service, accountability for misconduct and applicant's PTSD diagnosis outweighing applicant's failure to report, leaving the appointed place of duty, derelict in the performance of the duties, and negligently operating a motor vehicle causing the death of another Soldier basis for separation.

(2) The applicant desires to rejoin the Military Service. The Board considered this contention and voted to maintain the RE-code to a RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate.

(3) The applicant's résumé reflects performing as a drummer and being employed as a cook. The Board considered this contention during proceedings, but ultimately did not address

the contention due to the applicant's length of service, accountability for misconduct and applicant's PTSD diagnosis outweighing applicant's failure to report, leaving the appointed place of duty, derelict in the performance of the duties, and negligently operating a motor vehicle causing the death of another Soldier basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length of service, accountability for misconduct and applicant's PTSD diagnosis outweighing applicant's failure to report, leaving the appointed place of duty, derelict in the performance of the duties, and negligently operating a motor vehicle causing the death of another Soldier basis for separation. 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, and the narrative reason for separation 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 PTSD 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 length of service, accountability for misconduct and applicant's PTSD diagnosis outweighed the applicant's misconduct of failure to report, leaving the appointed place of duty, derelict in the performance of the duties, and negligently operating a motor vehicle causing the death of another Soldier. 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 PTSD diagnosis warranting consideration prior to reentry of military service.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

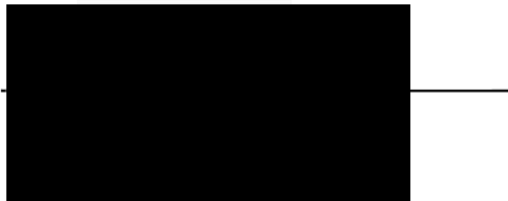
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10. BOARD ACTION DIRECTED:

- 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:

5/16/2024



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