

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 unfairly treated and repeatedly ignored, and their underlying issues were not addressed. The applicant was hospitalized for suicidal idealization due to treatment received from their chain of command. Rehabilitative attempts were not considered. The applicant alleges their commander made the following statement: "Rehabilitative attempts are not piratical." The applicant states the medication they received from their psychiatrist strongly affected their performance.

b. **Board Type and Decision:** In a records review conducted on 11 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Adjustment Disorder and Anxiety Disorder outweighing the applicant's FTR and disrespect toward an NCO offenses due to the sedating effects of the prescribed medications. 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, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 18 December 2013

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 18 November 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant failed to report to their appointed place of duty on divers' occasions between on or about 1 August 2013, and on or about 4 November 2013. On or about 14 February 2013, the applicant was disrespectful in language toward a noncommissioned officer.

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

(4) **Legal Consultation Date:** On 20 November 2013, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 10 December 2013 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 22 August 2011 / 3 years, 40 weeks

b. **Age at Enlistment / Education / GT Score:** 23 / High School Graduate / 102

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 35N10 Sigint Analyst / 2 years, 3 months, 27 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:** CG Article 15, 25 March 2013, for being disrespectful in language and deportment toward SGT C. The punishment consisted of a reduction to E-2; (suspended); forfeiture of \$396 and extra duty and restriction for 14 days.

Record Of Supplementary Action Under Article 15, UCMJ, 1 August 2013, reflects the suspended portion of the punishment imposed on 25 March 2013, was vacated for: Article 86. On or about 1 August 2013, without authority, fail to go to at the time prescribed to their appointed place of duty, to wit: 0630 Accountability Formation.

CG Article 15, 27 September 2013, on five occasions between 1 August and 17 September 2013, without authority, fail to go at the time prescribed to their appointed place of duty. The punishment consisted of a reduction to E-1; forfeiture of \$353 and extra duty and restriction for 14 days (suspended).

Record Of Supplementary Action Under Article 15, UCMJ, 15 November 2013, reflects the suspended portion of the punishment imposed on 27 September 2013, for forfeiture of \$353 was set aside based on the Appellate Commander's decision.

Numerous Developmental Counseling Forms, for various acts of misconduct.

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

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

(1) **Applicant provided:** VA Rating decision 2 April 2015, with a service connection of 30 percent for a medical condition.

The applicant provided a Memorandum For Record, 25 September 2013, reflecting the applicant started the medication on 30 July 2013, by CPT M., and it may take patients a couple of days to adjust to the drowsiness. It was expected for roughly one third of patients to have

drowsiness with this medication. In clinical trials 40.8 percent of 157 patients receiving trazodone complained of drowsiness as compared to 19.6 percent of 158 patients who received Placebo. The 150mg dose was discontinued by CPT M., on 29 August and a lower dose 100mg was ordered on 29 August, however it was not picked up from the pharmacy until 10 September.

(2) AMHRR Listed: Report of Mental Status Evaluation, 12 October 2013, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The command was advised to consider the influence of these conditions. The applicant was diagnosed with a medical condition. No evidence of substance abuse.

Report of Medical Examination, 18 October 2013, the examining medical physician noted in the comments section a medical condition.

Report of Medical History, 18 October 2013, the examining medical physician noted in the comments section a medical condition.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; six Memorandums for Record; VA Rating Decision; VA Form 21-529EZ; Medication Reconciliation; Memorandum from W.H.; Medication profile.

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.

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 medication they received from their psychiatrist strongly affected their performance. The applicant provided a Memorandum For Record, 25 September 2013, reflecting the applicant started medication on 30 July 2013, by CPT M., and it may take patients a couple of days to adjust to the drowsiness. It was expected for roughly one third of patients to have drowsiness with this medication. The 150 mg dose was discontinued by CPT M., on 29 August and a lower dose 100 mg was ordered on 29 August, however it was not picked up from the pharmacy until 10 September. The applicant's AMHRR includes a Report of Mental Status Evaluation (MSE), 12 October 2013, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. 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 applicant was diagnosed with a medical condition with no evidence of substance abuse. The MSE was considered by the separation authority.

The applicant contends being unfairly treated and repeatedly ignored, and their underlying issues were not addressed. The applicant was hospitalized for suicidal idealization due to treatment received from their chain of command. The applicant did not submit any evidence to support the contention. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statements provided with the application reflects the applicant was hard working and deserves VA Benefits.

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, Anxiety Disorder NOS.

(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 and is service connected by the VA for Anxiety Disorder NOS. Service connection establishes that the applicant's Anxiety Disorder NOS existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions mitigate the discharge. The medical evidence supports that the applicant's BH conditions and treatment with a sedating medication contributed to the FTRs. Accordingly, the applicant's Adjustment Disorder and Anxiety Disorder NOS mitigate the disrespect and FTRs that led to the separation.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Adjustment Disorder and Anxiety Disorder outweighed the applicant's FTR and disrespect toward an NCO offenses due to the sedating effects of the prescribed medications.

b. Response to Contention(s):

(1) The applicant contends the medication they received from their psychiatrist strongly affected their performance. The Board liberally considered this contention and determined that the applicant's Adjustment Disorder and Anxiety Disorder outweighed the applicant's FTR and disrespect toward an NCO offenses due to the sedating effects of the prescribed medications. Therefore, a discharge upgrade is warranted.

(2) The applicant contends being unfairly treated and repeatedly ignored, and their underlying issues were not addressed. The applicant was hospitalized for suicidal idealization due to treatment received from their chain of command. The Board considered this contention

during proceedings but ultimately did not address it due to an upgrade being granted based on medical mitigation of the applicant's offenses as discussed above in 9b(1).

c. The Board determined the discharge is inequitable based on the applicant's Adjustment Disorder and Anxiety Disorder outweighing the applicant's FTR and disrespect toward an NCO offenses due to the sedating effects of the prescribed medications. 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 Adjustment Disorder and Anxiety Disorder outweighed the applicant's FTR and disrespect toward an NCO offenses. 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.

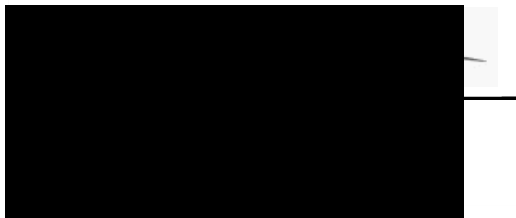
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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



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