

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable or general, a narrative reason change to "Secretarial Authority", separation authority change to "Reason of Best Interest of the Service" or other authority that corresponds with "Secretarial Authority" and a separation code consistent with "Secretarial Authority."

The applicant seeks relief contending, in effect, experiencing several traumatic events and being diagnosed with PTSD. The applicant states overstaying their leave by about six months to take their parent to chemotherapy and to escape the mental trauma they were experiencing. Prior to this incident, the applicant had a stellar record and earned several medals for their exemplary service. The applicant's misconduct was directly related to the PTSD they developed while serving in the Army. Under new directive, this Board should view the applicant's Post Traumatic Stress Disorder as a mitigating factor and consequently upgrade their discharge to honorable.

b. Board Type and Decision: In a records review conducted on 21 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Major Depression outweighing the applicant's AWOL offense. 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: Misconduct (AWOL) / AR 635-200, Chapter 14-12c (1) / JKD / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 21 October 2008**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 24 September 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was absent without leave for seven months.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 26 September 2008

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

(6) **Separation Decision Date / Characterization:** 15 October 2008 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 1 June 2005 / 4 years

b. **Age at Enlistment / Education / GT Score:** 21 / High School Graduate / 101

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 94A10, Land Combat Missile System Repairer / 2 years, 9 months, 15 days

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

e. **Overseas Service / Combat Service:** SWA / Iraq (25 April 2006 – 10 September 2006; 24 September 2007 – 25 December 2007)

f. **Awards and Decorations:** NDSM, GWOTSM, ICM-2, ASR, CAB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 5 September 2008, on or about 25 December 2007, without authority, absent oneself from their unit, and did remain so absent until on or about 31 July 2008. The punishment consisted of a reduction to E-1; forfeiture of \$673 pay per month for two months (suspended).

Developmental Counseling Forms, for Enlistment/Reenlistment Bonus Recoupment for \$791 67.

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

From PDY to AWOL, effective 25 December 2007;
From AWOL to DFR, effective 24 January 2008; and
From AWOL to PDY, effective 31 July 2008.

i. **Lost Time / Mode of Return:** 7 months, 6 days (AWOL, 25 December 2007 – 31 July 2008) / Return to military Authority

j. Behavioral Health Condition(s):

(1) **Applicant provided:** Medical Progress notes printed on 13 July 2021, reflects a medical diagnosis.

Report of Medical Examination, 8 September 2008, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a diagnosis.

Report of Medical History, 8 September 2021, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a diagnosis.

(2) AMHRR Listed: Report of Medical History and Examination as described in previous paragraph 4j(1).

Report of Mental Status Evaluation, 10 September 2008, 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.

(3) DoD and VA medical records. *The ARBA's medical advisor reviewed DoD and VA medical records as reflected in paragraph 9, below.*

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; two DD Forms 293; lawyers brief and exhibits one through five.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for their mental health.

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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(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(1) allows for an absentee returned to military control from a status of absent without leave or desertion to be separated for commission of a serious offense.

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 "JKD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c(1), misconduct (AWOL).

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

The applicant contends the SPD code should be changed to a code consistent with "Secretarial Authority." The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c(1), is "JKD."

The applicant contends being diagnosed with PTSD. The applicant provided a Medical Progress notes printed on 13 July 2021, reflecting a medical diagnosis. A Report of Medical Examination and History, 8 September 2008, the examining medical physician noted the applicant's medical conditions in the comments section, which included a diagnosis. A third-party letter detailing the applicant's mental struggles. The AMHRR includes the Report of Medical Examination and History as previously described above. Also included is a Report of Mental Status Evaluation, 10 September 2008, 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 command was advised to consider the influence of these conditions. The separation authority considered the mental status evaluation and the Report of Medical Examination and History.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits 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 good service, including two combat tours.

The applicant contends seeking treatment for the applicant's mental health. 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.

The applicant contends that the applicant's discharge should be upgraded on the basis of equity and fundamental fairness in light of the trauma the applicant experienced as a mitigating factor of the applicant's conduct. The applicant contends the applicant's misconduct was directly attributed the PTSD the applicant suffered due to combat exposure.

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 determined that, based on the Board's Medical Advisor opine and the applicant's official medical and service records, that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Dysthymia, Major Depression, Post Traumatic Stress Disorder.

(2) Did the condition exist, or experience occur during military service? The Board determined that, based on the Board Medical Advisor opine and the applicant's official medical and service records, the applicant was diagnosed in service with an Adjustment Disorder, Dysthymia, and Major Depression. The applicant is diagnosed, and service connected by the VA for combat-related PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board applied liberal consideration and determined that, based on the Board Medical Advisor opine

and the applicant's official medical and service records, the applicant's PTSD and Major Depression mitigate the applicant's AWOL offense given the nexus between PTSD, Major Depression and avoidance.

(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 Post Traumatic Stress Disorder and Major Depression outweighed the applicant's medically mitigated AWOL offense.

b. Response to Contention(s):

(1) The applicant contends being diagnosis with PTSD. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder and Major Depression outweighed the applicant's medically mitigated AWOL offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention during proceedings and changed to narrative reason to JKN (Minor Misconduct) given the applicant's PTSD outweighed the misconduct. The Board did not change to SA given the nature of the misconduct and the medical mitigation.

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

(4) The applicant contends good service, including two combat tours. The Board considered this contention and determined that the applicant's PTSD outweighed the applicant's medically mitigated AWOL offense to warrant a HD upgrade and NR change to minor misconduct. However, the Board determined a NR change/SPD code change to SA is not warranted because of the nature of the misconduct.

(5) The applicant contends seeking treatment for their mental health. The Board is glad to hear that the applicant has sought treatment and wishes the applicant success. The Board did not address this contention due to an upgrade being granted based on medical mitigation of the applicant's AWOL offense.

(6) The applicant contends that the applicant's discharge should be upgraded on the basis of equity and fundamental fairness in light of the trauma the applicant experienced as a mitigating factor of the applicant's conduct. The applicant contends the applicant's misconduct was directly attributed to the PTSD the applicant suffered due to combat exposure. The Board considered this contention and determined that the applicant's PTSD outweighed the applicant's medically mitigated AWOL offense to warrant a HD upgrade and NR change to minor misconduct. However, the Board determined a NR change/SPD code change to SA is not warranted because of the nature of the misconduct.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Major Depression outweighing the applicant's medically mitigated AWOL offense. 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001236

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 Post Traumatic Stress Disorder and Major Depression outweighing the applicant's medially mitigated AWOL offense. 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 given the upgrade to HD and the nature of the misconduct.

(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:

5/27/2024



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