

**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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, instances of misconduct used to substantiate their pattern of misconduct were due to severe mental health issues. The applicant's condition was undiagnosed and untreated at the time of the misconduct.

b. **Board Type and Decision:** In a records review conducted on 18 April 2024, and by a 5-0 vote, the Board, based on the applicant's Bipolar disorder, depression, length and quality of service outweighing the applicant's willfully failing to stay awake during their law enforcement shift, FTRs, disrespect towards an NCO, and wrongfully using the government travel charge card for personal use basis for separation, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service and reentry eligibility (RE) code were proper and equitable and voted not to change them. The RE code was proper and equitable due to applicant's BH diagnoses 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 / Honorable

b. **Date of Discharge:** 20 September 2012

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 29 August 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was derelict in the performance of their duties by willfully failing to stay awake during their law enforcement shift on or about 24 November 2011, and on or about 25 November 2011.

The applicant failed to show up at their appointed place of duty on or about 0900 formation on 27 February 2012.

The applicant failed to show up at their appointed place of duty for day shift weapons draw on or about 0600, 13 March 2012.

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The applicant failed to obey a lawful general regulation by wrongfully using their government travel charge card for personal use between on or about 3 May 2012 and 4 May 2012.

The applicant left their appointed place of duty as the Charge of Quarters Duty Runner on or about 13 June 2012.

The applicant was disrespectful in deportment towards SGT G., on or about 11 July 2012.

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

**(4) Legal Consultation Date:** 30 August 2012

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

**(6) Separation Decision Date / Characterization:** 12 September 2012 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 8 September 2009 / 5 years

**b. Age at Enlistment / Education / GT Score:** 22 / some college / 115

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 31B10, Military Police / 3 years, 13 days

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

**e. Overseas Service / Combat Service:** Korea

**f. Awards and Decorations:** NDSM, KDSM, NCOPDR, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Company Letter of Reprimand, 6 February 2012, reflects this is a letter of reprimand resulting from the incidents which occurred from 13 to 25 November 2011. Upon allegations made against the applicant for sleeping on duty, the commander determined there was enough evidence to find the applicant derelict in the performance of their law enforcement duties. This is a serious issue and a violation of Article 92 of the UCMJ.

CG Article 15, 7 February 2012, for on or about 24 and 25 November 2011, were derelict in the performance of those duties in the applicant willfully failed to stay awake during their law enforcement shift, as it was their duty to do. The punishment consisted of an oral and letter of reprimand.

CG Article 15, 26 June 2012, for on or about 3 May 2012 and on or about 4 May 2012, fail to obey a lawful general order. The punishment consisted of a reduction to E-3; forfeiture of \$435 pay per month for two months (suspended); and extra duty and restriction for 14 days.

Record Of Supplementary Action Under Article 15, UCMJ, 15 August 2012, reflects the suspended portion of the punishment imposed on 26 June 2012, was vacated for: Article 91, on or about 11 July 2012, were disrespectful in deportment toward SGT R. G. a noncommissioned

officer, then known by the applicant to be a noncommissioned officer, who was then in the execution of their office, by rolling the applicant's head back, huffing, yelling at them to back up, and calling them "bro" and "honey".

Numerous Developmental Counseling Forms, for various acts of misconduct.

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

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

**(1) Applicant provided:** Department Of Veterans Affairs letter reflects a service-connected disability compensation of 100 percent and a medical diagnosis.

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 3 August 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant is mentally responsible and able to distinguish right from wrong. The applicant has the mental capacity to understand and participate in administrative proceedings. The evaluation included a diagnosis.

*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; VA Rating Decision.

**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) 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.

(4) 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.

(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 instances of misconduct used to substantiate their pattern of misconduct were due to severe mental health issues. The applicant's condition was undiagnosed and untreated at the time of the misconduct. The applicant provided a Department Of Veterans Affairs letter reflecting a service-connected disability compensation of 100 percent and a medical diagnosis. The AMHRR includes a Report of Mental Status Evaluation, 3 August 2012, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in administrative proceedings. The evaluation included a diagnosis. 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? **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, Depression, Bipolar Disorder.

(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 Depression. The applicant is diagnosed and service connected by the VA for Bipolar Disorder. Service connection establishes that the applicant's Bipolar Disorder existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of BH conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder and Depression. The applicant is diagnosed and service connected by the VA for Bipolar Disorder. Bipolar Disorder is a serious BH condition that impacts mood, sleep, behavior and overall daily functioning. Given the nexus between Bipolar Disorder and disrupted sleep, being derelict in the performance of duties by willfully failing to stay awake during a law enforcement shift is mitigated. Given the nexus between Bipolar Disorder, Depression, avoidance, and decreased motivation, the FTRs are mitigated. And the nexus between Bipolar Disorder, impulsivity, and agitation, mitigates the disrespect and leaving the appointed place of duty. And while Bipolar Disorder can have a nexus with excessive spending, there is no evidence that the applicant's Bipolar Disorder contributed to using a government travel card for personal use. On the contrary, the record reveals the applicant's own admission that he consciously made the choice to use the travel card for personal use. And there is no natural sequela between an Adjustment Disorder or Depression and using a government travel card for personal use since these conditions do not interfere with the ability to distinguish between right and wrong and act in accordance with the right. Therefore, using a government travel card for personal use is not mitigated.

(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 Depression and Bipolar Disorder outweighed willfully failing to stay awake during their law enforcement shift, FTRs, and disrespect towards an NCO. However, the applicant's depression, bipolar disorder, and adjustment disorder did not mitigate wrongfully using the government travel charge card for personal use basis for separation. The Board determined that the remaining unmitigated misconduct did not negate the applicant's meritorious service required for an Honorable Discharge.

b. Response to Contention(s): The applicant contends instances of misconduct used to substantiate their pattern of misconduct were due to severe mental health issues. The applicant's condition was undiagnosed and untreated at the time of the misconduct. The Board considered this contention and determined the applicant's Bipolar Disorder and Depression mitigate the willfully failing to stay awake during their law enforcement shift, FTRs, and disrespect towards an NCO, however there is remaining unmitigated misconduct of wrongfully using the government travel charge card for personal use, in which the Board determined did not negate meritorious service. The Board voted to change the narrative reason/SPD code to Misconduct (Minor Infractions)/JKN.

c. The Board, based on the applicant's Bipolar disorder, depression, length and quality of service outweighing the applicant's willfully failing to stay awake during their law enforcement shift, FTRs, disrespect towards an NCO, and wrongfully using the government travel charge card for personal use basis for separation, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for

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separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service and reentry eligibility (RE) code were proper and equitable and voted not to change them. The RE code was proper and equitable due to applicant's BH diagnoses 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 determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable; therefore, no further relief is available.

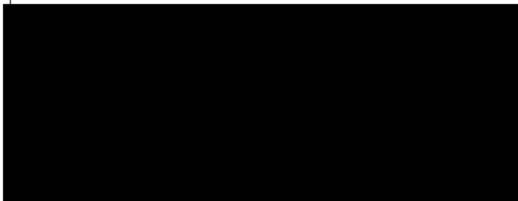
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change, due to applicant's BH diagnoses warranting consideration prior to reentry of military service.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- 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:**

7/5/2024  


**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