

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, having been wrongfully discharged after serving three and a half years of a four-year enlistment term; the applicant was not treated properly by the unit during the separation. The applicant is now being treated for PTSD at the Atlanta VA Medical Center and is completely disabled and unemployable because of the mental illness suffered from the combat tour in Afghanistan, from 19 July 2003 to 4 May 2004. The applicant should have been medically discharged with an honorable characterization of service.

b. **Board Type and Decision:** In a records review conducted on 15 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable, partially based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's FTR, DUI, and drunk on duty offenses and the applicant's length of service, with combat, outweighing the criminal mischief offense. 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:** 12 April 2006

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 30 March 2006

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

On 17 June 2005, the applicant received a Company Grade Article 15 for being disrespectful in language and deportment towards a noncommissioned officer;

on 19 August 2005, the applicant received a Field Grade Article 15 for two failures to be at the appointed place of duty, disobeying a noncommissioned officer, and violating a general

regulation by having a blood alcohol level of .05 grams of alcohol per 100 milliliter of blood or greater;

on 4 January 2006, the applicant was counseled because of being detained by the Military Police and charged with criminal mischief for breaking a window at the friend's residence; and

on 17 January 2006, the applicant received a supplementary action under Article 15 for driving while intoxicated.

The applicant's behavior was not acceptable and not tolerated by the unit or the Army.

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

(4) Legal Consultation Date: 30 March 2006

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 7 April 2006 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 13 November 2002 / 4 years

b. Age at Enlistment / Education / GT Score: 33 / High School Graduate / 88

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42A10, Human Resources Specialist / 3 years, 5 months, 9 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Kuwait/Iraq (3 July 2003 – 6 May 2004)

f. Awards and Decorations: NDSM, GWOTEM, GWOTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Four Developmental Counseling Forms for being insubordinate towards an NCO, driving under the influence of alcohol, being detained by the military police for criminal mischief, and driving while intoxicated with a suspended license.

Military Police Report, 17 October 2004, reflects the applicant was apprehended for driving while intoxicated (off post).

Military Police Report, 5 February 2005, reflects the applicant was apprehended for aggravated unlicensed operation of a motor vehicle in the 2nd degree (off post).

CG Article 15, 17 June 2005, for being disrespectful in language and deportment towards an NCO on 3 June 2005. The punishment consisted of a reduction to E-3 and extra duty for 14 days.

FG Article 15, 16 August 2005, for failing to go at the time prescribed to the appointed place of duty on two separate occasions on 14 July 2005, for disobeying an NCO on 14 July 2005 and

violating a lawful general regulation on 14 July 2005. The punishment consisted of a reduction to E-2; forfeiture of \$692 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Military Police Report, 6 January 2006, reflects the applicant was apprehended for: drunken driving (on post).

Military Police Blotter, undated, reflects the applicant was apprehended for Criminal Mischief, 4th degree (off post) and issued a ticket to appear in a civilian court on 18 January 2006.

Record Of Supplementary Action Under Article 15, UCMJ, 17 January 2006, reflects the suspended portion of the punishment imposed on 16 August 2005, was vacated for violating Article 111, UCMJ, by being physically in control of a passenger care while drunk on 6 January 2006.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Atlanta VA Medical Center letters, 30 March 2011 and 20 October 2011, rendered by a Staff Psychiatrist, reflect the applicant was being treated in the Trauma Recovery Program.

Atlanta VA Medical Center, 9 February 2015, rendered by a Staff Psychiatrist, reflects the applicant was being treated as a patient.

(2) AMHRR Listed: Report of Medical History, 13 February 2006, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: The applicant has noted multiple problems and has not sought medical attention.

Report of Medical Examination, 28 February 2006, the examining medical physician noted in the summary of defects and diagnoses section the applicant's medical conditions.

Report of Mental Status Evaluation, 16 March 2006, reflects the applicant was psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The form reflects 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 293; DD Form 214; six Atlanta VA Medical Center letters; VA decision letter; Social Security Administration letter; PTSD certificate; three Psychiatrist letters; and QTC letter.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when

considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10, United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(6) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(7) Paragraph 14-12b, 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 narrative reason for the discharge needs to be changed to disability. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." 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 being wrongfully discharged. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends not being treated properly during separation proceedings from the unit. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant sought assistance or reported the mistreatment.

The applicant contends being diagnosed and receiving treatment for PTSD by the VA. The applicant provided several medical documents indicating diagnoses and treatment. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 16 March 2006, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE was considered by the separation authority.

The applicant contends the discharge should have been for medical reasons. Army Regulation 635-200, Chapter 14-2c, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

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: Depression, Post Traumatic Stress 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 Depression. The applicant is also 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 actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's Depression and PTSD partially mitigate the applicant's offenses. Given the nexus

between PTSD, Depression, self-medicating with substances, and avoidance, the applicant's FTRs, having a positive blood alcohol level while on duty, and DUI are mitigated. The disrespect and disobeying an NCO are also mitigated due to the nexus with PTSD and difficulty with authority. The remaining misconduct of criminal mischief for breaking a window at a friend's residence is not mitigated due to no natural sequela with PTSD or Depression since neither condition interferes with the ability to distinguish between right and wrong and act in accordance with the right.

(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 outweighed the applicant's FTR, DUI, and drunk on duty offenses. The Board found that he applicant's length of service, with combat, outweighing the remaining medically unmitigated misconduct of criminal mischief.

b. Response to Contention(s):

(1) The applicant contends being diagnosed and receiving treatment for PTSD by the VA. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's FTR, DUI, and drunk on duty offenses. The Board found that the applicant's remaining unmitigated misconduct of breaking a window was not of a serious nature to negate meritorious service. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the discharge should have been for medical reasons and the narrative reason should be changed to disability. The Board determined that the applicant's request for a medical discharge does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(3) The applicant contends being wrongfully discharged. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's FTR, DUI, and drunk on duty offenses. The Board found that he applicant's length of service, with combat, outweighing the remaining medically unmitigated misconduct of criminal mischief.

(4) The applicant was not treated properly during separation proceedings from the unit. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's FTR, DUI, and drunk on duty offenses. The Board found that he applicant's length of service, with combat, outweighing the remaining medically unmitigated misconduct of criminal mischief.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's FTR, DUI, and drunk on duty offenses and the applicant's length of service, with combat, outweighing the remaining medically unmitigated misconduct of criminal mischief. 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 Post Traumatic Stress Disorder outweighed the applicant’s FTR, DUI, and drunk on duty offenses and the applicant’s length of service, with combat outweighed the remaining medically unmitigated misconduct of criminal mischief. 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.

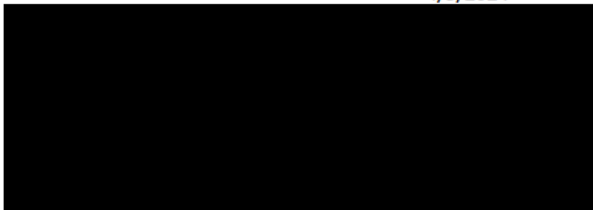
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation and the applicant’s behavioral health conditions need to be reviewed prior to any reentry into military service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

4/5/2024



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