

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, prior to 2006, the records show no serious disciplinary actions. The applicant believes "acting out" the behavior was caused by PTSD. When the applicant met with a counselor in Iraq, the counselor simply spoke of how the spouse had left the counselor; therefore, there was no assistance. The applicant returned home, feeling abandoned and alone, which led to drinking heavily and to a path of self-destruction as the applicant was disobeying the NCOs. The NCOs claimed to have helped the applicant, but they only continued to punish. The applicant regrets everything, and it was not the applicant's character. The records reflect on the PTSD and a statement on being betrayed by the peers. Since leaving the Army, the applicant was diagnosed with PTSD. The board should consider the applicant's commitment and service to the great country.

b. **Board Type and Decision:** In a records review conducted on 1 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder mitigating the applicant's disobeying a lawful order offenses and the applicant's length and quality of service, to include combat service, outweighing the applicant's theft 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 (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 11 May 2007

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 24 April 2007

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

The applicant stole \$73.50 worth of cough syrup from AAFES.

The applicant also disobeyed lawful orders from both the Commander and SSG I.

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

(4) Legal Consultation Date: Undated

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 2 May 2007 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 November 2003 / 5 years

b. Age at Enlistment / Education / GT Score: 18 / GED / 99

c. Highest Grade Achieved / MOS / Total Service: E-4 / 31B10, Military Police / 3 years, 5 months, 22 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (26 April 2004 – 25 April 2005); Iraq (14 November 2005 – 2 November 2006)

f. Awards and Decorations: ARCOM, AAM, NDSM, ACM, GWOTSM, HSM, ICM, ASR, OSR-2

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: 18 Developmental Counseling Forms for acts of misconduct: unprofessional and unacceptable conduct, missing work, not informing of statuses, tampering with a urine sample, shoplifting from the AAFES, violating Army body piercing and uniform policies, failing to maintain accountability of a sensitive item, failing to go at the time prescribed to the appointed place of duty, failing an APFT test, violating an order or regulation, substandard performance, revocation of pass privileges, abusing cough syrup, being insubordinate and involved in a physical altercation, and dereliction of duties.

Memorandum of Reprimand, 10 January 2007, reflects the applicant failed to report to the 0430 Guard Mount on 28 November 2006 and the command wasted many man hours searching for the applicant.

Unit Urinalysis Ledger of ASAP, 29 January 2007, reflects the applicant was tested during a Probable Cause (PO) urinalysis testing, conducted on 29 January 2007.

Military Police Desk Blotter, 28 February 2007, reflects the applicant was apprehended for shoplifting AAFES property (on post) on 26 February 2007.

FG Article 15, 29 March 2007, for disobeying a superior commissioned officer on 29 January 2007 by not providing a valid urine sample; disobeying an NCO on 5 February 2006 by leaving Fort Polk without proper authority; and stealing cough syrup, a value of \$73.50, property of the AFFES on 26 February 2007. The punishment consisted of a reduction to E-2, and extra duty and restriction for 45 days.

Report of Mental Status Evaluation, 29 March 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings and was mentally responsible. The MSE did not reveal any psychiatric conditions or symptoms which impaired the applicant's ability to participate in the separation proceedings and was recommended for an expeditious administrative separation.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs benefits letter, 23 December 2014, reflecting the applicant was rated 30 percent disability for other specified trauma and stressor related disorder (previously PTSD (also claimed as anxiety, depression, memory loss, and sleep disturbance/insomnia).

(2) AMHRR Listed: Report of Mental Status Evaluation, 26 February 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings and was mentally responsible. The MSE did not reveal any psychiatric conditions or symptoms which impaired the applicant's ability to participate in the separation proceedings and was recommended for an expeditious administrative separation. The Primary Psychiatric diagnosis was Dextromethorphan Abuse, and the Social Stressors were Redeployment Stressors.

Report of Medical History, 13 March 2007, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Is currently being counseled by psychiatry for PTSD, and has PTSD, sleep problems, and anger management problems.

5. APPLICANT-PROVIDED EVIDENCE: Online application; DD Form 214; VA benefits letter; and case separation packet.

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 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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

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 non-waiverable 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 behavior leading to the discharge was caused by PTSD; upon returning home, the applicant felt abandoned and alone, which led to drinking and a path to self-destruction by disobeying the NCOs; and the applicant was diagnosed with PTSD. The applicant provided a VA benefits letter reflecting the applicant was rated 30 percent disability for other specified trauma and stressor related disorder (previously PTSD (also claimed as anxiety, depression, memory loss, and sleep disturbance/insomnia)). The applicant's AMHRR contains documentation which supports a diagnosis of in-service PTSD, sleep problems, and anger management problems. The record shows the applicant underwent a mental status evaluation (MSE) on 26 February 2007, which indicates the applicant was mentally responsible. The MSE was considered by the separation authority.

The applicant contends the NCOs claimed to have helped, but instead, continued to punish the applicant. The applicant did not submit any evidence, other than the applicant's statement, to

support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the commitment and service to the country should be considered.

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, Major 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 an Adjustment Disorder and Major 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 BH conditions provide partial mitigation for the basis of separation. Given the nexus between PTSD and avoidance, disobeying a lawful order not to leave Fort Polk is mitigated. However, there is no natural sequela between an Adjustment Disorder, Major Depression, or PTSD and theft since none of the conditions interfere 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? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Major Depression, or Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated theft offense.

b. Response to Contention(s):

(1) The applicant contends the behavior leading to the discharge was caused by PTSD; upon returning home, the applicant felt abandoned and alone, which led to drinking and a path to self-destruction by disobeying the NCOs; and the applicant was diagnosed with PTSD. The Board liberally considered this contention and determined that the applicant's PTSD mitigates the disobeying of a lawful order, but did not support a conclusion that the applicant's Adjustment Disorder, Major Depression, or Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated theft offense. However, the Board found that the applicant's service record did outweigh the theft offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the NCOs claimed to have helped, but instead, continued to punish the applicant. The Board considered this contention during proceedings but ultimately did not address it due to an upgrade already being granted as discussed in 9b(1) above.

(3) The applicant contends the commitment and service to the country should be considered. The Board determined that the applicant's service record did outweigh the medically unmitigated theft offense.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder mitigating the applicant's disobeying a lawful order offenses and the applicant's length and quality of service, to include combat service, outweighing the applicant's theft 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.

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 mitigated the applicant's disobeying a lawful order offenses and the applicant's length and quality of service, to include combat service, outweighed the applicant's theft 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.

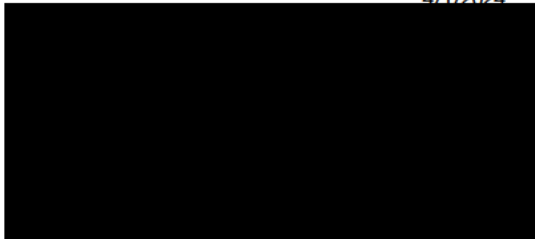
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

4/1/2024



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