

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, the involuntary separation was inequitable because it was based on a single isolated incident over the entire service. The applicant was suffering from depression eight months after joining the military and was having difficulty adjusting to military life. Regardless, the applicant completed the tasks, left on time, and followed all laws and regulations. The applicant sought treatment for depression and was treated with medications. Despite the improved health, the applicant was informed of the discharge proceedings by the chain of command. The discharge narrative should be updated to reflect the diagnosed adjustment disorder. The applicant is now a veteran who is 30 percent disabled.

b. **Board Type and Decision:** In a records review conducted on 9 January 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's Chronic Adjustment Disorder mitigated applicant's drinking in excess, resulting in being drunk on duty, insubordination, and disobeying a lawful order. 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 voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's Chronic Adjustment Disorder diagnosis 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 / General (Under Honorable Conditions)

b. **Date of Discharge:** 14 May 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 28 April 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: Although, the intention to recommend retention if it is combined with reclassification into another military occupation specialty, the applicant's actions have made the applicant ineffective as a military police officer.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001321

On 30 November 2008, the applicant received a Company Grade Article 15 for being incapacitated for the proper performance of the duties because of previous overindulgence of intoxicating liquor.

On 20 February 2009, the applicant reported to duty and drew a weapon while still under the influence of alcohol.

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

(4) Legal Consultation Date: 28 April 2009

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 5 May 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 3 January 2008 / 5 years

b. Age at Enlistment / Education / GT Score: 20 / GED / 94

c. Highest Grade Achieved / MOS / Total Service: E-2 / 31B10, Military Police / 1 year, 4 months, 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany / None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Four Developmental Counseling Forms for being drunk on duty x2, disrespecting a superior commissioned officer, being insubordinate, disobeying a lawful order, and being recommended for a summary court-martial.

CG Article 15, 12 January 2009, for wrongful previous overindulgence in intoxicating liquor or drugs causing incapacitated for the proper performance of the duties on 30 November 2008. The punishment consisted of a reduction to E-1; forfeiture of \$250 pay (suspended); and extra duty and restriction for 14 days.

Report of Mental Status Evaluation, 24 April 2009, reflects the applicant was 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. There were no psychiatric conditions, which would contravene the separation proceedings.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) **AMHRR Listed:** Report of Medical History, 24 March 2009, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Seen by Mental Health for Adjustment Disorder, worry, stress, difficulty sleeping; history of repeated offenses; and completed the January to March 2009 ASAP.

Report of Medical Examination, 24 March 2009, the examining medical physician noted in the comments section: History of Anxiety, and Adjustment Disorder and Anxiety and history of ETOH abuse, Depression.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293 and DD Form 214.

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

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

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

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

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

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

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

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

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

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

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

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

(6) Paragraph 14-12b addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable and a narrative reason change.

The applicant contends the narrative reason for the discharge needs to be changed. 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 the involuntary separation was inequitable because it was based on a single isolated incident over the entire service. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends suffering from depression and was having difficulty adjusting to military life and is now a veteran who is 30 percent disabled. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR contains documentation which supports a diagnosis of in-service depression. The record shows the applicant underwent a mental status evaluation (MSE) on 24 April 2009, which indicates the applicant was mentally responsible. The MSE was considered by the separation authority.

The applicant contends good service by completing all tasks, leaving work on time, and following all laws and regulations.

The applicant contends despite improved health, the applicant was informed of the separation proceedings by the chain of command. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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: Chronic Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 30 percent service connected (SC) for Chronic Adjustment Disorder by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is 30 percent SC with Chronic Adjustment Disorder, by the VA, with onset in the military. Records also show the applicant was diagnosed, in service, with Adjustment Disorder with Disturbance in Emotion and Conduct - with noted subthreshold PTSD symptoms related to childhood sexual abuse. Additionally, applicant has history of Gender Dysphoria which was present during service and resulted in reported depression and anxiety symptoms, due to having to hide applicant's gender identity. Chronic Adjustment Disorder, history of childhood sexual abuse, and Gender Dysphoria are each associated with comorbid substance use to self-medicated symptoms. While the childhood sexual abuse and gender dysphoria EPTS, it is clear they persisted during services and very likely were exacerbated by service, resulting in a Chronic Adjustment Disorder Diagnosis. As such, there is a nexus between the applicant's misconduct characterized by drinking in excess, resulting in being drunk on duty, and applicant's SC diagnosis conditions that EPTS, such that the misconduct is mitigated. Misconduct characterized by insubordination and disobeying a lawful order is also mitigated given the misconduct occurred while the applicant was in an inebriated state.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence before the Board, including the Board Medical Advisor's opine, the ADRB determined that the applicants EPTMS and Chronic Adjustment Disorder outweighed the basis of separation - being incapacitated for the proper performance of the duties because of previous overindulgence of intoxicating liquor and reported to duty and drew a weapon while still under the influence of alcohol.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined the applicant's narrative reason for discharge is inequitable due to applicant's Chronic Adjustment Disorder mitigating applicant's being incapacitated for the proper performance of the duties because of previous overindulgence of intoxicating liquor and reported to duty and drew a weapon while still under the influence of alcohol basis for separation.

(2) The applicant contends the involuntary separation was inequitable because it was based on a single isolated incident over the entire service. 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 Chronic Adjustment Disorder outweighing the applicant's being incapacitated for the proper performance of the duties because of previous overindulgence of

intoxicating liquor and reported to duty and drew a weapon while still under the influence of alcohol basis for separation.

(3) The applicant contends suffering from depression and was having difficulty adjusting to military life and is now a veteran who is 30 percent disabled. 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 Chronic Adjustment Disorder outweighing the applicant's being incapacitated for the proper performance of the duties because of previous overindulgence of intoxicating liquor and reported to duty and drew a weapon while still under the influence of alcohol basis for separation.

(4) The applicant contends good service by completing all tasks, leaving work on time, and following all laws and regulations. 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 Chronic Adjustment Disorder outweighing the applicant's being incapacitated for the proper performance of the duties because of previous overindulgence of intoxicating liquor and reported to duty and drew a weapon while still under the influence of alcohol basis for separation.

(5) The applicant contends despite improved health, the applicant was informed of the separation proceedings by the chain of command. 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 Chronic Adjustment Disorder outweighing the applicant's being incapacitated for the proper performance of the duties because of previous overindulgence of intoxicating liquor and reported to duty and drew a weapon while still under the influence of alcohol basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's Chronic Adjustment Disorder mitigated applicant's being incapacitated for the proper performance of the duties because of previous overindulgence of intoxicating liquor and reported to duty and drew a weapon while still under the influence of alcohol basis for separation. 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 voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's Chronic Adjustment Disorder diagnosis 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 voted to change the applicant's characterization of service to Honorable because the applicant's Chronic Adjustment Disorder mitigated the applicant's misconduct of being incapacitated for the proper performance of the duties because of previous overindulgence of intoxicating liquor and reported to duty and drew a weapon while still under the influence of alcohol basis for separation. 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001321

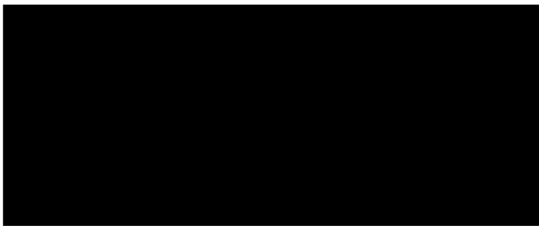
(3) The RE code will not change due to applicant's Chronic Adjustment Disorder diagnosis warranting consideration prior to reentry of military service.

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, paragraph 14-12a

Authenticating Official:

4/30/2024



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