

**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, being handled differently from other Soldiers who had committed comparable DUIs, who were allowed to continue with their careers. The applicant made a stupid error with one month left on their enlistment contract. The applicant did not realize they were over the legal limit when they drove. Prior to the DUI incident, the applicant sought treatment for depression because of stress caused by their parent's health issues and their spouse's absence from home for training and deployments. Prior to this incident, which resulted in their discharge, the applicant was a good Soldier who had never been in trouble. The applicant has maintained their current employment since their discharge and lives a very healthy lifestyle and has participated in marathons. The applicant would like to advance in their painting career but is prevented because of their current discharge.

b. **Board Type and Decision:** In a records review conducted on 18 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Adjustment Disorder, Depression, PTSD, MST, and IPV outweighing the applicant's DUI 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 the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted not to change the reentry eligibility (RE) code due to applicant's PTSD 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 8 November 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 11 September 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: Driving Under the Influence on 1 July 2012.

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

(4) **Legal Consultation Date:** 1 October 2012

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

(6) **Separation Decision Date / Characterization:** 23 October 2012 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 19 January 2010 / 3 years

b. **Age at Enlistment / Education / GT Score:** 30 / High School Graduate / 102

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92R1P, Parachute Rigger / 2 years, 9 months, 20 days

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

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** AAM, NDSM, GWOTSM, ASR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 1 July 2012, reflects the applicant was apprehended for: Driving Under the Influence (on post).

FG Article 15, 28 August 2012, for on or about, 1 July 2012, physically control a vehicle, to wit: a passenger truck, while drunk. The punishment consisted of a reduction to E-1; forfeiture of \$372 pay per month for two months and extra duty for 45 days; restriction for 45 days (suspended).

General Officer Memorandum Of Reprimand, 17 August 2012, reflects the applicant was driving while impaired on 1 July 2012, a Fort Benning Military Police apprehended the applicant for operating a motor vehicle while under the influence of alcohol. A military police officer observed the applicant drive into a parking lot and stumbling from their vehicle. Upon contact, the officer detected a strong odor of an alcoholic beverage emanating from the applicant. The officer administered a standardized field sobriety test, which the applicant failed. The applicant was advised of the Georgia Implied Consent Notice and administered a portable breathalyzer test which resulted in a reading of .230 grams per 210 liters breath alcohol content, exceeding the legal limit of .08g/210L.

Three Developmental Counseling Forms, for driving under influence and separation.

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

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

(1) **Applicant provided:** Memorandum, Army Substance Abuse Program, 28 August 2012, reflects the applicant had attended all scheduled sessions, and worked diligently on the emotional issues driving the applicant's addiction. The counselor believed the applicant's actions of the past did not speak to the person or Soldier. The counselor was pleased with the

applicant's progress, commitment, and most of all their ability to be self-critical and honest. The applicant was exceptionally remorseful for their actions and had accepted full accountability and was working on appropriate countermeasure to make sure this never happened again. The counselor was extraordinarily pleased at the applicant's progress at this time and their prognosis was clinically seen as excellent.

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 13 August 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings. The applicant has been screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with: Adjustment disorder with depressed mood, Alcohol Dependence. The applicant met psychiatric criteria for expeditious administrative separation IAW 5-17. The applicant manifests a long-standing, chronic pattern of difficulty adjusting (i.e., Adjustment Disorder) as characterized by at least two separate instances of maladaptive reaction to identifiable stressful life events. The applicant had been screened for substance use disorders (i.e., alcohol and drugs). Findings: Alcohol Dependence.

Report of Medical Examination and History, 14 August 2012, the examining medical physician noted in the comments section: Alcohol use and depression.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; self-authored letter; six letters of support; Memorandum, 12 October 2012; Soldier Marathon 218.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has maintained employment and lives a very healthy lifestyle and has participated in marathons.

**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.

(7) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 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 prior to the DUI incident, the applicant sought treatment for depression because of stress caused by their parent's health issues and their spouse's absence from home for training and deployments. The applicant provided a Memorandum, Army Substance Abuse Program, 28 August 2012, the applicant had attended all scheduled sessions, and worked diligently on the emotional issues driving the applicant's addiction. The counselor believed the applicant's actions of the past did not speak to the person or Soldier. The counselor was pleased with the applicant's progress, commitment, and most of all their ability to be self-critical and honest. The applicant was exceptionally remorseful for their actions and had accepted full accountability and was working on appropriate countermeasure to make sure it would never happen again. The counselor was extraordinarily pleased at the applicant's progress at the time and their prognosis was clinically seen as excellent. The AMHRR includes a Report of

Mental Status Evaluation (MSE), 13 August 2012, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; The applicant has been screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with: Adjustment disorder with depressed mood, Alcohol Dependence. Also, a Report of Medical Examination and History, 14 August 2012, the examining medical physician noted in the comments section: Alcohol use and depression. The MSE and Medical examination were considered by the separation authority.

The applicant contends being handled differently from other Soldiers who had committed comparable DUIs and were allowed to continue with their careers. Applicable regulations state each case must be decided on an individual basis, considering the unique facts and circumstances of the case.

The applicant contends good service.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends the event which led to the discharge from the Army was an isolated incident. 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 third-party statements provided with the application reflect on the applicant's good character and on how hard the applicant worked at being a good Soldier.

The applicant contends obtaining employment; lives a very healthy lifestyle and has participated in marathons. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

## **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, PTSD, MST, IPV.

(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 service connected by the VA for PTSD related to MST. Service connection establishes that the applicant's PTSD and MST existed during military service. The VA medical record also reveals an in-service history of IPV.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple BH conditions that provide mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder and Depression. The applicant is also service connected by the VA for PTSD related to MST, and the VA medical record reveals an in-service history of IPV. Given the nexus between Depression, PTSD, MST, IPV, and self-medicating with substances, the DUI that led to the applicant's separation is mitigated. Given the applicant's MST, an upgrade to Secretarial Authority is recommended.

(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 Adjustment Disorder, Depression, PTSD, MST, and IPV outweighed the DUI basis for separation for the aforementioned reason(s).

**b. Response to Contention(s):**

(1) The applicant contends prior to the DUI incident, the applicant sought treatment for depression because of stress caused by their parent's health issues and their spouse's absence from home for training and deployments. 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 Adjustment Disorder, Depression, PTSD, MST, and IPV fully outweighing the applicant's DUI basis for separation.

(2) The applicant contends being handled differently from other Soldiers who had committed comparable DUIs and were allowed to continue with their careers. 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 Adjustment Disorder, Depression, PTSD, MST, and IPV fully outweighing the applicant's DUI basis for separation.

(3) The applicant contends good 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 Adjustment Disorder, Depression, PTSD, MST, and IPV fully outweighing the applicant's DUI basis for separation.

(4) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(5) The applicant contends the event which led to the discharge from the Army was an isolated incident. 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 Adjustment Disorder, Depression, PTSD, MST, and IPV fully outweighing the applicant's DUI basis for separation.

(6) The applicant contends obtaining employment; lives a very healthy lifestyle and has participated in marathons. 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 Adjustment Disorder, Depression, PTSD, MST, and IPV fully outweighing the applicant's DUI basis for separation.

**c.** The Board determined the discharge is inequitable based on the applicant's Adjustment Disorder, Depression, PTSD, MST, and IPV outweighing the applicant's DUI basis for

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separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted not to change the reentry eligibility (RE) code due to applicant's PTSD 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 Adjustment Disorder, Depression, PTSD, MST, and IPV mitigated the applicant's misconduct of DUI. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The Board voted not to change the reentry eligibility (RE) code due to applicant's PTSD 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:** Secretarial Authority / JFF
- d. Change RE Code to:** No Change
- e. Change Authority to:** AR 635-200, Chapter 15

**Authenticating Official:**

5/15/2024



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