

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, serving in the Army honorably for two years and seven months which included a combat tour in Iraq from 1 December 2008 to 17 November 2009. Upon returning home after the deployment, the applicant did not fully understand how to cope with their issues and experiences during the deployment. The applicant unfortunately began using alcohol excessively to cope with these issues. The applicant is not stating using alcohol was the right way of doing things; however, the applicant believes if they had been offered more in the way of mental health and substance abuse counseling, they would have finished the first enlistment with an honorable discharge.

b. **Board Type and Decision:** In a records review conducted on 11 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service, including combat service in Iraq, outweighing the applicant's FTR and alcohol-related offenses. 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:** 30 December 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 17 November 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant had multiple incidents of misconduct involving alcohol in the past six months. On 8 March 2010, the applicant was arrested for driving while under the influence of alcohol. On 14 August 2010, the applicant received a Field Grade Article 15 for being found drunk on duty.

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

(4) **Legal Consultation Date:** 23 November 2010

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

(6) **Separation Decision Date / Characterization:** 7 December 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 20 February 2008 / 4 years, 19 weeks

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 113

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B1P, Infantryman / 2 years, 10 months, 4 days

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

e. **Overseas Service / Combat Service:** SWA / Iraq (1 December 2008 – 17 November 2009)

f. **Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM-CS, ASR, OSR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Headquarter, XVIII Airborne Corps, SIR, 9 March 2010, reflects at approximately 08 2330 MAR10, the applicant left the Barracks after consuming alcohol with the intent of driving a person the applicant had in the barracks home to Lillington. At the person's house, the applicant consumed more alcohol. At approximately 09 0125MAR10, the applicant was stopped by a Harnett Co Sheriff's deputy due to excess speed. The officer asked if the applicant had consumed any alcohol during the evening. The applicant stated they had consumed alcohol and at this time was given a breathalyzer. The applicant's BC at this time was .10. The applicant was taken into custody and booked in the Harnett Co Correctional Facility. While the applicant was being booked the applicant was given another breathalyzer blowing a .08 and a .09 BAC

General Officer Memorandum of Reprimand, 18 March 2010, reflects on 8 March 2010, the applicant was arrested for driving while impaired after being stopped for speeding. A breathalyzer test administered to the applicant determined the blood alcohol content to be .09 percent which is over the legal limit authorized to operate a motor vehicle in the State of North Carolina.

CG Article 15, 26 July 2010, for failing to go at the prescribed time to the appointed place of duty on or about 15 July 2010. The punishment consisted of a reduction to E-3; forfeiture of \$423 pay per month for one month; and extra duty and restriction for 14 days.

FG Article 15, 16 August 2010, for being found drunk while on duty as a rifleman on or about 14 August 2010. The punishment consisted of a reduction to E-1; forfeiture of \$723 pay per month for two months; and extra duty and restriction for 45 days.

Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Confined by Civil Authorities (CCA)" effective

9 October 2010; and
From "CCA" to "PDY," effective 16 October 2010.

Three Developmental Counseling Forms, for the intent to discharge the applicant from the Army under AR 635-200, Chapter 14-12b; disobeying a direct order, failure to report, missing formation and being drunk on duty.

i. Lost Time / Mode of Return: 6 days (CCA, 9 October 2010 – 15 October 2010) / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Bath VA Medical Center letter, 25 March 2015, reflects the applicant was currently a patient at the Bath VA Medical Center. The applicant was admitted to the facility on 23 January 2015 and was being treated for a diagnosis of depression, NOS and Alcohol Dependence.

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), 1 November 2010. reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The applicant was screened by the Division Behavioral Health Clinic by a licensed clinical psychologist. Upon review of available clinical information and according to MEDCOM AR 10-040 the applicant does not exhibit symptoms of PTSD or mTBI from military deployment. The applicant was diagnosed with Axis I: Alcohol Dependence.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; Bath VA Medical Center 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 14-3 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 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends good service, including a combat tour. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends using alcohol to cope with their issues and experiences during a deployment. The applicant believes if they had been offered more in the way of mental health and substance abuse counseling or treatment post-deployment, they would have continued to be able to be a productive Soldier and continue their career. The applicant provided Bath VA Medical Center letter, 25 March 2015, which reflects the applicant was currently a patient at the Bath VA Medical Center. The applicant was admitted to the facility on 23 January 2015 and was being treated for a diagnosis of depression, NOS and Alcohol Dependence. The AMHRR

contains Report of Behavioral Health Evaluation (BHE), 1 November 2010, which reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The applicant was screened by the Division Behavioral Health Clinic by a licensed clinical psychologist. Upon review of available clinical information and according to MEDCOM AR 10-040 the applicant does not exhibit symptoms of PTSD or mTBI from military deployment. The applicant was diagnosed with Axis I: Alcohol Dependence. The BHE was considered by the separation authority. Army Regulation 635-200, paragraph 1-17d(2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality Soldier. Army Regulation 600-85, paragraph 7-3 entitled voluntary (self) identification and referral, states voluntary (self) ID is the most desirable method of identifying substance use disorder. The individual whose performance, social conduct, interpersonal relations, or health becomes impaired because of these problems has the personal obligation to seek help. Soldiers seeking self-referral for problematic substance use may access services through BH services for a SUD evaluation.

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 NOS.

(2) Did the condition exist or experience occur during military service? **No.** The Board's Medical Advisor found no evidence of any mitigating BH conditions existing during military service. The sole in service diagnosis was Alcohol Dependence, which is not a mitigating condition in the absence of another BH disorder. There is evidence that the applicant was diagnosed with Depression, NOS by the VA five years after the applicant's discharge from the Army, which is a potentially mitigating condition. However, there is no evidence that the applicant's Depression, NOS existed at the time of military service to include no service connection by the VA. Accordingly, there is no medical mitigation for the misconduct that led to this applicant's separation.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is no evidence of any mitigating BH conditions existing during military service. The sole in service diagnosis was Alcohol Dependence, which is not a mitigating condition in the absence of another BH disorder. There is evidence that the applicant was diagnosed with Depression, NOS by the VA five years after the applicant's discharge from the Army, which is a potentially mitigating condition. However, there is no evidence that the applicant's Depression, NOS existed at the time of military service to include no service connection by the VA. Accordingly, there is no medical mitigation for the misconduct that led to this applicant's separation.

(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 Depression outweighed the medically unmitigated FTR and alcohol-related offenses.

b. Response to Contention(s):

(1) The applicant contends good service, including a combat tour. The Board considered this contention and determined that the applicant's length of service, including combat service in Iraq, outweighed the applicant's FTR and alcohol-related offenses. The Board also noted that the applicant did not have misconduct issues prior to deployment. Therefore, a discharge upgrade is warranted.

(2) The applicant contends using alcohol to cope with their issues and experiences during a deployment. The applicant believes if the applicant had been offered more in the way of mental health and substance abuse counseling or treatment post-deployment, the applicant would have continued to be able to be a productive Soldier and continue in the applicant's military career. The Board liberally considered this contention, but Board determined that the available evidence did not support a conclusion that the applicant's Depression or any other potential behavioral health condition outweighed the medically unmitigated FTR and alcohol-related offenses. However, the Board did note that the applicant's misconduct took place immediately upon return from deployment and took that into account when voting to upgrade the applicant's discharge.

c. The Board determined the discharge is inequitable based on the applicant's length of service, including combat service in Iraq, outweighing the applicant's FTR and alcohol-related offenses. 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 length of service, including combat service in Iraq, outweighed the applicant's FTR and alcohol-related offenses. 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.

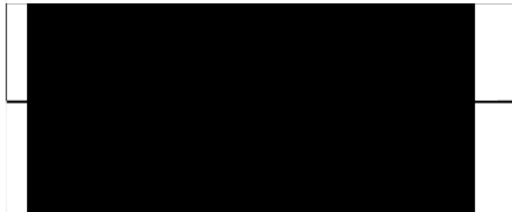
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

2/22/2024



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