

**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, after enlisting on 13 July 2005, the applicant served honorably and was allowed to reenlist or extend the time in service. The Army would not have allowed the applicant to reenlist or extend if the service was not honorable. The applicant realizes the applicant was wrong and did not perform to the standards required of the applicant when discharged. The applicant did serve honorably up to the period.

b. **Board Type and Decision:** In a records review conducted on 9 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, ADHD and sleep-related disorders outweighing the applicant's substandard performance, inability to progress as a Soldier, derelict of duty related to losing issued equipment basis for separation, violating a lawful regulation, and disobeying a lawful order, related to wearing of a tongue ring misconduct. 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 RE code will not change, due to applicant's ADHD and sleep-related disorders diagnoses 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:** Unsatisfactory Performance / AR 635-200, Chapter 13 / JHJ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 12 September 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 3 August 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant showed the inability to perform satisfactory by not progressing as a Soldier. As a result, it was determined the applicant was unqualified for further military service. Specifically, the applicant's job performance was substandard. The applicant was derelict in duty because the applicant lost military issued equipment and failed to maintain proper military appearance. The applicant was barred from reenlistment.

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

**(4) Legal Consultation Date:** On 3 August 2012, the applicant waived legal counsel.

**(5) Administrative Separation Board:** On 3 August 2012, the applicant unconditionally waived consideration of the case before an administrative separation board.

**(6) Separation Decision Date / Characterization:** 27 August 2012 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 6 November 2008 / 5 years

**b. Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 108

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 35F10, Intelligence Analyst / 7 years, 2 months

**d. Prior Service / Characterizations:** RA, 13 July 2005 – 5 November 2008 / HD

**e. Overseas Service / Combat Service:** Alaska, SWA / Iraq (11 August 2006 – 31 October 2007, 31 January 2011 – 6 December 2011)

**f. Awards and Decorations:** ICM-3CS, ARCOM, AAM, AGCM-2, NDSM, GWOTSM, ASR, OSR-3

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Company Grade Article 15, 1 November 2011, for willfully disobeying a lawful order from Staff Sergeant M., a noncommissioned officer (NCO), to stop wearing the tongue ring (22 September 2011); and on two occasions, violating a lawful regulation by wrongfully wearing the tongue ring in military uniform (26 July and 22 September 2011). The punishment consisted of a reduction to E-3; forfeiture of \$542 pay per month for two months (suspended); and extra duty and restriction for 14 days.

Bar to Reenlistment Certificate, 3 November 2011, reflects the applicant was barred from reenlistment for actions resulting in an Article 15, various counseling, and favorable personnel actions being suspended.

Department of Veterans Affairs (VA) Statement in Support of Claim, 31 March 2015, reflecting the applicant applied for educational benefits and was denied because the applicant did not receive an honorable discharge. The Veterans Service Office requested the DD Form 214 or DD Form 215 reflect the applicant served honorably until 2008.

Numerous Developmental Counseling Forms, for but not limited to:

- Being enrolled in the overweight program,
- Achieving satisfactory progress in the weight control program during the monthly weigh-in,
- Violating Army Regulation 670-1, by wearing a tongue ring,
- Substandard performance as the TAC NCO-In-Charge,
- Not being recommended to appear before the E-5 promotion board on multiple occasions,
- Losing plate inserts to the applicant's improved outer tactical vest (IOTV),

Losing the military identification card,  
Duty performance expectations,  
A bar to reenlistment being initiated against the applicant, and  
Pending separation from the Army for unsatisfactory performance.

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

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

**(1) Applicant provided:** Report of Mental Status Evaluation (MSE), 7 June 2012, reflects the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for post-traumatic stress disorder (PTSD) and mild traumatic brain injury (mTBI) with negative results. The applicant was diagnosed with attention deficit disorder.

Report of Medical History, 19 June 2012, the examining medical physician noted in the comments section: Behavioral Health counseling for anxiety, insomnia; discussed self-management, sleep hygiene plan; and diagnosed with sleep apnea.

**(2) AMHRR Listed:** MSE and Report of Medical History as described in previous paragraph 4j(1).

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 149; DD Form 214; VA Statement in Support of Claim; Honorable R. B. letter; National Personnel Records Center letter; and military service record, including 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 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(5) Paragraph 13-8, prescribes for the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

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 "JHJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 13, unsatisfactory performance.

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 good service, including a combat tour.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends the DD Form 214 should be changed to reflect the honorable service from the prior enlistment. The applicant's requested change to the DD Form 214 does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

#### **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: ADHD, Acute Insomnia, Non-organic Sleep Disorder, Sleep Apnea.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant has an in-service diagnosis of ADHD and multiple sleep disorder diagnoses.

(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 does not have a service connected (SC) BH diagnosis and does not appear to assert that the misconduct was related to a BH condition. However, applicant does have a potentially mitigating diagnosis of ADHD that existed prior to service and likely exacerbated by service, and multiple sleep-related disorders (i.e., Hypersomnia, Acute Insomnia, Non-organic Sleep Disorder, and Sleep Apnea). As there is an association with ADHD with failure to follow through on instructions, distractibility, disorganization, losing things necessary for task, and forgetfulness, there is a nexus between the applicant's misconduct characterized by substandard performance, inability to progress as a Soldier, and derelict of duty related to losing issued equipment. While records suggest the applicant's ADHD symptoms were effectively treated beginning in 2005, records do not sufficiently document that the applicant continued using the medication across the period of applicant's career and given a number of AHLTA encounters reflected "no active medication" beginning in 2009, it is likely the applicant discontinued use of the medication at some point, resulting in a return of symptoms. The applicant's various sleep related disorders also likely contributed to issues with disorganization, forgetful, and ability to focus. The applicant's misconduct characterized by violation of a lawful regulation and disobeying a lawful order, related to wearing of a tongue ring, are not natural sequelae of ADHD and not mitigated by the disorder.

(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 ADHD and sleep-related disorders outweighed the substandard performance, inability to progress as a Soldier, and derelict of duty related to losing issued equipment basis for separation. The remaining misconduct, violating a lawful regulation, and disobeying a lawful order, related to wearing of a tongue ring is outweighed by the applicant's length and quality of service, to include combat service.

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

(1) The applicant contends good service, including a combat tour. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(2) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance. However, the Board voted to upgrade the applicant's characterization of service to Honorable for reasons noted in 9a.(4) above.

(3) The applicant contends the DD Form 214 should be changed to reflect the honorable service from the prior enlistment. The Board considered this contention and determined the applicant's characterization of service at the time of separation is based on the applicant's service at the time of separation and the decision of the separation authority.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, ADHD and sleep-related disorders outweighing the applicant's substandard performance, inability to progress as a Soldier, derelict of duty related to losing issued equipment basis for separation. While the violating a lawful regulation, and disobeying a lawful order, related to wearing of a tongue ring portion of misconduct was not mitigated, it did not rise to the level that negated otherwise meritorious service. 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 RE code will not change, due to applicant's ADHD and sleep-related disorders diagnoses warranting consideration prior to reentry of military service.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's ADHD and sleep-related disorders mitigated the applicant's misconduct of substandard performance, inability to progress as a Soldier, derelict of duty related to losing issued equipment basis for separation. While the violating a lawful regulation, and disobeying a lawful order, related to wearing of a tongue ring portion of misconduct was not mitigated, it did not rise to the level that negated otherwise meritorious service. 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.

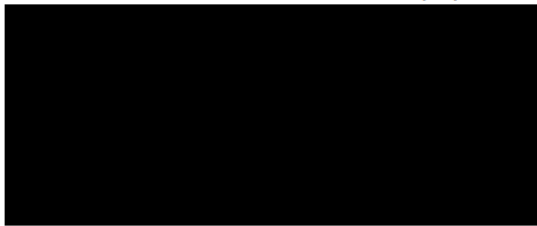
(3) The RE code will not change, due to applicant's ADHD and sleep-related disorders diagnoses warranting consideration prior to reentry of military service.

**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:**

4/29/2024



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