

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 bad conduct. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the records are incomplete and missing foreign war service tour credit. The applicant was deployed with the 101st Airborne Division for operation Iraqi Freedom from March 2003 to February 2004. Upon discharge, all the applicant's records were to be forwarded to Fort Knox, but they nor the applicant received the records. The applicant was unaware of this until recently when the applicant was denied disability benefits for post-traumatic stress disorder (PTSD) upon grounds the applicant did not serve in Iraq. The applicant understands the applicant was court-martialed and lost rank, pay, and an honorable discharge, but believe it is not right to take a Soldier's combat tours. The applicant's Enlisted Record Brief reflects combat deployment, but it is not reflected on the applicant's DD Form 214. The applicant made mistakes and coped with the illness the wrong way.

b. **Board Type and Decision:** In a records review conducted on 4 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Depressive Disorder outweighing the applicant's FTR and illegal substance abuse 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, and the reentry code to RE-3.
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:** Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. **Date of Discharge:** 27 June 2008

c. **Separation Facts:**

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 9, 31 August 2006, on 6 April 2006, the applicant was found guilty of the following:

Charge I, in violation of Article 112, UCMJ:

Specifications 1 and 2: On two occasions between 5 December 2005 and 4 January 2006 and between 5 January and 31 January 2006, wrongfully use marijuana. Plea: Guilty.

Specification 3: Between 25 and 31 January 2006, wrongfully use methylenedioxyamphetamine, a Schedule I controlled substance. Plea: Guilty.

Charge II, in violation of Article 86, UCMJ:

Specification 1: Between 2 March 2006 and 5 March 2006, absent from the unit in Hanau, Germany. Plea: Not guilty, but guilty of the lesser included offense of failure to go at the time prescribed to the appointed place of duty. Finding: The Order shows Not Guilty, but corrected by the Army Court of Criminal Appeals.

Specifications 3 through 9: On seven occasions between 1 February and 10 March 2010, fail to go at the time prescribed to the appointed place of duty. Plea: Guilty.

(2) Adjudged Sentence: Reduction to E-1; to be confined for 70 days, and to be discharged from the service with a Bad Conduct discharge.

(3) Date / Sentence Approved: 31 August 2006 / The sentence was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed. The applicant was credited with 37 days of confinement towards the sentence to confinement.

(4) Appellate Reviews: The record of trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals (ACCA) affirmed the approved findings of guilty and the sentence. The ACCA amended Charge II, Specification 1, from a finding of Not Guilty to the offense of absent without leave to Guilty to the lesser included offense of failure to go at the time prescribed to the appointed place of duty.

(5) Date Sentence of BCD Ordered Executed: 13 March 2008

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 July 2004 / 4 years

b. Age at Enlistment / Education / GT Score: 23 / 1 Year College / 113

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92G20, Food Service Operation / 6 years, 11 months, 8 days

d. Prior Service / Characterizations: RA, 27 June 2001 – 30 June 2004 / HD

e. Overseas Service / Combat Service: Germany / None

f. Awards and Decorations: AGCM, NDSM, GWOTSM, ASR

g. Performance Ratings: July 2004 – October 2004 / Fully Capable
November 2004 – October 2005 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Two Personnel Action forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Confined by Military Authorities (CMA)" effective 22 April 2006; and

From "CMA" to "PDY," 15 May 2006.

Company Grade Article 15, 22 July 2005, for failing to go at the time prescribed to the appointed place of duty (10 June 2005). The punishment consisted of a forfeiture of \$459 pay and extra duty and restriction for 14 days.

Field Grade Article 15, 15 November 2005, for physically controlling a vehicle while the alcohol concentration in the blood was .122 grams of alcohol per 100 milliliters of blood or greater, as shown by chemical analysis (5 November 2005). The punishment consisted of a reduction to E-4; forfeiture of \$939 pay per month for two months; and extra duty and restriction for 45 days.

Military Police Report, 6 December 2005, reflects the applicant was apprehended for: simple assault, consummated with a battery, domestic; and spouse abuse, civilian victim (on post). Investigation revealed on 6 December 2005, the applicant and [redacted] were involved in a verbal altercation which turned physical when the applicant struck [redacted] in the face.

General Officer Memorandum Of Reprimand, 12 January 2006, reflects the applicant was driving under the influence of alcohol. The applicant was involved in a vehicle accident and German Police administered a blood test which resulted in .122 percent blood alcohol content (BAC).

The applicant's Enlisted Record Brief (ERB), 19 July 2008, reflects the applicant was flagged for Adverse Action (AA), effective 24 February 2006; was ineligible for reenlistment because of Other; prohibitions not otherwise identified (9X). The applicant was reduced from E-4 to E-1 effective 6 April 2006. Section I – Assignment Information, Overseas/Deployment Combat Duty has no entries. Section IX – Assignment Information shows assignment in Germany. Section VIII – Awards and Decorations, reflects the applicant was awarded AGCM, NDSM, and GWTSM.

i. Lost Time / Mode of Return: 23 days (CMA, 22 April 2006 – 14 May 2006) / Completion of Sentence

j. Behavioral Health Condition(s):

(1) Applicant provided: None.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; 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), dated 25 September 2019, 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

(4) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Paragraph 3-11 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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's Army Military Human Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends PTSD affected behavior, which led to the discharge. 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 no documentation of PTSD diagnosis. The AMHRR is void of a mental status evaluation.

The applicant contends serving in Iraq and requests credit for combat tours on the applicant's DD Form 214. 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: PTSD, Depressive Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed, and service connected by the VA for combat-related PTSD and Depressive Disorder NOS. Service connection establishes that these conditions existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions mitigate the discharge. Given the nexus between PTSD, Depressive Disorder NOS, avoidance, and self-medicating with substances, the drug use and FTRs that led to the applicant's separation are mitigated.

(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 Post Traumatic Stress Disorder and Depressive Disorder outweighed the applicant's FTR and illegal substance abuse offenses.

b. Response to Contention(s):

(1) The applicant contends PTSD affected behavior, which led to the discharge. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder and Depressive Disorder outweighed the applicant's FTR and illegal substance abuse offenses.

(2) The applicant contends serving in Iraq and requests credit for combat tours on the applicant's DD Form 214. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army

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Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Depressive Disorder outweighing the applicant's FTR and illegal substance abuse 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, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder and Depressive Disorder outweighed the applicant's FTR and illegal substance abuse 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.

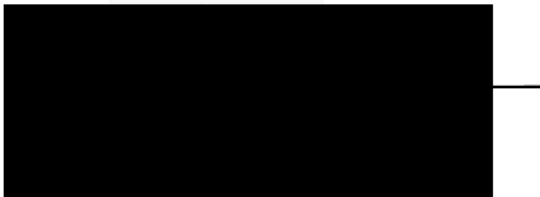
(3) The RE code will change to RE-3.

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:** RE-3
- e. **Change Authority to:** AR 635-200

Authenticating Official:

4/9/2024



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