1. Applicant's Name:

a. Application Date: 26 April 2021

b. Date Received: 26 April 2021

c. Counsel:



#### 2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues: The current characterization of service for the period under review is honorable. The applicant requests an upgrade to honorable, narrative reason change to "Expiration of Service Obligation", SPD Code change to "JBK", and RE Code to "RE-1."

The applicant seeks relief contending, in effect, being wrongfully and unjustly separated, the applicant was less than four months away from finishing the obligated active-duty service. The command made a hasty and uninformed decision to discharge the applicant from the Army. The command demonstrated a flagrant disregard for the applicant's entire character, and the wrong must be rectified. According to AR 635-200, paragraph 3-7a(2)(c), the record of service is outweighed by subsequent honest and faithful service over a longer period of service, and it is not the isolated incident, but the pattern of behavior is the governing factor in determining the character of service. The small disciplinary transgressions were outweighed by the honest and faithful service and remarkable achievements. The isolated incident should not be used to determine the character of service. Aside from the dedicated service and multiple personal decorations, the applicant was deployed to Afghanistan in a hostile fire zone and actively engaged the enemy in combat, earning the combat action badge. The evidence presented and the applicant's complete record of service clearly show having served honorably and with distinction. The erroneous separation severely undermined the Army Core Values of loyalty, responsibility. respect, selfless devotion, honor, integrity, and personal courage. The applicant clearly cared about his nation and the Army. The applicant had a medically recognized problem which the applicant resolved, and the chain of command offered no aid. Soldiers frequently use alcohol to self-medicate the symptoms of combat traumatic stress. The applicant was determined to be willing to comply with rehabilitative efforts by a competent medical authority, and the applicant was amenable to the offered rehabilitation service. It was also decided that the applicant indicated a willingness to comply with therapy, a commitment to change, and a willingness to do what was required for recovery. Although medical care was advised, the care was denied by the applicant's command. Despite the absence of command participation, the applicant used available resources to self-enroll in and successfully complete a lower-level alcohol addiction prevention program. When weighed against the valiant service and sacrifice for the country, the single isolated occurrence obviously fits within the parameters of an honorable discharge. The applicant promised to abstain from drinking and was committed to rehabilitation and personal change by refraining from the damaging behavior. The applicant has since worked full-time and enrolled in college to earn a liberal arts degree. The applicant was hired by Raven Industries to make plastic films and has garnered the admiration and respect of friends and family. Counsel further details the contentions in an allied legal brief provided with the application.

**b. Board Type and Decision:** In a records review conducted on 13 December 2023, and by a 4-1 vote, the Board, based on the applicant's Anxiety NOS diagnosis mitigating applicant's DUI basis for separation, determined the narrative reason for the applicant's separation is now

inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's Anxiety NOS diagnosis warranting medical qualification 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 / Honorable
  - **b.** Date of Discharge: 11 December 2011
  - c. Separation Facts:
    - (1) Date of Notification of Intent to Separate: 5 October 2011
- (2) Basis for Separation: The applicant was informed of the following reasons: The applicant was apprehended for driving under the influence of alcohol.
  - (3) Recommended Characterization: General (Under Honorable Conditions)
  - (4) Legal Consultation Date: 12 October 2011
  - (5) Administrative Separation Board: NA
- **(6) Separation Decision Date / Characterization:** 27 October 2011 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

- a. Date / Period of Enlistment: 5 February 2008 / 4 years, 8 weeks / The applicant extended the most recent enlistment by a period of 12 months on 12 May 2011, giving the applicant a new ETS of: 31 March 2013.
  - b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 125
- **c. Highest Grade Achieved / MOS / Total Service:** E-5 / 13F2P, Fire Support Specialist and 13B10, Cannon Crewmember / 6 years, 19 days / The DD Form 214 does not accurately reflect the total period of service.
  - d. Prior Service / Characterizations: ARNG, 23 November 2005 12 June 2006 / NA ADT, 13 June 2006 11 August 2006 / NIF ARNG 12 August 6006 3 June 2007 / NA ADT, 4 June 2007 28 July 2007 / HD ARNG, 29 July 2007 4 February 2008 / HD
- e. Overseas Service / Combat Service: Alaska, SWA / Afghanistan (12 February 2009 12 February 2010)

- **f.** Awards and Decorations: ARCOM, AAM-2, VUA-2, AGCM, NDSM, ACM-2CS, GWOTSM, ASR, OSR-2, NATOMDL, CAB
  - g. Performance Ratings: 1 November 2010 31 May 2011 / Among the Best
- h. Disciplinary Action(s) / Evidentiary Record: Service School Academic Evaluation Report, 17 February 2011, reflects the applicant exceeded the Warrior Leader Course standards with superior results in demonstrated abilities; had ranked second academically in a class of 80 students with 96.28 percent average; and was placed on the Commandant's List.

Incident Report, 23 July 2011, reflects the applicant was apprehended for Driving Under the Influence of alcohol by the Anchorage Police Department and arrested for having a Breath Alcohol Content (BAC) of 0.16 (sic).

Military Police Report, 15 August 2011, reflects the applicant was apprehended for: DUI – Driving under the Influence (off post) on 23 July 2011.

General Officer Memorandum of Reprimand, 3 November 2011, reflects the applicant was driving under the influence of alcohol. After being stopped for making a wide turn on 23 July 2011 and observed having red watery eyes, emitting strong odor of alcohol, and admitting having consumed alcohol prior to driving, the applicant's breath sample revealed a BAC of .146 percent.

- i. Lost Time / Mode of Return: None
- j. Behavioral Health Condition(s):
  - (1) Applicant provided: None
- (2) AMHRR Listed: Report of Mental Status Evaluation, 24 August 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant was diagnosed with: Anxiety Disorder NOS.

ASAP Statement of Progress Summary, 14 October 2011, reflects the applicant was referred to ASAP on 23 August 2011, and was assessed and diagnosed with alcohol dependence. All the BATs and UA tests have been negative. The applicant demonstrated a willingness to comply with treatment and despite not receiving more intensive rehabilitative services, the applicant had maintained abstinence and demonstrated a commitment to change, a desire to lead a life without alcohol and do what was necessary to work a plan of recovery.

- **5. APPLICANT-PROVIDED EVIDENCE:** DD Form 149; DD Form 214; and Legal Brief with listed enclosures (1) through (23).
- **6. Post Service Accomplishments:** The applicant has obtained full-time employment and enrolled in college to pursue a liberal arts degree. The applicant has garnered the admiration and respect of friends and family.
- 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) 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.
- (4) 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.
- (5) 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 contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with an general discharge which was upgraded by a previous ADRB to honorable characterization of service. The

narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the separation code (SPD) should be changed. Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c, is "JKQ."

The applicant requests a reentry eligibility (RE) code change. The applicant desires to rejoin the Military Service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The applicant contends reinstatement at the E-5 rank and promotion eligibility to E-6 and back pay from date of separation to present. The applicant's request 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.

The applicant having been wrongfully and unjustly separated and less than four months away from finishing the obligated active-duty service, the command made a hasty and uninformed decision to discharge the applicant from the Army and demonstrated a flagrant disregard for the entire character. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the record of service clearly showing honorable service with distinction, the remarkable achievements with personal decorations, including earning a combat action badge, and the pattern of behavior should be the governing factor in determining the character of service.

The applicant contends the isolated incident should not be used to determine the character of service. Army Regulation 635-200, paragraph 3-5c states that there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends having a medically recognized problem in which the applicant resolved, and the chain of command offered no aid. The applicant's AMHRR contains documentation which supports a diagnosis of in-service anxiety disorder. The record shows the applicant underwent a mental status evaluation (MSE) on 24 August 2011, which indicates the applicant was mentally responsible. The MSE was considered by the separation authority.

The applicant contends having abstained from drinking, being committed to rehabilitation, and making personal change by refraining from the damaging behavior and having since worked full-time and enrolled in college to pursue a liberal arts degree. 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 inservice misconduct was an aberration and not indicative of the member's overall character.

The third-party statements provided with the application lauded the applicant's performance and character and recognized the good conduct after leaving the military service.

#### 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, after applying liberal consideration, found the that applicant's Anxiety NOS (PTSD like symptoms and other incurring mental health conditions) that, in part, warranted a previous Board to upgrade the applicant's discharge characterization to HD, now warrants reconsideration of applicant's discharge narrative reason and RE code.
- **(2)** Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant Anxiety NOS existed during the applicant's military service.
- (3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's Anxiety Disorder NOS mitigates the applicant's DUI offense given the association with Anxiety Disorder and comorbid substance abuse.
- (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 Anxiety NOS outweighed the applicant's medically mitigated DUI offense for purposes of a narrative reason change to Misconduct (Minor Infractions)/JKN.

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

- (1) The applicant contends the narrative reason and associated separation code (SPD) for the discharge needs changed. The Board considered this contention during proceedings and determined a change in the narrative reason, and as such the associated SPD code, was warranted based on the applicant's Anxiety NOS diagnosis fully outweighing the applicant's DUI basis for separation.
- (2) The applicant requests a reentry eligibility (RE) code change. The Board considered this contention and determined that the applicant's RE code was proper and equitable as the applicant Anxiety NOS requires the applicant to obtain a medical qualification waiver prior to returning to military service.
- (3) The applicant contends reinstatement at the E-5 rank and promotion eligibility to E-6 and back pay from date of separation to present. 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 Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

- (4) The applicant having been wrongfully and unjustly separated and less than four months away from finishing the obligated active-duty service, the command made a hasty and uninformed decision to discharge the applicant from the Army and demonstrated a flagrant disregard for the entire character. The Board considered this contention during proceedings, but determined that there is no evidence of arbitrary or capricious actions by the applicant's chain of command.
- (5) The applicant contends the record of service clearly showing honorable service with distinction, the remarkable achievements with personal decorations, including earning a combat action badge, and the pattern of behavior should be the governing factor in determining the character of service. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade in characterization being granted based on the applicant's Anxiety NOS diagnosis outweighing the applicant's DUI basis for separation. The Board determined that the applicant's narrative reason should change to "Misconduct (Minor Infractions)" as it accurately reflects the applicant's basis of separation and the RE-code should remain RE-3 based on the need for a review of behavioral health conditions prior to any reentry into military service..
- (6) The applicant contends the isolated incident should not be used to determine the character of service. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade in characterization being granted based on the applicant's Anxiety NOS diagnosis outweighing the applicant's DUI basis for separation. The Board determined that the applicant's narrative reason should change to "Misconduct (Minor Infractions)" as it accurately reflects the applicant's basis of separation and the RE-code should remain RE-3 based on the need for a review of behavioral health conditions prior to any reentry into military service.
- (7) The applicant contends having a medically recognized problem in which the applicant resolved, and the chain of command offered no aid. The Board considered this contention during proceedings, but determined that there is no evidence of arbitrary or capricious actions by the applicant's chain of command.
- (8) The applicant contends having abstained from drinking, being committed to rehabilitation, and making personal change by refraining from the damaging behavior and having since worked full-time and enrolled in college to pursue a liberal arts degree. The Board considered this contention during proceedings, but determined that the applicant's post service accomplishment's do not outweigh a narrative reason for discharge as Misconduct (Minor Infractions) and does not supersede the need to have a review of behavior health conditions prior to any reentry into military service as required with an RE-3.
- **c.** The Board determined, based on the applicant's Anxiety NOS diagnosis mitigating applicant's DUI basis for separation, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's Anxiety NOS 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 applicant's characterization of service was previously upgraded to Honorable and there is no further upgrade available.
- (2) The Board voted to change the reason for discharge to Misconduct (Minor) Infractions) because the applicant's Anxiety NOS diagnosis mitigated the applicant's misconduct of DUI, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.
- (3) The Board voted not to change the RE code due to applicant's Anxiety NOS diagnosis warranting consideration prior to reentry of military service.

#### 10. BOARD ACTION DIRECTED:

a. Issue a New DD-214: Yes

b. Change Characterization to: No Change

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:**



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

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