

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**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, attending Sinclair Community College, and is studying User Support and working at O'Neil and Associates Inc. The applicant understands what they did was taken out of context; however, it was the same type of language the applicant heard from their peers, seniors, and Soldiers during the applicant's 15 years of military service. The applicant believes they did not get a fair investigation. The applicant believes the investigation was not processed fully and a judgment was made prematurely. The applicant was charged with sexual harassment and punished. The applicant was diagnosed with TBI and PTSD which the applicant believes they were suffering from since 2005 during a deployment to Iraq. As a result of having TBI, the applicant had problems with comprehending, focusing, and saying things they meant. The applicant has problems with verbal translation, similar to dyslexia, to say things the applicant thinks are correct; however, do not always come out correct. Between 2005 and 2013, the applicant deployed five times in Iraq and Afghanistan. As a result of those deployments, the applicant's personality has changed. The applicant believes their diagnoses were not considered throughout this process. The applicant's personality started changing after the tour to Afghanistan in 2013, which the applicant now understands was PTSD. The applicant was a loner, stopped talking to everyone on the team, was angry, and believed they were being badgered. The incident happened in 2014, after the last deployment to Afghanistan. The applicant did not realize what they said was offensive or derogatory and did not mean to cause harm.

b. Board Type and Decision: In a records review conducted on 11 July 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, outweighing the applicant's making unwelcome verbal comments of a sexual nature basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH 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: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 2 May 2014

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 19 February 2014

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant violated Army Regulation 600-20, by making unwelcome verbal comments of a sexual nature.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 21 February 2014

(5) Administrative Separation Board: On 21 February 2014, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: 28 March 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 March 2009 / indefinite

b. Age at Enlistment / Education / GT Score: 31 / some college / 115

c. Highest Grade Achieved / MOS / Total Service: E-6 / 88M30, Motor Transport Operator / 15 years, 3 months, 22 days

d. Prior Service / Characterizations: USMC, 11 January 1999 – 23 December 2002 / HD
(Break in Service)
RA, 29 January 2003 – 24 February 2005 / HD
RA, 25 February 2005 – 19 March 2009 / HD

e. Overseas Service / Combat Service: Korea, SWA / Afghanistan (3 August 2012 – 24 May 2013); Iraq (14 October 2004 – 25 April 2005; 9 September 2005 – 10 March 2006; 16 September 2006 – 4 May 2007)

f. Awards and Decorations: ACM-CS, ICM-3CS, ARCOM-6, MUC-2, AGCM-3, USMCGCM, NDSM, GWOTEM, GWOTSM, KDSM, NCOPDR-2, ASR, OSR-3, NSSDR, NATOMDL, CAB

g. Performance Ratings: 31 January 2009 – 30 January 2010 / Among the Best
31 January 2010 – 30 January 2011 / Fully Capable
30 January 2011 – 31 August 2011 / Among the Best
1 October 2011 – 21 April 2012 / Fully Capable

22 April 2012 – 21 April 2013 / Fully Capable

22 April 2013 – 16 April 2014 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 16 January 2014, for failing to obey a lawful order issued by COL C., by wrongfully missing two medical appointments on or about 12 December 2013. The punishment consisted of extra duty for 14 days.

FG Article 15, 30 January 2014, for violating a lawful general regulation by wrongfully making deliberate or repeated unwelcome verbal comments of a sexual nature on or about 10 January 2014. The punishment consisted of a reduction to E-5; forfeiture of \$1,547 pay per month for two months (suspended); and extra duty for 45 days.

Two Developmental Counseling Forms, for initiation of involuntary separation and two missed appointments.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Initial Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, Medical Record, Progress Notes, 12 February 2015, reflects a diagnosis.

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored statement; DD Form 214; Medical Record.

6. POST SERVICE ACCOMPLISHMENTS: The applicant attends Sinclair Community College and is studying User Support and working at O'Neil and Associate Inc.

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 four combat tours. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends what they did was taken out of context and was the same language the applicant heard from peers, seniors and Soldiers and believed the investigation was unfair and judgement was made prematurely. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being diagnosed with TBI and PTSD by the VA. The applicant provided Initial Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, Medical Record, Progress Notes, 12 February 2015, which reflects a diagnosis. The AMHRR does not contain a Mental Status Evaluation (MSE).

The applicant attends Sinclair Community College and is studying User Support and working at O'Neil and Associate Inc. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, TBI, PTSD. Additionally, the applicant asserts Dyslexia, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and TBI. The applicant is service connected by the VA for PTSD, which establishes that the PTSD also existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder and TBI. The applicant is service connected by the VA for PTSD. However, there is no natural sequela between an Adjustment Disorder, TBI, or PTSD and making unwelcome verbal comments of a sexual nature since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant also self-asserts Dyslexia, which is a learning disorder characterized by difficulty reading that has no natural sequela with making unwelcome sexual comments.

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends good service, including four combat tours. The Board considered this contention and determined that this contention was valid and voted to upgrade the characterization of service due to the applicant's length and quality of service, to include combat service outweighed the applicant's making unwelcome verbal comments of a sexual nature basis for separation.

(2) The applicant contends what they did was taken out of context and was the same language the applicant heard from peers, seniors and Soldiers; and believed the investigation was unfair, and judgement was made prematurely. The Board considered this contention during

proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service outweighing the applicant's making unwelcome verbal comments of a sexual nature basis for separation.

(3) The applicant contends being diagnosed with TBI and PTSD by the VA. The Board considered this contention and determined the applicant's TBI and PTSD diagnoses do not mitigate or outweigh the applicant's discharge as outlined in section 9a(3).

(4) The applicant attends Sinclair Community College and is studying User Support and working at O'Neil and Associate Inc. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service outweighing the applicant's making unwelcome verbal comments of a sexual nature basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, outweighing the applicant's making unwelcome verbal comments of a sexual nature basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnoses warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length and quality of service, to include combat service outweighed the applicant's misconduct of making unwelcome verbal comments of a sexual nature. 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 BH diagnosis warranting consideration prior to reentry of military service.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001402

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:

3/6/2025



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