

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 under other than honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, a desire to have access to medical benefits and a job. The applicant lost faith in the chain of command when their leave request was denied. The applicant requested leave to locate their estranged spouse and child. The applicant accepts responsibility for being AWOL. The applicant contends their chain of command removed them from a mental health facility at Walter Reed to impose an Article 15 and make them participate in a training exercise. During this time, the applicant was on heavy medications for severe anxiety, depression, and suicide attempts.

b. **Board Type and Decision:** In a records review conducted on 7 December 2023, the Board carefully considered the applicant's request, supporting documents, evidentiary record, medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. By a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Depression mitigating the misconduct that led to the separation (AWOL). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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 SPD of JKN and RE-Code of 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

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

c. Separation Facts:

- (1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** NIF
- (2) **Legal Consultation Date:** NIF
- (3) **Basis for Separation:** NIF
- (4) **Recommended Characterization:** NIF

(5) Separation Decision Date / Characterization: NIF**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 2 November 2009 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 23 / GED / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 25P10, 7E Microwave System Operator-Maintainer / 4 years, 1 month, 20 days
- d. **Prior Service / Characterizations:** RA, 21 September 2007 – 1 November 2009 / HD
- e. **Overseas Service / Combat Service:** Korea / None
- f. **Awards and Decorations:** AGCM, NDSM, GWOTSM, KDSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** CG Article 15, 18 October 2011, for failing to go at the time prescribed to their appointed place of duty on three occasions (between 8 and 15 September 2011). On or about 9 September 2011, failed to be in the proper uniform and shaven. The punishment consisted of a reduction to E-3; forfeiture of \$455 (suspended).

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

- From "PDY" to "AWOL," effective 28 October 2011;
- From "AWOL" to "DFR," effective 27 November 2011; and
- From "DFR" to "PDY," effective 22 February 2012.

Developmental Counseling Form, for recommendation for Article 15.

Orders 068-0001, 8 March 2012, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 12 March 2012 from the Regular Army.

The applicant's DD Form 214 reflects the applicant had completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 10, with a narrative reason of In Lieu of Trial By Court Martial. The DD Form 214 was authenticated with the applicant's electronic signature. The applicant had lost time for the period 28 October 2011 to 22 February 2012.

- i. **Lost Time / Mode of Return:** 2 months, 25 days (AWOL 28 November 2011 – 22 February 2012) / Apprehended by Civil Authorities.

j. Behavioral Health Condition(s):

- (1) **Applicant provided:** None
- (2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; NPRC service request and National Personnel Records Center letter.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution

shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) 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) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(7) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(8) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 "KFS" as

the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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 Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions.

The applicant contends their chain of command removed them from a mental health facility at Walter Reed to impose Article 15 and make participate in a training exercise. During this time, the applicant was on heavy medications for severe anxiety, depression, and suicide attempts. 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 AMHRR is void of a mental status report.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits 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 an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, Depression, and Anxiety.

(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, Depression, and Anxiety.

(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 was diagnosed in service with an Adjustment Disorder, Depression, and Anxiety. The medical record reveals that the applicant was actively being treated for Depression at the time he went AWOL, including a psychiatric hospitalization two months prior. Given the nexus between Depression, avoidance, loss of interest in activities, and low motivation, the applicant's Depression mitigates the AWOL that appears to be the basis of separation.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's Depression outweighed the AWOL that appears to be the basis for separation.

b. Response to Contention(s):

(1) The applicant contends their chain of command removed them from a mental health facility at Walter Reed to impose Article 15 and participate in a training exercise. During this time, the applicant was on heavy medications for severe anxiety, depression, and suicide attempts. 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 Depression fully outweighing the applicant's AWOL basis for separation.

(2) The applicant contends an upgrade of the discharge would allow veterans benefits. 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 Depression fully outweighing the applicant's AWOL basis for separation.

(3) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. 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 Depression fully outweighing the applicant's AWOL basis for separation.

a. The Board determined the discharge is inequitable based on the applicant's Depression mitigating the misconduct that led to the separation (AWOL). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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 SPD of JKN and RE-Code of 3.

b. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Depression mitigated the applicant's AWOL. Thus, the prior characterization is no longer appropriate.

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(2) The Board voted to change the narrative reason for discharge to Misconduct (Minor Infractions) under the same pretexts. Accordingly, the reason for discharge is no longer appropriate. The SPD code associated with the new narrative reason is JKN.

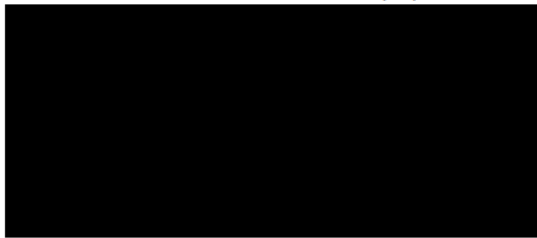
(3) The Board voted to change the RE code to RE-3 based on the diagnosed behavioral health conditions and the new narrative reason/SPD.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: 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:

12/15/2023



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