

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, deploying to Afghanistan caused the applicant to lose confidence in the chain of command. The applicant contends several incidents were key to the rapid downward propelling of their military drive. The applicant never gave up believing they were in the right place, but circumstances surrounding the applicant and the attitude of the chain of command began to plummet causing the applicant to lose confidence in the command. The loss of confidence and negligence on the part of the immediate chain of command culminated in the applicant's dismissal from active duty. The applicant contends the chain of command showed favoritism to select Soldiers. The applicant states the loss of their sibling was the primary reason for the deterioration of morale and their physical and emotional state while deployed. The applicant states being denied reintegration leave. Since the applicant's release from active duty, they have been under the care of the local Veteran Affairs. The applicant desires access to their education benefits.

b. **Board Type and Decision:** In a records review conducted on 14 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 characterization is inequitable based on the applicant's Adjustment Disorder and Depression diagnosis partially mitigating the misconduct (DUI, drunk on duty, FTR, drunk and disorderly conduct) that led to the separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The board found that the remaining misconduct (destroying property, making a false statement, and violating a GO) were substance abuse related and did not outweigh the applicant's Adjustment Disorder and Depression.

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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)
- b. **Date of Discharge:** 7 June 2012
- c. **Separation Facts:**

(1) Date of Notification of Intent to Separate: 21 May 2012

(2) Basis for Separation: The applicant was informed of the following reasons: On 19 December 2010, the applicant was in operation of a vehicle while drunk.

On 22 November 2011, the applicant was found drunk on duty, the applicant violated a lawful general order, and made a false official statement.

On 29 January 2012, the applicant was drunk and disorderly and willfully and wrongfully damaged personal property of another Soldier.

On 15 February 2012, the applicant was drunk and disorderly.

On 23 and 24 January, 12 February, 22 March and 4 May 2012 the applicant failed to report to their appointed place of duty, and on 3 May 2012, the applicant was incapacitated for duty because of wrongful previous overindulgence in intoxicating liquor.

This misconduct was unacceptable and would not be tolerated by the unit, the Brigade, or the United States Army.

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

(4) Legal Consultation Date: 18 May 2012

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 21 May 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 15 June 2009 / 4 years, 20 weeks

b. Age at Enlistment / Education / GT Score: 27 / High School Graduate / 114

c. Highest Grade Achieved / MOS / Total Service: E-3 / 92G10, Food Service Operation / 2 years, 11 months, 23 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany, SWA / Afghanistan (20 February 2011 – 14 January 2012)

f. Awards and Decorations: MUC, NDSM, ACM-2CS, GWOTSM, ASR, OSR, NATOMDL

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 20 December 2010, reflects the applicant was apprehended for: Driving Under the Influence 2nd offence (off post).

Commander's Report, 21 May 2012, reflects a Field Grade Article 15 imposed on 2 August 2011. The punishment consisted of reduction to Private (E1); forfeiture of \$366.00 pay per

month for 2 months suspended, to be automatically remitted if not vacated before 31 October 2011.

Military Police Report, 22 February 2012, reflects the applicant was apprehended for: Conduct Unbecoming a member of the military service drunk and disorderly. (on post).

Report of Mental Status Evaluation, 17 May 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant had a history of being deployed. The applicant was not deemed a safety risk. The applicant had been screened for alcohol and drugs with the Audit questionnaire. The applicant was seen in the ASAP clinic.

Numerous Developmental Counseling Forms for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Health records, 13 March 2012, reflects a diagnosis of grief reaction, adjustment disorder with depression.

Department of Veterans Affairs Rating Decision, 16 January 2013, reflects a service connection for Major Depressive Disorder with Alcohol dependency in remission (claimed as depression adjustment disorder with depression moods), with an evaluation of 70 percent.

(2) AMHRR Listed: Report of Medical History, 22 December 2011, the examining medical physician noted in the comments section: Diagnosed with depression after a sibling passed away in June 2011.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; self-authored letter; VA Benefits letter; Health Records.

6. POST SERVICE ACCOMPLISHMENTS: The applicant states seeking treatment from the VA.

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 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 the loss of their sibling was the primary reason for the deterioration of morale and their physical and emotional state while deployed. The applicant states being denied reintegration leave. The applicant provided Health records, 13 March 2012, reflecting a diagnosis of grief reaction, adjustment disorder with depression. The Department of Veterans Affairs Rating Decision, 16 January 2013, reflects a service connection for Major Depressive Disorder with Alcohol dependency in remission (claimed as depression adjustment disorder with

depression moods), with an evaluation of 70 percent. The AMHRR includes a Report of Medical History, 22 December 2011, reflecting the examining medical physician noted in the comments section: Diagnosed with depression after a sibling passed away in June 2011. The Report of Mental Status Evaluation, 17 May 2012, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The mental status report and medical history report were considered by the separation authority. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends losing confidence and negligence on the part of the immediate chain of command culminated in the applicant's dismissal from active duty. The applicant contends the chain of command showed favoritism to select Soldiers. 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 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 the Department of Veterans Affairs for further assistance.

The applicant contends seeking care from the VA. 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder and Depression.

(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 Depression. The VA has also service connected the applicant for the Depression.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder and Depression. The VA has also service connected the applicant for the Depression, which provides partial mitigation for the basis of separation. The applicant's alcohol-related misconduct of DUI, drunk on duty/incapacitated, and drunk and disorderly conduct is mitigated given the nexus between Depression and self-medicating with substances. The applicant's FTRs are also mitigated given the nexus with Depression and avoidance, as well as the fact that several of the FTRs were

substance related. The remaining misconduct (disobeying a general order, making a false official statement, and damaging property) is not mitigated due to no natural sequela between this misconduct and an Adjustment Disorder or Depression. It is noted that while damaging the property of another soldier is not mitigated by Depression, the record indicates that the damage occurred while the applicant was intoxicated.

Does the condition or experience outweigh the discharge? **Yes.** The Board concurred with the opinion of the Board's Medical Advisor and found that the applicant's Adjustment Disorder and Depression partially mitigated the misconduct (DUI, drunk on duty, FTR, drunk and disorderly conduct). The remaining misconduct (failing a lawful general order, making a false official statement, and damaging property) were found to be alcohol-related, of which did not rise to a level that outweighed the applicant's BH conditions.

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable. The Board considered this contention and voted to upgrade the applicant's request from General (Under Honorable Conditions) to Honorable because the applicant's Adjustment Disorder and Depression partially mitigated the misconduct that served as the basis of separation. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, with a narrative reason of Misconduct (Minor Infractions). The corresponding SPD changed to JKN with no change to the RE-Code based on the BH conditions.

(2) The applicant contends the loss of their sibling was the primary reason for the deterioration of morale and their physical and emotional state while deployed. The Board considered this contention during proceedings, but ultimately did not address it due to an upgrade being granted.

(3) The applicant contends losing confidence and negligence on the part of the immediate chain of command culminated in the applicant's dismissal from active duty. The applicant contends the chain of command showed favoritism to select Soldiers. The Board considered this contention during proceedings, but ultimately did not address it due to an upgrade being granted.

(4) 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 because eligibility for Veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact the Department of Veterans Affairs for further assistance.

(5) The applicant contends seeking care from the VA. The Board considered this contention during proceedings and commends the applicant, but ultimately did not address it due to an upgrade being granted.

c. The Board determined the discharge is inequitable based on the applicant's Adjustment Disorder and Depression partially outweighing the applicant's misconduct (DUI, drunk on duty, FTR, drunk and disorderly conduct). The remaining misconduct (destroying property, making a false statement, and violating a GO) were found to be substance abuse related and did not outweigh the applicant's BH conditions. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization Honorable and changed the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The RE code is proper and equitable based on the BH conditions.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001419

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Adjustment Disorder and Depression outweighed the basis of separation. 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.

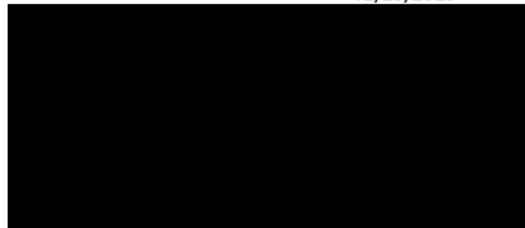
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:** No Change
- e. **Change Authority to:** AR 635-200, paragraph 14-12a

Authenticating Official:

12/29/2023



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