

**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 and a change to the narrative reason.

The applicant seeks relief contending, in effect, at the time of both the applicant's deployment and the applicant's discharge, post-traumatic stress disorder (PTSD) was not as understood as it is today. When the applicant returned from deployment, the applicant was given only a cursory review regarding the applicant's mental health, and at no point during the period leading up to the applicant's discharge was the applicant screened for PTSD. The behavior the applicant exhibited is easily explained when viewed as the behavior of someone with an untreated mental disorder. After the discharge and release from service, the applicant was diagnosed with PTSD after seeking medical services at the Phoenix, Department of Veterans Affairs (VA) Hospital. Considering the lack of mental health treatment, the applicant received while at Fort Riley and the applicant's subsequent diagnosis of PTSD, the applicant believes the characterization of service should be reviewed.

b. **Board Type and Decision:** In a records review conducted on 9 November 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's depression mitigating the applicant's AWOL, FTRs, drunk on duty, and failure to obey lawful orders basis for 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 voted the reentry eligibility (RE) code was proper and equitable due to applicant's depression diagnosis and substance use 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:** Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 31 January 2007

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** Unsigned Acknowledgment

(2) **Basis for Separation:** The applicant was informed of the following reasons:

The applicant went absent without leave (AWOL);

On several occasions the applicant was late to formation;

On several occasions the applicant missed formation;

The applicant showed up drunk on duty; and

The applicant failed to obey lawful orders.

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

**(4) Legal Consultation Date:** 16 January 2007

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 30 January 2007 / General (Under Honorable Conditions)

#### **4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 6 August 2002 / 5 years

**b. Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 128

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 92F10, Petroleum Supply Specialist / 4 years, 5 months

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** Germany, SWA / Iraq (12 February 2004 – 12 February 2005)

**f. Awards and Decorations:** AAM, AGCM, NDSM, GWOTSM, ICM, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Memorandum, subject: BAC [blood alcohol content] Test, 23 March 2006, reflects the commander requested a BAC test for the applicant because the applicant was out of ranks and smelled of alcohol.

Intoxilyzer – Alcohol Analyzer results, 23 March 2006, reflects the applicant test resulted in a .133 BAC.

Field Grade Article 15, 19 April 2006, for as a result of wrongful overindulgence in intoxicating liquor or drugs incapacitated for the proper performance of duties (23 March 2006). The punishment consisted of a reduction to E-2; forfeiture of \$713 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Record Of Supplementary Action Under Article 15, UCMJ, 20 July 2006, reflects the suspended portion of the punishment imposed on 19 April 2006, was vacated for: Article 86, failure to report at the time prescribed to the appointed place of duty.

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

From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 1 August 2006; and  
From "AWOL" to "PDY," effective 26 August 2006.

District Court of Wabunsee County, Kansas, Diversion Agreement, 12 September 2006, reflects the applicant entered into an agreement with the court for a period of 12 months, acknowledging the charges of driving under the influence of alcohol or drugs, misdemeanor, and improper stopping, standing, or parking on roadway. The applicant agreed there was enough evidence to prove the applicant committed the crimes and to pay a diversion fee of \$500, court cost of \$66, booking fee of \$25, and a fine of \$500.

General Officer Memorandum of Reprimand (GOMOR), 7 December 2006, reflects the applicant was driving while under the influence of alcohol. On 1 August 2006, a police officer noticed the applicant parked on the side of Interstate 70, asleep in the car with the engine running. The officer believed the applicant might have been intoxicated and administered a series of sobriety tests, which the applicant failed. The applicant was arrested and transported to the police station where the applicant submitted a breath test, which indicated the applicant's BAC was .138.

Field Grade Article 15, 13 December 2006, for on two occasions, failing to go at the time prescribed to the appointed place of duty (1 August and 20 September 2006) and being absent without leave (between 1 and 2 August 2006). The punishment consisted of a reduction to E-1 and an oral reprimand.

Numerous Developmental Counseling Forms, for but not limited to:

- Failing to obey a direct order, driving under the influence (DUI),
- Being drunk on duty,
- Being command-referred to the Army Substance Abuse Program,
- Receiving a GOMOR for DUI,
- Failing to report because of intoxication,
- Sleeping in training,
- Failing to report to appointed place of duty on multiple occasions, and
- Being recommended for separation under AR 635-200, paragraph 14-12b.

i. **Lost Time / Mode of Return:** 25 days (AWOL, 1 August 2006 – 25 August 2006) / NIF

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Department of Veterans Affairs, Problem List, from 27 October 2008 to 1 May 2015, reflecting problems listed as:

- PTSD;
- Tinnitus;
- Concussion with no loss of consciousness;
- Substance abuse;
- Closed head injury; and
- Headaches

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; Enlisted Record Brief; separation orders; Preseparation Counseling Checklist; and VA Problems List.

**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)** 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 contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly 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 being diagnosed with PTSD by the VA and the condition affected behavior which led to the discharge. The applicant provided medical documents indicating a diagnosis of PTSD; tinnitus; concussion with no loss of consciousness; substance abuse; closed head injury; and headaches. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends the lack of mental health treatment at Fort Riley should be considered. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

#### **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: Depression, Subthreshold PTSD Symptoms.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with Depression during 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, given the association between Depression and comorbid substance abuse, lethargy, problems with memory, and withdrawal/avoidance there is a relationship between the applicant's misconduct characterized by being drunk on duty, multiple instances of FTR, failure to obey a lawful order given the

violation of the lawful order appear to be related to DUI, and 2-day period of AWOL, such that the misconduct was mitigated by the diagnosis.

(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 Depression outweighed the AWOL, FTRs, drunk on duty and failure to obey lawful orders basis for separation for the aforementioned reason(s).

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

(1) The applicant contends being diagnosed with PTSD by the VA and the condition affected behavior which led to the discharge. 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, FTRs, drunk on duty and failure to obey lawful orders basis for separation.

(2) The applicant contends the lack of mental health treatment at Fort Riley should be considered. 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, FTRs, drunk on duty and failure to obey lawful orders basis for separation.

**c.** The Board determined the discharge is inequitable based on the applicant's depression mitigating the applicant's AWOL, FTRs, drunk on duty and failure to obey lawful orders basis for 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 voted the reentry eligibility (RE) code was proper and equitable due to applicant's depression diagnosis and substance use 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 depression mitigated the applicant's misconduct of marijuana abuse and AWOL. 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 Board voted the reentry eligibility (RE) code was proper and equitable due to applicant's depression diagnosis and substance use warranting consideration prior to reentry of military service.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

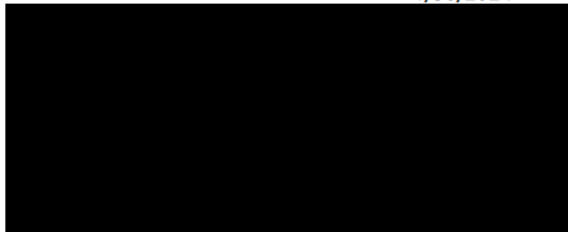
**AR20210001457**

**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:**

1/30/2024



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