

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, not being given the opportunity to prove the applicant had been rehabilitated per Army Regulation 600-85. The applicant successfully completed the Army Substance Abuse Program (ASAP), as highlighted by the applicant's counselor, and endorsed by the former commander and the commander at the time of proceedings but was chaptered out of the Army. The applicant completed the ASAP program by actively participating and embracing the change in life. The applicant was chaptered shortly after, with no evidence of ASAP failure or return to alcohol dependency. The tenets of Army Regulation 600-85 were not upheld. The applicant continues to flourish while supporting the Department of Defense (DOD), Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI). The applicant maintains a security clearance and contributes daily to the defense of the nation. While the applicant made mistakes during the enlistment, the applicant was removed from the service after giving over seven years of selfless and tireless service. The applicant continues to have trouble securing government employment because of this nasty scar and inappropriate classification of service. The applicant was discharged inappropriately because of the stigma of post-traumatic stress disorder (PTSD), but the applicant has to carry this punishment for the rest of the applicant's life in attempts to secure government employment. The applicant further details the contentions in a self-authored statement submitted with the application.

b. **Board Type and Decision:** In a records review conducted on 30 November 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and Mood Disorder Not Otherwise Specified (NOS) mitigating the applicant's DUI 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. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD and Mood Disorder NOS diagnoses.

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 October 2010

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file. However, the applicant provided documents which are described below in 3c (5).

(1) Date of Notification of Intent to Separate: NIF

(2) Basis for Separation: NIF

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: Memorandum, subject: Request to Suspend Separation in accordance with AR 635-200, 30 April 2010, reflecting on 14 April 2010, the administrative separation board convened, and the applicant appeared with counsel. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 31 July 2007 / 4 years

b. Age at Enlistment / Education / GT Score: 26 / bachelor's degree / 125

c. Highest Grade Achieved / MOS / Total Service: E-6 / 31B30, Military Police / 7 years, 5 months, 2 days

d. Prior Service / Characterizations: RA, 29 May 2003 – 30 July 2007 / HD

e. Overseas Service / Combat Service: Korea, SWA / Iraq (7 December 2005 – 6 December 2006)

f. Awards and Decorations: ARCOM-2, AAM-6, MUC, NUC, ASUA, AGCM-2, NDSM, GWOTSM, KSDM, ICM-2CS, NCOPDR-2, ASR, OSR-2, CAB

g. Performance Ratings: 1 January 2008 – 31 December 2008 / Among the Best
1 January 2009 – 31 July 2009 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: General Officer Memorandum of Reprimand, date illegible, reflects the applicant was driving while intoxicated (DWI) on two separate occasions. On 22 March 2008, the applicant was arrested by New York State Police and subsequently convicted for DWI. The applicant submitted to a breath test which indicated a 0.16 percent blood alcohol content (BAC). On 27 June 2009, the applicant was arrested by Prince William County Police, Virginia. The applicant submitted a chemical breath test with a result of 0.20 percent BAC. The applicant's chain of command confronted the applicant regarding the second incident and the applicant lied, denying the incident by claiming it was a misunderstanding.

The applicant's Enlisted Record Briefs (ERBs), 26 January and 29 July 2010, reflects the applicant was flagged for Adverse Action (AA) and Involuntary Separation or Discharge (Field Initiated), (BA), both effective 30 June 2009.

Orders 194-0006, 13 July 2010, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 31 October 2010 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 14-12b, with a narrative reason of Pattern of Misconduct. The DD Form 214 was authenticated with the applicant's electronic signature.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs (VA) letter, date unavailable, reflecting the VA rated the applicant 30 percent service-connected disabled for mood disorder and alcohol abuse (also claimed as PTSD).

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; DD Form 214; self-authored statement; military defense counsel memorandum; numerous third-party character references; two Enlisted Record Briefs; NCO Evaluation Report; six Recommendations for Award; three Service School Academic Reports; NCO Academy's Honor Graduate Diploma; Army Review Boards Agency ARBA Case Tracking System Online Application Summary; excerpt, Army Regulation 600-85; and excerpt, Army Regulation 635-200.

6. POST SERVICE ACCOMPLISHMENTS: The applicant provided support to the DOD and DOJ / FBI, maintained a security clearance, and contributed daily to the defense of the nation.

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 600-85 (The Army Substance Abuse Program), in effect at the time, Table 1-1, states the overarching tenets and supporting capabilities of ASAP for treatment / rehabilitation is clinical intervention with the goal of returning Soldiers to full duty or identify Soldiers who are not able to be successfully rehabilitated. Paragraph 1-7c(7) states when a Soldier is convicted of driving while intoxicated / driving under the influence a second time during the career, the separation authority shall administratively separate the Soldier unless the Soldier is recommended for retention by an administrative separation board under AR 635-200. The regulatory provision should apply to situations in which at least one of a Soldier's DWI / DUI convictions occurred on or after 17 February 2009, the original effective date of the major revision of the regulation. Army Regulation 600-85, currently in effect, states Soldiers with a subsequent alcohol or drug-related incident of misconduct at any time during the 12-month period following treatment or during the 12-month period following removal from the program, for any reason, will be processed for separation as an alcohol or drug-abuse rehabilitation

failure. This expanded period does not prevent separation for other reasons authorized by existing administrative separation regulations or other authorities.

e. 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.

f. 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.

g. 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's Army Military Human Resources Record (AMHRR) includes partial 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 14, paragraph 14-12b, by reason of Pattern of Misconduct, with a characterization of service of general (under honorable conditions).

The applicant contends suffering from PTSD because of combat and the suicides of a friend and a Soldier under the applicant's leadership, and the condition affected behavior which led to the discharge. The applicant provided a document reflecting the VA rated the applicant 30 percent service-connected disabled for mood disorder and alcohol abuse (also claimed as PTSD). The AMHRR is void of a mental status evaluation.

The applicant contends the command ignored the tenets prescribed in AR 600-85 and the applicant was not provided the opportunity to show the applicant had rehabilitated. The applicant provided documents reflecting an administrative separation board recommended separation with a general (under honorable conditions) discharge. The applicant's AMHRR is void of a separation packet. The record does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour. The applicant provided numerous in-service character references and service documents attesting to the applicant's good military service. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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.

The applicant contends providing support to the DOD and DOJ / FBI, maintaining a security clearance, and contributing daily to the defense of the nation. 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, PTSD, Mood Disorder NOS.

(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 PTSD, and the applicant is service connected by the VA for Mood Disorder NOS. Service connection establishes that the applicant's Mood Disorder NOS existed during military service.

(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 and PTSD, and the applicant is service connected by the VA for Mood Disorder NOS. Given the nexus between PTSD, Mood Disorder NOS, and self-medicating with substances, the DUIs that led to the applicant's separation are mitigated.

(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 PTSD and Mood Disorder NOS outweighed the listed basis for separation (DUIs).

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD because of combat, the suicides of a friend and a Soldier under the applicant's leadership in that the condition affected behaviors. The Board considered this contention and determined that the applicant's PTSD and Mood Disorder NOS mitigates the multiple DUI offenses.

(2) The applicant contends the command ignored the tenets prescribed in AR 600-85 and the applicant was not provided the opportunity to show the applicant had rehabilitated. The Board considered this contention during proceedings, but ultimately did not address it due to the applicant's PTSD and Mood Disorder NOS fully outweighing the basis of separation (DUIs).

(3) The applicant contends good service, including a combat tour. The Board considered this contention during proceedings, but ultimately did not address it due to the applicant's PTSD and Mood Disorder NOS fully outweighing the basis of separation (DUIs).

(4) 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. The Board does not grant upgrades for favorable employment opportunities.

(5) The applicant contends providing support to the DOD and DOJ / FBI, maintaining a security clearance, and contributing daily to the defense of the nation. The Board considered this contention during proceedings and noted these post-service accomplishments. However, an upgrade was already granted based on the applicant's PTSD and Mood Disorder NOS fully outweighing the basis of separation (DUIs).

c. The Board determined the discharge is inequitable based on the applicant's PTSD and Mood Disorder NOS mitigating the applicant's DUI basis of 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. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding

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separation code of JKN. The Board determined the current RE code is proper and equitable. 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 PTSD and Mood Disorder NOS mitigated the applicant's DUI offenses. Therefore, the prior characterization is no longer appropriate.

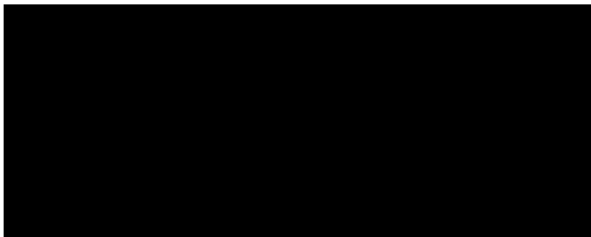
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts. Therefore, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code is proper and equitable due to the applicant's behavioral health diagnoses.

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:



Legend:

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