

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, the US Department of Veterans Affairs recently rated the applicant with 50 percent service-connected disabilities for PTSD, Bipolar Disorder, and Attention Deficit Hyperactive Disorder (ADHD). The rating states the applicant has an occupational and social impairment with reduced reliability and productivity. The applicant's GAF score is 50, which indicates serious impairment in social, occupational, or school functioning. The provided information should help to explain the applicant's misconduct. The applicant requests their rank be reinstated along with all awards. Also, all charges of domestic violence were dropped; therefore, the pattern of misconduct should be deleted.

b. Board Type and Decision: In a records review conducted on 16 November 2023, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's PTSD, Bipolar Disorder, and Traumatic Brain Injury (TBI) outweighing the applicant's FTR and Disrespect Toward An NCO offense, which were the 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 code is proper and equitable and voted not to change it.

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: 1 February 2010**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 11 January 2010

(2) Basis for Separation: The applicant was informed of the following reasons: On or about 29 July 2009, the applicant failed to go to their appointed place of duty, to wit: 0630 hours accountability formation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001470

On or about 27 July 2009, the applicant was disrespectful in department toward SGT M., an NCO, by taking off their rank and throwing it to the ground and walking away, consequently resulting in a Company Grade Article 15 on 18 August 2009.

Between on or about 19 October 2009 and on or about 22 October 2009, on several occasions, the applicant failed to go to their appointed place of duty, to wit: 0630 hours accountability formation.

On or about 05 November 2009, the applicant was disrespectful in department towards SFC W., and SGT S., by walking off when they both were talking to the applicant, consequently resulting in a Company Grade Article 15 on 10 December 2009.

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

(4) Legal Consultation Date: 19 January 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 25 January 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 April 2007 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / High School Letter / 90

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92A10, Automated Logistical Specialist / 2 years, 9 months, 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (18 April 2008 – 6 September 2008)

f. Awards and Decorations: NDSM, GWOTSM-2, ICM-CS, ASR-2

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 18 August 2009, for on or about 27 July 2009, without authority, fail to go at the time prescribed to their appointed place of duty. On or about 29 July 2009, were disrespectful in department toward SGT M., by taking their rank off and throwing it to the ground and walking away. The punishment consisted of forfeiture of \$300; and extra duty for 14 days and restriction for 7 days.

Mental Status Evaluation, 18 December 2009, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. It was recommended the commander offer the applicant a three-month trial period for restoration. The applicant was experiencing multiple stressors related to marital problems. During the trial period, the applicant would be expected to adhere to treatment plan set forth by chain of command and BH. If the applicant elects to discontinue medications, groups, or one on one sessions with the mutual consent of the health care providers, then the applicant would be subject to the commander's discretion to continue the trial period of

restoration. No alcohol was recommended. The applicant stated their intent was to remain in the Army to complete their military obligation. If for any reason, the applicant elects not to comply with the agreed upon treatment program, the commander may elect to invoke any action. If the applicant does not concur with these recommendations, DoD Directive 6490.1 "Mental Health Evaluations of Members of the Armed Forces", 1997, requires the next senior commanding officer within two business days, explain the decision to act against medical advice regarding administrative management of the applicant.

CG Article 15, 10 December 2010, for failing to go at the time prescribed to their appointed place of duty on three occasions between (19 and 22 October 2009). On 5 November 2009, was disrespectful in department toward SFC W. and SGT S., by walking off when they were talking to the applicant. The punishment consisted of a reduction to E-3; forfeiture of \$409 pay (suspended); 14 days extra duty and restriction and oral reprimand.

Numerous Developmental Counseling Forms for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: VA Rating Decision, 24 July 2013, reflects an evaluation of 50 percent for PTSD, bipolar disorder, attention deficit hyperactive disorder (also claimed as anxiety), and 40 percent for TBI.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293 and VA Benefits 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) 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 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 the US Department of Veterans Affairs rated the applicant 50 percent service-connected disabled for PTSD, Bipolar Disorder, and ADHD. The applicant submitted the

VA ratings that states the applicant has an occupational and social impairment with reduced reliability and productivity, and the applicant's GAF score is 50, which indicates serious impairment in social, occupational, or school functioning. The applicant contends the VA Rating Decision should help to explain the applicant's misconduct. The applicant provided a VA Rating Decision, 24 July 2013, reflecting an evaluation of 50 percent for PTSD, bipolar disorder, attention deficit hyperactive disorder (also claimed as anxiety), and 40 percent for TBI. The AMHRR includes a Mental Status Evaluation, 18 December 2009, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The mental status report and its recommendation for a three-month rehabilitative period was considered by the separation authority.

The applicant contends all charges of domestic violence were dropped; therefore, the pattern of misconduct should be deleted. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR reflects the specific reasons for the discharge included failing to go to their appointed place of duty on several occasions and being disrespectful on multiple occasions to a noncommission officer. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the applicant's rank should be reinstated along with all awards. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR) using the enclosed DD Form 149 regarding this matter. DD Form 149 may also be obtained from a Veterans' Service Organization.

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, Anxiety Disorder NOS, PTSD, Bipolar Disorder, and TBI.

(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 Anxiety Disorder NOS. The applicant is also service connected by the VA for PTSD, TBI, and Bipolar Disorder, which establishes that these conditions also 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's behavioral health conditions mitigate the offenses that were the basis of separation. Given the nexus between PTSD, Bipolar Disorder, and avoidance, the FTRs are mitigated. And given the nexus between PTSD and difficulty with authority (as well as the nexus with TBI, Bipolar Disorder, and impulse control), the disrespect offenses are also 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, Bipolar Disorder, and TBI outweighed the applicant's basis of separation (FTRs and disrespect).

b. Response to Contention(s):

(1) The applicant contends the US Department of Veterans Affairs rated the applicant 50 percent service-connected disabled for PTSD, Bipolar Disorder, Attention Deficit Hyperactive Disorder. The rating states the applicant has an occupational and social impairment with reduced reliability and productivity. The applicant's GAF score is 50, which indicates serious impairment in social, occupational, or school functioning. The Board liberally considered this contention and determined that the applicant's PTSD, Bipolar Disorder, and TBI outweighed the applicant's FTR and disrespect offenses, which were the basis for separation. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but ultimately did not address it due to an upgrade being granted based on the applicant's noted BH conditions.

(3) The applicant contends all charges of domestic violence were dropped; therefore, the pattern of misconduct should be deleted. The Board considered this contention but ultimately did not address it due to an upgrade being granted based on the applicant's noted BH conditions.

(4) The applicant contends their rank should be reinstated along with all awards. The Board determined that the applicant's requested change to rank and the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

c. The Board determined the discharge is inequitable based on the applicant's PTSD, Bipolar Disorder, and TBI outweighing the applicant's FTRs and Disrespect Toward NCO offenses, which were the 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 code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD, Bipolar Disorder, and TBI mitigated the applicant's FTRs and Disrespect Toward NCO offenses, which were the basis for separation. 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 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: Yes**

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001470

- 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**

Authenticating Official:

3/8/2024



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