

**1. Applicant's Name:** [REDACTED]

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

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

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

The applicant seeks relief contending, in effect, at the time of discharge, the applicant pleaded to be released at an earlier time to avoid a medical board after a sexual misconduct incident. The applicant has been in therapy and has overcome their issues.

b. **Board Type and Decision:** In a records review conducted on 30 November 2023, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's length of service and combat service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General Under Honorable Conditions 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 RE code was found proper and equitable.

*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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 4 November 2005

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** Undated

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant violated General Orders by introducing, possessing, transferring, and consuming alcohol; participating in relationships not required by the mission; and having visitors of the opposite gender in their living quarters.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 17 October 2005

(5) **Administrative Separation Board:** On 17 October 2005, the applicant's unconditional waiver was approved.

**(6) Separation Decision Date / Characterization:** 25 October 2005 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 27 January 2004 / 4 years

**b. Age at Enlistment / Education / GT Score:** 29 / associate degree / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 63J10, Quartermaster and Chemical Equipment Repairer / 1 year, 9 months, 8 days

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

**e. Overseas Service / Combat Service:** SWA / Iraq (30 January 2005 – 5 August 2005)

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

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Agent Investigation Report, 21 July 2005, reflects on 15 July 2005, the applicant told several Soldiers in the unit the applicant had been raped. After further investigation (17 July 2005), the applicant admitted to not being raped and indicated that other Soldiers the applicant confided in called it rape.

Mental Status Evaluation, 5 August 2008, 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. Noted, IAW AR 635-200, the applicant had met the criteria for Chapter 5-13 administrative separation for Personality Disorder as indicated by the following behavioral manifestations defined by DSM-IV. Retention of such emotionally and behaviorally disabled Soldier puts them at high risks for continued engagement in behaviors (Substances abuse, suicide attempts, assault, AWOL) for which psychiatric hospitalization or UCMJ action may become necessary. Further a personality disordered Soldier represents a command liability and impair overall unit readiness and functioning. While intensive effort may result in transient improvement in behavior, such efforts are predicably short lived in their efficacy and ultimately result in no improvement of the Soldier's retention potential.

**i. Lost Time / Mode of Return:** None

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Memorandum for Record Certificate of Psychiatric Examination, 8 August 2005, the applicant had no withdrawal symptoms on the ward. The applicant displayed no suicidal behavior on the ward and participated cooperatively in individual and group therapy. The applicant was not regarded as a danger to self or others at the time of discharge. The applicant was diagnosed with Adjustment Disorder. The applicant had met the retention standards prescribed in Chapter 3, AR 40-501, and there is no psychiatric disease/defect which warranted disposition through medical channels. The applicant did not need a medical board. The applicant was mentally sound and able to appreciate any wrongfulness in their conduct and

to conform their conduct to the requirements of the law. The applicant had the mental capacity to understand and participate in a board or other administrative proceedings.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; ERB.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has sought out therapy and overcome their issues.

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

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

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

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

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of

service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

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

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

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

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

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

**(4)** Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

**(5)** Chapter 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.

**(6)** 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.

**(7)** Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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 pleading to be released at an earlier time to avoid a medical board after a sexual misconduct incident. 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 the applicant sought out therapy and has overcome the applicant's issues. 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.

The AMHRR includes a Memorandum for Record Certificate of Psychiatric Examination, 8 August 2005, reflecting the applicant had no withdrawal symptoms on the ward. The applicant displayed no suicidal behavior on the ward and participated cooperatively in individual and group therapy. The applicant was not regarded as a danger to self or others at the time of discharge. The applicant was diagnosed with Adjustment Disorder. Also, a Mental Status Evaluation, 5 August 2008, 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. The mental status evaluation was considered by the separation authority.

## **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 determined that, based on the Board Medical Advisor opine

resulting from a review of the applicant's DOD/VA health and official service records and the applicant submitted evidence, the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Depression, Anxiety Disorder NOS, and MST.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined that, based on the Board Medical Advisor's opine and the applicant's official record, the applicant was diagnosed in service with an Adjustment Disorder, Depression, and Anxiety Disorder NOS and the applicant asserts experiencing an MST in March 2005 while deployed to Iraq.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board applied liberal consideration and determined that, based on the Board Medical Advisor's opine, and determined that the applicant's Adjustment Disorder, Depression, Anxiety Disorder NOS, and MST assertion do not mitigate the basis of separation misconduct. The applicant's BH conditions were all diagnosed after the misconduct that led to the separation, so it is less likely than not that any of these conditions contributed to the misconduct that led to the separation. Similarly, the misconduct occurred prior to the asserted MST and the record reflects credible contradictory evidence that outweighs the assertion regarding the facts and circumstances (CID unsubstantiated claim based on inconsistent applicant statements, sworn witness statements reflecting the applicant openly discussed filing a false claim).

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression, Anxiety Disorder NOS, and asserted MST outweighed the applicant's medically unmitigated offenses violation of General Orders (introducing, possessing, transferring, and consuming alcohol; participating in relationships not required by the mission; and having visitors of the opposite gender in living quarters).

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

(1) The applicant contends pleading to be released at an earlier time to avoid a medical board after a sexual misconduct incident. The Board considered this contention during proceedings and determined the applicant's discharge warrants an upgrade to a General characterization of service based on the applicant's length of service and combat service.

(2) The applicant contends the applicant sought out therapy and has overcome the applicant's issues. The Board considered this contention during proceedings, but ultimately did not address it in detail based on granting relief as stated in paragraph b, above.

**c.** The Board determined the discharge is inequitable based on the applicant's length of service and combat service outweighing the basis of separation. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to General Under Honorable Conditions and changed the separation authority to AR 635-200 par 14-12a. Accordingly, the narrative reason for discharge changed to Misconduct (Minor Infractions) with a corresponding SPD of JKN. The RE-code of 3 (waiver required) was found proper and equitable based on the behavioral health condition(s). However, the applicant may request a personal appearance hearing to address further issues before a 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:**

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

**AR20210001476**

(1) The Board voted to change the applicant's characterization of service to General Under Honorable Conditions based on the applicant's length of service and combat service. 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 is JKN.

(3) The RE code is proper and equitable considering the documented BH conditions.

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** General, Under Honorable Conditions
- 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:**

5/23/2024



**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