

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the request for an upgrade is based on the Hagel Memorandum consideration for PTSD.

b. Board Type and Decision: In a records review conducted on 2 November 2023, and by a 5-0 vote, the Board, based on the applicant's length and quality of service, to include combat service, PTSD and depression diagnoses outweighing applicant's disobeying a lawful on multiple occasions, derelict in the performance of the duties, and making a false official statement, and determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis 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: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Honorable

b. Date of Discharge: 14 October 2014**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 9 September 2014

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

On 6 July 2014, the applicant wrongfully disobeyed a lawful command from a commissioned officer;

on 16 and 18 April, and 5 and 6 July 2014, the applicant wrongfully disobeyed a lawful order from a noncommissioned officer;

on 5 July 2014, the applicant made a false official statement; and

on 9 September 2013, the applicant was derelict in the performance of the duties.

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

(4) Legal Consultation Date: Incomplete Election of Rights

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 23 September 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 March 2011 / 4 years, 19 weeks

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 103

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1P, Infantryman / 3 years, 7 months, 7 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (22 February 2012 – 29 August 2012; 22 January 2014 – 12 August 2014)

f. Awards and Decorations: ACM-2CS, ARCOM-2, AAM-2, AGCM, NDSM, GWOTSM, ASR, OSR-2, NATOMDL, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: The applicant's Enlisted Record Brief (ERB), 15 October 2014, reflects the applicant was flagged for Adverse Action (AA), effective 12 July 2014, and was ineligible for reenlistment due to Adverse Action Flag (Flag Codes A, H, L, M, U, V, and X) (9B). The Assignment Eligibility Availability code was not properly coded. The applicant was reduced from E-4 to E-3, effective 15 July 2014.

The applicant's DD Form 214 reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was authenticated with the applicant's electronic signature. The applicant had no lost time.

Commander's Report, undated, reflects the applicant received the following:

CG Article 15, 23 May 2013, for leaving appointed place of duty and disobeying a noncommissioned officer. The punishment consisted of a reduction to E-3; forfeiture of \$443 pay; extra duty and restriction for 14 days; and an oral reprimand.

Summarized Article 15, 10 September 2013, for being derelict in the performance of duties. The punishment consisted of extra duty for 14 days (9 days suspended); restriction for 14 days; and an oral reprimand.

CG Article 15, 15 July 2014, for disobeying a commissioned officer; disobeying a noncommissioned officer; and making a false official statement. The punishment consisted of a reduction to E-3.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; and Hagel Memorandum.

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) 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.

(4) 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.

(5) 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'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 not 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 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of honorable.

The applicant contends the request for an upgrade is based on the Hagel memorandum consideration for PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR contains no documentation of PTSD diagnosis.

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: Adjustment Disorder, Depression, TBI, PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Depression. The VA has also diagnosed and service connected the applicant with Anxiety and TBI and diagnosed combat-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder and Depression. The VA has also diagnosed and service connected the applicant with Anxiety and TBI and diagnosed combat-related PTSD. Given the nexus between PTSD and difficulty with authority, wrongful disobedience is mitigated. There is also a nexus between PTSD, Depression, and avoidance,

so the applicant's dereliction of duties is mitigated. Making a false official statement is not mitigated by any of the applicant's BH conditions due to no natural sequela.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression, TBI, and PTSD outweighed the basis for applicant's separation – making a false official statement.

b. Response to Contention(s): The applicant contends the request for an upgrade is based on the Hagel memorandum consideration for PTSD. The Board considered this contention and determined the applicant's PTSD mitigates applicant's disobeying a lawful on multiple occasions and dereliction in the performance of the duties, however it does not excuse or mitigate applicant's misconduct of making a false official statement. However, the Board voted to upgrade the applicant's discharge based on the applicant's length and quality of service, to include combat service, PTSD and depression diagnoses outweighing applicant's making a false official statement.

c. The Board, based on the applicant's length and quality of service, to include combat service, PTSD and depression diagnoses outweighing applicant's disobeying a lawful on multiple occasions, derelict in the performance of the duties, and making a false official statement, and determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis 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 length and quality of service, to include combat service, PTSD and depression diagnoses outweighed the applicant's misconduct of disobeying a lawful on multiple occasions, derelict in the performance of the duties, and making a false official statement. Thus, the prior characterization is no longer appropriate.

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

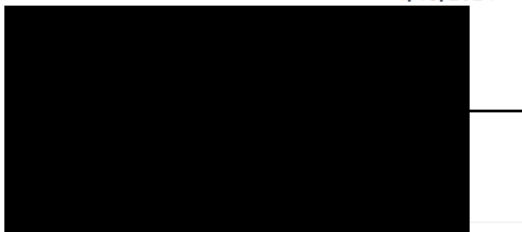
(3) The RE code will not change, due to applicant's Adjustment Disorder, Depression, TBI, and PTSD diagnoses warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: No Change
- 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:

1/15/2024



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