

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 honorable.

The applicant seeks relief contending, in effect, being stationed at Camp Loyalty in Baghdad Iraq where they lost seven Soldiers from an enemy rocket attack. The applicant was so afraid for their life, and since the applicant did not have any medication to treat the PTSD, the applicant became sick. The applicant was the only Soldier working in the supply section and which escalated the symptoms. The applicant could not go on with the deployment and then after was discharged.

b. Board Type and Decision: In a records review conducted on 24 October 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the PTSD and Major Depressive Disorder (MDD) partially outweighing the majority of the applicant's misconduct and the remaining misconduct is outweighed by the applicant's length, quality and combat service, prior honorable service and the length of time since the discharge. Therefore, the Board voted to grant partial relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. *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 / General (Under Honorable Conditions)

b. Date of Discharge: 27 September 2011**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 20 August 2011

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

On several occasions, the applicant failed to report between on or about 3 January 2011 and 27 May 2011.

On several occasions, the applicant willfully disobeyed a noncommissioned officer between on or about 25 May 2011 and 27 May 2011.

The applicant disrespected several noncommissioned officers on or about 27 May 2011.

On several occasions, the applicant failed to obey a lawful order between on or about 2 January 2011 and 5 January 2011.

The applicant was derelict in their duty to escort the local national day workers on 23 May 2011: and,

The applicant made false official statement to SSG J. B. on 23 May 2011.

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

(4) Legal Consultation Date: 22 August 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 26 August 2011 /General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 3 June 2010 / 3 years, 2 weeks

b. Age at Enlistment / Education / GT Score: 24 / High School Graduate / 92

c. Highest Grade Achieved / MOS / Total Service: E-3 / 92Y10, Unit Supply Specialist / 4 years, 1 month, 27 days

d. Prior Service / Characterizations: ARNG, 1 August 2007 – 11 May 2009 / GD
IADT, 20 August 2007 – 10 January 2008 / UNC
(Concurrent Service)
USARCG, 12 May 2009 – 31 July 2009 / NA
USAR, 1 August 2009 – 2 June 2010 / HD

e. Overseas Service / Combat Service: SWA / Iraq (13 November 2010 – 13 September 2011)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 8 January 2011, on or about 2 and 5 January 2011, fail to obey a lawful order issued by SGT T. W. K.; on or about 3 January 2011, fail to go at the time prescribed to the appointed place of duty; and on or about 3 January 2011, without authority, go from the appointed place of duty. The punishment consisted of a reduction to E-2; forfeiture of \$383 pay per month for one month; extra duty and restriction for 14 days; and an oral reprimand.

FG Article 15, 12 July 2011, on or about 23 May 2011, with intent to deceive, make to SSG J. B., an official statement, which statement was totally false; on or about 23 May 2011, was derelict in the performance of duties; on or about 21, 25, 26 and 27 May 2011, willfully disobey a lawful order from a noncommissioned officer; on or about 27 May 2011, was disrespectful in deportment toward 1SG M. J. S.; on or about 27 May 2011, was disrespectful in language toward SSG R. K.; on or about 27 May 2011, was disrespectful in deportment toward

SSG R. K.; on or about 27 May 2011, was disrespectful in deportment toward 1SG T. V.; on or about 21 and 27 May 2011, fail to go at the time prescribed to the appointed place of duty. The punishment consisted of a reduction to E-2; forfeiture of \$872; and extra duty for 45 days.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Initial Post Traumatic Stress Disorder Disability Benefits Questionnaire, 19 January 2012, reflects the applicant was diagnosed with: Axis I: 309.81 Post-traumatic Stress Disorder, chronic and 296.22 Major depression, single episode, moderate; and Axis IV: Psychosocial and Environmental Problems: Spouse threatening to divorce the applicant, inability to get a job despite active search for work, death of Soldier friends while deployed in the past year, inadequate income/financially struggling.

Problem List, 5 November 2013, reflects the applicant was being treated for Posttraumatic Stress Disorder and Headache Disorder.

Department of Veterans Affairs letter, 3 June 2013, reflects the applicant has been treated for service-connected PTSD since July 2012. It was noted, the applicant presented with significant symptoms which were moderate to severe in intensity to include: difficulty with concentration, tendency to isolate oneself from other, irritability, anger, as well as ongoing depression, hypervigilance, significant gastrointestinal distress, and being easily startled. The applicant also indicated difficulty in trusting figures of authority which could have resulted in conditions which led to the applicant's general discharge.

Progress Notes, 13 September 2012, reflects the VA granted the applicant 70 percent service-connected disability for post-traumatic stress disorder.

National Register Psychologist Veteran Evaluation Expert Report, 20 September 2021, reflects Dr. B. V., licensed clinical psychologist, states due to the Veteran's trauma stressors and TBI while in the military, it is the clinical opinion the "Misconduct (Serious Offense)" was directly due to the trauma stressors the applicant experienced in military service and which was further complicated by in-service TBI. It is the clinical opinion the Veteran should have the general (under honorable conditions) reviewed and changed and upgraded to a medical discharge.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Online Application; DD Form 214; partial ADRB CRD AR20150003313; VA Letter; Orders D-06-010060; Permanent Order 187-034; medical records; Licensed Clinical Psychologist Letter; Dr. B. V. résumé.

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 14-12c 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 being deployed to Iraq and losing seven Soldiers from an enemy rocket attack. The applicant was afraid for their life and became sick due to not having any medication to treat PTSD. The applicant was the only Soldier working in the supply section which escalated the applicant's symptoms, and the applicant could not finish the deployment. The applicant provided an Initial Post Traumatic Stress Disorder Disability Benefits Questionnaire, 19 January 2012, which reflects the applicant was diagnosed with: Axis I: 309.81 Post-traumatic Stress Disorder, chronic and 296.22 Major depression, single episode, moderate; and Axis IV: Psychosocial and Environmental Problems: Spouse threatening to divorce the applicant, inability to get a job despite active search for work, death of Soldier friends while deployed in the past year, inadequate income/financially struggling. Problem List, 5 November 2013, reflects the applicant was being treated for Post-traumatic Stress Disorder and Headache Disorder. A Department of Veterans Affairs letter, 3 June 2013, reflects the applicant had been treated for service-connected PTSD since July 2012. It was noted, the applicant presented with significant symptoms which were moderate to severe in intensity to include: difficulty with concentration, tendency to isolate oneself from other, irritability, anger, as well as ongoing depression, hypervigilance, significant gastrointestinal distress, and being easily startled. The applicant also indicated difficulty in trusting figures of authority which could have resulted in conditions which led to the applicant's general discharge. Progress Notes, 13 September 2012, reflect the VA granted the applicant 70 percent service-connected disability for post-traumatic stress disorder. The AMHRR does not contain a mental status evaluation.

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: PTSD, MDD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent SC for PTSD related to combat.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that The applicant is 100 SC for PTSD and has a potentially mitigating diagnosis of MDD. As there is an association with PTSD and avoidance and PTSD and difficulty with authority figures, there is a nexus between the applicant misconduct characterized by FTR, derelict in duty for not escorting local nationals, and minor disrespect of an NCO on 27 May 2011 whereby the applicant was disrespectful in language, rolled his eyes, and was being argumentative. While PTSD does not typically mitigate disobeying direct orders, a review of the records suggests some of the infractions were minor, to include not getting a mop and cleaning his room, not following the NCO when directed to do so, and not running two miles as directed, and under liberal guidance, this advisor supports mitigation. The applicant's misconduct characterized by failing to report every hour on the hours between, while not mitigated by PTSD would be potentially mitigated by MDD due to the relationship between MDD and memory problems, lethargy, and decreased motivation. Regarding misconduct characterized by making a false official statement, the misconduct is not natural sequela of PTSD or MDD and therefore not mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the Board's application of liberal consideration, the Board considered the opinion of the Board's Medical Advisor, a voting member, that the available evidence did not support a conclusion that the applicant's PTSD mitigated the misconduct of making false official statement with intent to deceive.

b. Response to Contention(s): The applicant contends being deployed to Iraq and losing seven Soldiers from an enemy rocket attack. The applicant was afraid for their life and became sick due to not having any medication to treat PTSD. The applicant was the only Soldier working in the supply section which escalated the applicant's symptoms, and the applicant could not finish the deployment. The Board considered this contention and determined the applicant's PTSD and MDD outweighs the applicant's basis for separation and the remaining unmitigated misconduct is minor misconduct.

c. The Board determined the discharge is inequitable based on the PTSD and Major Depressive Disorder (MDD) partially outweighing the applicant's basis for separation misconduct and the remaining misconduct is outweighed by the applicant's length, quality and combat service, prior honorable service and the length of time since the discharge. 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 of the partial mitigation and service record as detailed in paragraphs 9a (3-4) and 9b. 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.

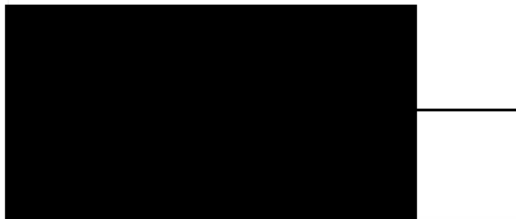
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: 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:

12/29/2023



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