

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**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 applicant is sorry for their actions committed in the year of 2014. The applicant knows deep in their heart, they served this country proudly. The applicant served in the rank of E-6 and received numerous awards throughout their military career. The applicant has led and mentored many Soldiers in the past which are now leaders still serving in today's Army. The applicant served two tours in Iraq, in which the applicant is a survivor of five IED attacks during the duration of the deployments. The applicant made a bad choice in the last part of the military career conducting a bootlegging operation. The applicant suffers badly from depression and PTSD in which they are now 100 percent disabled by VA. The applicant even lost their marriage because of the bad behavior. The applicant has been through counseling with the VA to help cope with nightmares and PTSD along with behavior issues and is on medication. The applicant realizes the wrong they have done and desires to make everything right. The applicant has served honorably during the 17 years and 11 months. The applicant also states there is no proof the applicant committed a felony crime of selling untax cigarettes and felony charges against the applicant were dropped.

**b. Board Type and Decision:** In a records review conducted on 5 October 2023, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the circumstances surrounding the misconduct, and the applicant taking accountability for actions outweighing 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 that the reentry code of RE-3 is 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 / General (Under Honorable Conditions)

**b. Date of Discharge:** 10 December 2014

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 8 September 2014

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

The applicant did, at or near Walthourville, Georgia, between on or about 17 April 2014 to on or about 2 July 2014, violate Section 48-11-25, Official Code of Georgia Annotated, by selling untaxed cigarettes on multiple occasions; and,

The applicant did, at or near Walthourville, Georgia, between on or about 17 April 2014 to on or about 2 July 2014, violate Section 3-3-3, Official Code of Georgia Annotated, by selling alcohol without a license on multiple occasions.

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

**(4) Legal Consultation Date:** 6 October 2014

**(5) Administrative Separation Board:** On 8 October 2014, the applicant was notified to appear before an administrative separation board.

On 7 November 2014, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the two reasons listed in the notification memorandum were supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

**(6) Separation Decision Date / Characterization:** undated / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 26 June 2009 / NIF (The DD Form 4 for this period is void from the AMHRR.)

**b. Age at Enlistment / Education / GT Score:** 32 / some college / 117

**c. Highest Grade Achieved / MOS / Total Service:** E-6 / 92F30, Petroleum Supply Specialist / 17 years, 11 months, 8 days

**d. Prior Service / Characterizations:** RA, 3 January 1997 – 14 July 1999 / HD  
RA, 15 July 1999 – 30 August 2000 / HD  
RA, 31 August 2001 – 17 May 2005 / HD  
RA, 18 May 2005 – 25 June 2009 / HD

**e. Overseas Service / Combat Service:** Germany, Korea, SWA / Iraq (4 January 2005 – 6 January 2006; 17 January 2007 – 4 April 2008)

**f. Awards and Decorations:** ARCOM-4, AAM-5, AGCM-5, NDSM, GWOTSM, KDSM, ICM-2CS, NCOPDR-3, ASR, OSR-5, CAB

**g. Performance Ratings:** 1 November 2008 – 11 January 2011 / Among The Best  
12 January 2011 – 12 September 2013 / Among The Best

13 September 2013 – 12 September 2014 / Marginal

**h. Disciplinary Action(s) / Evidentiary Record:** Waltourville Police Department, Incident Report, 2 July 2014, reflects the applicant was arrested for two counts of the sale of untaxed cigarettes, Smokeless to and two counts of sale of alcohol without license.

Personnel Action Form reflects the applicant's duty status changed as follows: From "Present for Duty (PDY)," to "Confined by Civilian Authorities (CCA)" effective 3 July 2014.

Two Developmental Counseling Forms, for initiation of Flag for involuntary separation under 14-12c and for being arrested for two counts of selling alcohol without a license and two counts of selling tobacco without a license.

Report of Proceedings by Investigating Officer/Board of Officers, 7 November 2014, reflects the investigating officer found: The allegation of selling untaxed cigarettes on multiple occasions and the allegation of selling alcohol without a license on multiple occasions was supported by preponderance of the evidence and does warrant separation. The Board recommended the applicant be separated from Active Military Service with a general (under honorable conditions) characterization of service.

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

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

**(1) Applicant provided:** Health Record, 5 November 2014, reflects the applicant reported the following: high levels of general distress; severe depressive symptoms; severe anxiety symptoms; significant PTSD symptoms; and harmful or hazardous alcohol consumption.

VA Benefit Letter, 12 May 2018, reflects the applicant was granted 100 percent service-connected disability; however, the letter does not state the nature of the disability.

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 31 July 2014, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD with negative results and mTBI with positive results. Service member was referred for: A comprehensive mild Traumatic Brain Injury evaluation. It was noted the applicant declined referral for behavioral health treatment at the time. The applicant's adjustment disorder is secondary to the current legal encumbrance the applicant is facing. The applicant meets psychiatric medical retention requirements of IAW 40-501, Chapter 3 and does not warrant disposition through medical channels or qualify for MEB. The applicant was psychiatrically cleared for any administrative action deemed appropriate by command and is deployable worldwide. The applicant was diagnosed with: Axis I: 309.0 Adjustment disorder secondary to current legal problem.

**5. APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 149; self-authored statement; DD Form 214; court documents; health record; eBenefits statement; VA Form 21-526EZ; VA Form 21-0781; VA Form 21-0781; 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 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 good service, including two combat tours. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends being diagnosed with depression and PTSD by the VA. The applicant provided a Health Record, 5 November 2014, which reflects the applicant reported the following: high levels of general distress; severe depressive symptoms; severe anxiety symptoms; significant PTSD symptoms; harmful or hazardous alcohol consumption. A VA Benefits letter, 12 May 2018, reflects the applicant was granted 100 percent service-connected disability; however, the letter does not state the nature of the disability. The AMHRR contains Report of Mental Status Evaluation (MSE), 31 July 2014, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD with negative results and mTBI with positive results. Service member was referred for: A comprehensive mild Traumatic Brain Injury evaluation. It was noted the applicant declined referral for behavioral health treatment at the time. The applicant's adjustment disorder is secondary to the current legal encumbrance the applicant is facing. The applicant meets psychiatric medical retention requirements of IAW 40-501, Chapter 3 and did not warrant disposition through medical channels or qualify for MEB. The applicant was psychiatrically cleared for any administrative action deemed appropriate by command and was deployable worldwide. The applicant was diagnosed with: Axis I: 309.0 Adjustment disorder secondary to current legal problem. The MSE was considered by the separation authority.

The applicant contends there was no proof of the applicant's guilt during the military trial and the applicant was discharged prior to attending a civilian trial in court. The felony charges were dropped. The applicant provided a copy of Superior Court of Liberty County, State of Georgia document, 10 June 2015, which reflects the disposition for two counts of sale of non-taxed tobacco product, was Not Proven and the two counts of alcohol license violation the disposition was guilty. The applicant was adjudged guilty or sentenced under First Offender/Conditional Discharge.

The applicant requests separation pay for lost wages as an E-6. 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. A 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, PTSD, and Major Depression.

(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. The VA has also diagnosed and service connected the applicant for combat-related PTSD with Major Depression. Service connection establishes that applicant's PTSD and Major Depression existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate or excuse the discharge. The applicant was diagnosed in service with an Adjustment Disorder. The VA has also diagnosed and service connected the applicant for combat-related PTSD with Major Depression. Despite these BH conditions, there is no medical mitigation in the applicant's case due to no natural sequela between an Adjustment Disorder, PTSD, or Major Depression and illegally selling cigarettes and alcohol. None of applicant's conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(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, PTSD, or Major Depression outweighed the applicant's medically unmitigated offenses of illegally selling cigarettes and alcohol.

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

(1) The applicant contends good service, including two combat tours. The Board determined that the applicant's length and quality of service (including service in Iraq), the circumstances of the misconduct, and the applicant taking responsibility for their poor decisions, outweighed the illegal selling of alcohol and cigarettes. Therefore, a discharge upgrade is warranted.

(2) The applicant contends being diagnosed with depression and PTSD by the VA. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, or Major Depression outweighed the applicant's medically unmitigated offenses of illegally selling cigarettes and alcohol. However, the Board did determine that a discharge upgrade is warranted as noted above in 9b(1).

(3) The applicant contends there was no proof of the applicant's guilt during the military trial and the applicant was discharged prior to attending a civilian trial in court. The Board considered this contention during proceedings but ultimately did not address it in detail due to an upgrade being granted based on the applicant's service record.

(4) The applicant requests separation pay for lost wages as an E-6. The Board determined that the applicant's request for lost wages 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 149 regarding this matter. A DD Form 149 may be obtained online or from a Veterans' Service Organization.

**c.** The Board determined the discharge is inequitable based on the applicant's length and quality of service (to include combat service), the circumstances of the misconduct, and the

applicant taking accountability for actions. These factors outweighed the misconduct that served as 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 of RE-3 is proper and equitable.

**d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable based on the mitigating factors outlined in the evidentiary record (length/quality of service, combat service, circumstances surrounding the misconduct, and the applicant taking responsibility for the misconduct). 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:** 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

**Authenticating Official:** \_\_\_\_\_



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