

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, sustaining a left knee injury during a deployment which was a significant contributing cause in the release from the Army. The applicant states not being given a medical profile before being deployed, and was unable to convince leaders to stop calling the applicant a nickname and to acknowledge the seriousness of the medical condition. The applicant states despite physical ailments, leadership made it appear as though the applicant did not try to improve oneself and be successful in the Army. The applicant had one month left to finish an honorable term of service, but due to the permanent profile the applicant was medically unable to carry on as a healthy Soldier. The applicant was given the first Article 15 because of the perception of being disrespectful due to the inability to stand for long periods of time. The applicant was subjected to harassment from the leadership, which was reported to the Office of the Inspector General. The applicant contends having PTSD.

b. Board Type and Decision: In a records review conducted on 31 August 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, applicant's PTSD diagnosis, and harassment experienced by the applicant during military service outweighing the discharge. 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of 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: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 26 March 2015**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 2 December 2014

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant disobeyed a lawful order. Disrespectful in language towards an NCO. Used provoking language towards SPC W. and communicated a threat towards SPC W.

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

(4) Legal Consultation Date: 8 December 2014

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 19 February 2015 / General (Under Honorable Conditions) / The separation authority found the disability was not the cause, or substantial contributing cause, of the misconduct committed and no other circumstances warranted disability processing instead of alternate administrative separation. Directed this case not be processed through medical disability channels.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 April 2011 / 4 years, 21 weeks

b. Age at Enlistment / Education / GT Score: 20 / Bachelor's Degree / 120

c. Highest Grade Achieved / MOS / Total Service: E-4 / 13F1P, Fire Support Specialist / 3 years, 11 months, 2 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Alaska, SWA / Afghanistan (5 December 2011 – 17 September 2012)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Commander's Report, 17 December 2014, reflects:

Company Grade Article 15 imposed on 21 November 2012; Violation of Article 91, UCMJ; Punishment: Reduction to Private First Class, suspended for 180 days; forfeiture of \$410 pay, suspended for 180 days; restriction for 45 days, suspended for 180 days.

Company Grade Article 15 imposed on 28 June 2013; Violation of Article 91, UCMJ; Punishment: Forfeiture of \$485 pay, suspended for 180 days; extra duty and restriction for 14 days, suspended for 180 days.

Field Grade Article 15 imposed on 10 July 2014: Violation of Article 117, UCMJ and Article 134, UCMJ; Punishment: Reduction to Private First Class, forfeiture of \$500 pay per month for two months; extra duty and restriction for 45 days.

Memorandum for recommendation for medical board, 5 December 2014, reflects the applicant had been under the care of the orthopedic clinic for the diagnosis of bilateral knee osteoarthritis. Right great toe arthritis and left leg chronic exertional compartment syndrome.

Three Developmental Counseling Forms, for chapter proceeding and performance.

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 214; DD Form 293 and memorandum, 13 August 2015.

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 14-12b, 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 having PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR is void of a mental status report.

The applicant contends sustaining a left knee injury during a deployment, which was a significant contributing cause in the release from the Army. The applicant's AMHRR includes a Memorandum, 5 December 2014, recommendation for medical board, reflecting the applicant had been under the care of the orthopedic clinic for the diagnosis of bilateral knee osteoarthritis. Right great toe arthritis and left leg chronic exertional compartment syndrome. The separation authority found the condition was not the cause, or substantial contributing cause, of the misconduct committed and no other circumstances warranted disability processing instead of alternate administrative separation. The separation authority directed the case not be processed through medical disability channels.

The applicant contends harassment and discrimination by members of the chain of command. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

The applicant contends not being given a medical profile before being deployed, and was unable to convince leaders to stop calling the applicant by a nickname and to acknowledge the seriousness of the medical condition. The applicant contends, despite physical ailments, leadership made it appear as though the applicant did not try to improve oneself and be successful in the Army. The applicant had one month left to finish an honorable term of service, but due to the permanent profile the applicant was medically unable to carry on as a healthy

Soldier. The applicant contends being given an Article 15, because of the perception of being disrespectful due to the inability to stand for long periods of time. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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, 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 is diagnosed and service connected by the VA for PTSD. The service connection establishes that applicant's PTSD existed during military service.

(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 is diagnosed and service connected by the VA for PTSD, which provide partial mitigation for the misconduct that led to applicant's separation. Given the nexus between PTSD and difficulty with authority, applicant's PTSD likely contributed to the disobeying a lawful order and disrespect, so that misconduct is mitigated. However, neither PTSD or an Adjustment Disorder have a natural sequela with using provoking language to threaten someone, so this misconduct is not mitigated.

(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 outweighed the basis for applicant's separation – provoking language, and communicating a threat. There is validity to applicant's harassment claim (supporting 3rd party statements), along with the remaining misconduct being minor in nature.

b. Response to Contention(s):

(1) The applicant contends having PTSD. The Board considered this contention and determined the applicant's PTSD, length and quality of service, to include combat service, and harassment experienced by the applicant during military service outweighed the applicant's provoking language, communicating a threat, disobeying a lawful order and disrespect.

(2) The applicant contends left knee injury sustained during a deployment was a significant contributing cause in the release from the Army. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD, length and quality of service, to include combat service, and harassment experienced by the applicant during military service outweighed the

applicant's provoking language, communicating a threat, disobeying a lawful order and disrespect.

(3) The applicant contends harassment and discrimination by members of the chain of command. The Board considered this contention and determined the applicant's harassment experienced by the applicant during military service, PTSD, length and quality of service, to include combat service, outweighed the applicant's provoking language, communicating a threat, disobeying a lawful order and disrespect.

(4) The applicant contends not being given a medical profile before being deployed and was unable to convince leaders to stop calling the applicant by a nickname and to acknowledge the seriousness of the medical condition. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD, length and quality of service, to include combat service, and harassment experienced by the applicant during military service outweighed the applicant's provoking language, communicating a threat, disobeying a lawful order and disrespect.

(5) The applicant contends being given an Article 15, because of the perception of being disrespectful due to the inability to stand for long periods of time. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD, length and quality of service, to include combat service, and harassment experienced by the applicant during military service outweighed the applicant's provoking language, communicating a threat, disobeying a lawful order and disrespect.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, applicant's PTSD diagnosis, and harassment experienced by the applicant during military service outweighing the discharge. 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of 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, applicant's PTSD diagnosis, and harassment experienced by the applicant during military service outweighed the discharge. Thus, the prior characterization is no longer appropriate

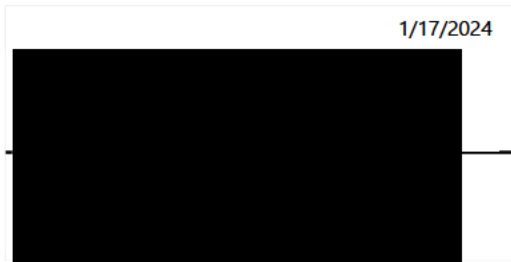
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change, due to applicant's PTSD diagnosis and applicant's experiences warranting consideration prior to reentry of military service.

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, paragraph 14-12a

Authenticating Official:



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