

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, through counsel, requests an upgrade to honorable.

The applicant seeks relief contending, in effect, on 3 September 2014, the Secretary of Defense acknowledged the military corrections boards needed to change the course for veterans with PTSD. Aiming to redress the long history of injustice in the military, the PTSD Upgrade Memo required a new standard liberal consideration in cases like the applicant. The application falls inside the PTSD Upgrade Memo, which creates a presumption in favor of upgrade. Which is further supported by five diagnoses for PTSD. However, because the applicant's unit used the medical issues to attack and punish, the applicant did not receive the appropriate medical discharge. The applicant's unit used the medical illness to attack the applicant's credibility.

b. Board Type and Decision: In a records review conducted on 3 October 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's service record, compassion for the applicant's behavioral health condition, and the length of time since 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 determined the reentry code is proper and equitable and voted not to change it.

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 2012**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 31 May 2011

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant forged a DA Form 3349, Physical Profile.

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

(4) Legal Consultation Date: 1 June 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 23 August 2012 / General (Under Honorable Conditions) / In accordance with AR 635-200, paragraph 1-33(c), the separation authority found the disability was not the cause, or substantial contributing cause, of the misconduct and no other circumstances warrant disability processing instead of alternate administrative separation. The separation authority directed the case not be processed through medical disability channels.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 April 2008 / 4 years

b. Age at Enlistment / Education / GT Score: 21 / GED / 114 / 4 years

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92A1P, Automated Logistical Specialist / 4 years, 5 months, 20 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Alaska, SWA / Afghanistan (4 March 2009 – 25 January 2010)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 18 March 2011, on or about 20 February 2011 the applicant was disrespectful in language to an NCO and failed to go at the time prescribed to appointed place of duty. The punishment consisted of extra duty and restriction for 14 days.

Record of Trial by Summary Court-Martial, reflects the applicant was charged with:

Two specifications of violation of Article 107:

Specification 1: On or about 18 September 2011, with intent to deceive present to CPT R., a false official statement.

Specification 2: On or about 18 September 2011, with intent to deceive make a false official statement to LTC D.

The sentence adjudged: Confinement for 30 days, Reduction to E-1 and Forfeiture of \$978.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Clinical Neuropsychological Evaluation, 28 September 2011, reflects a diagnosis of Axis I: PTSD, Axis III: TBI.

Memorandum For Physical Evaluation, Board 26 March 2012, the medical evaluation board found the applicant has a diagnosis of Anxiety Disorder NOS which meets retention standards. As such, the MES will be administratively terminated, and the applicant will continue to receive medical and behavioral health care through the JBER TMC.

Memorandum for Physical Evaluation Board, Joint Base Lewis McChord 18 April 2012, states based on the new information, as well as the Soldier's medical record, VA C&P exam, and both Dr. S., and Major G., evaluations, and determined the most appropriate Axis I diagnosis for the applicant is Post traumatic Stress Disorder in accordance with the DSM-IV-TR and MEDCOM Policy 12-035. Additionally, social, and occupational limitations due exist and these have resulted in both interference in the applicant's effective military performance and limit the ability to perform duties. Therefore, it is the determination the applicant does not meet fitness for duty standards currently. The applicant medical evaluation board will be reinitiated and the packet including the previous NARSUM, VA C&P, and psychiatric addendum will be forwarded to the PEB for adjudication.

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), 23 March 2011, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was diagnosed with Axis I: PTSD, Anxiety Disorder NOS; Axis III: mTBI, Gastric bleeding.

Report of Medical Examination, 15 May 2012, the examining medical physician noted in the comments section: PTSD, has P3 profile associated with depression and anxiety.

Report of Mental Status Evaluation, 12 June 2012, 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. The applicant had been screened for PTSD and mTBI with positive results. The applicant was diagnosed with: Axis I: Post Traumatic Stress Disorder, Chronic Cognitive D/O, by history; Axis III: Traumatic Brain Injury, by history . It is the professional opinion of the evaluating physician this service member will not respond to the command's efforts at rehabilitation (such as transfer disciplinary action or reclassification) or to any behavioral health treatment methods currently available in the military. Service member (SM) has been screened for substance use disorders (i.e., alcohol and drugs). Findings: Negative. The service member has undergone a mental status examination, at this time SM meets criteria for PTSD, chronic, SM also with h/o Cognitive Disorder and Traumatic Brain Injury; Per SM history, above diagnoses has led to symptoms which negatively impact both the professional and personal life. SM: currently in IDES process. SM is followed by multiple disciplines for treatment of the disorders, including Behavioral Health, Cognitive Rehabilitation and Traumatic Brain Injury Clinic, SM, is actively engaged in treatment process. Restrict access to or disarm all weapons and ammunition (including those which are privately owned). Prohibit the use of alcohol as alcohol is a CNS depressant and may impair inhibitions and judgment. The service member may participate in PT as allowed by physical profile, as exercise often improves mood.

5. APPLICANT-PROVIDED EVIDENCE: Online application; Legal brief with enclosures listed from A through D.

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 suffering from PTSD and should have been medically discharged. A Memorandum for Physical Evaluation Board, Joint Base Lewis McChord, 18 April 2012, provided by counsel reflects, based on the new information, as well as the Soldier's medical record, VA C&P exam, and both Dr. S., and Major G., evaluations, and determined the most appropriate Axis I diagnosis for the applicant is Post traumatic stress disorder in accordance with the DSM-IV-TR and MEDCOM Policy 12-035. Additionally, social, and occupational limitations due exist and these have resulted in both interference in the applicant's effective military performance and limit the ability to perform duties. Therefore, it is the determination the applicant does not meet fitness for duty standards currently. The applicant's medical evaluation board will be reinitiated and the packet including the previous NARSUM, VA C&P, and psychiatric addendum will be forwarded to the PEB for adjudication. The AMHRR shows the applicant underwent a behavioral health evaluation (BHE) on 23 March 2011 and a mental status evaluation (MSE) on 12 June 2012, which reflect a diagnosis of Axis I: PTSD, Anxiety Disorder NOS; Axis III: mTBI, and Chronic Cognitive D/O, by history. The BHE and MSE was considered by the separation authority. Army Regulation 635-200, in pertinent part, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct. On 23 August 2012, the separation authority, in accordance with AR 635-200, paragraph 1-33(c), found the disability was not the cause, or substantial contributing cause, of the misconduct and no other circumstances warrant disability processing instead of alternate administrative separation. The separation authority directed this case not be processed through medical disability channels.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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: Post Traumatic Stress Disorder, Major Depressive Disorder, Anxiety Disorder, Traumatic Brain Injury, Post-Concussive Syndrome.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the diagnoses were related to military service.

(3) Does the condition or experience actually 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 applicant's offense of forgery as there is not

natural sequela of PTSD, MDD and Anxiety Disorder. The applicant's Post-Concussive Syndrome and TBI does not mitigate the applicant's forgery offense as there is no evidence in the record that the diagnoses were at a severity to impact judgement, behavior, or cognition to a degree that impaired the applicant's ability to appreciate the difference between right and wrong and adhere to 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 Post Traumatic Stress Disorder, Major Depressive Disorder, Anxiety Disorder, Traumatic Brain Injury, Post-Concussive Syndrome outweighed the applicant's medically unmitigated offense of forging a physical profile.

b. Response to Contention(s):

(1) The applicant contends a discharge upgrade should be made on justice and equity grounds. The Board considered this contention and determined that a discharge upgrade is warranted based on the applicant's service record, compassion for the applicant's behavioral health condition, and the length of time since the discharge.

(2) The applicant contends suffering from PTSD and should have been medically discharged. The Board liberally considered this contention but, ultimately did not address based on the Board vote to upgrade the applicant's discharge based on paragraph 9b(1), above.

(3) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance

c. The Board determined the discharge is inequitable based on the applicant's service record, compassion for the applicant's behavioral health condition, and the length of time since 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 determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because applicant's service record, compassion for the applicant's behavioral health condition, and the length of time since separation 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, as the current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

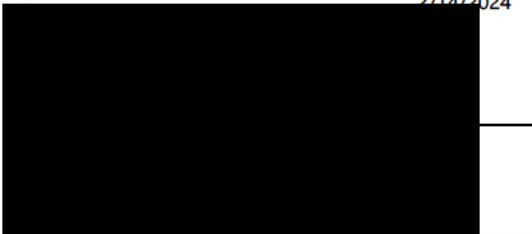
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10. BOARD ACTION DIRECTED:

- 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:

2/14/2024



Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs