

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is honorable. The applicant requests a narrative reason change.

The applicant seeks relief contending, in effect, the applicant was not properly evaluated before receiving a chapter 14 for Pattern of Misconduct. There was an underlying medical condition which was overlooked and the applicant attempted to notify counselors of the mental health issue, but was simply told "sounds like normal Soldier problems." As a result of the applicant's discharge, the applicant sought help and was evaluated in an alcohol assessment clinic by a civilian counselor and was evaluated by Department of Veterans Affairs (VA) psychiatrist for symptoms of post-traumatic stress disorder (PTSD). The applicant completed 54 hours of intensive outpatient care and weekly follow-up after care for six weeks through Roadback Incorporated of Lawton, Oklahoma. The applicant was diagnosed and in agreement with the VA psychiatrist, the PTSD is a service related health problem. The applicant is receiving counseling through the VA healthcare system for this reason. The applicant agrees with the Roadback counselor, the applicant's alcohol abuse was a coping mechanism for an untreated mental health condition. The applicant firmly believes the conditions contributed to the applicant's poor performance. The applicant never received any judicial or nonjudicial punishments before the applicant was discharged. The applicant further details the contentions in the applications and the self-authored statement submitted with the applications.

b. Board Type and Decision: In a records review conducted on 9 August 2023, and by a 5-0 vote, the Board, based on the applicant's PTSD mitigating applicant DUI and multiple failures to report (FTRs) basis for separation, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it. The Board 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, Paragraph 14-12b / JKA / RE-3 / Honorable

b. Date of Discharge: 23 January 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 13 December 2012

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AR20210001720

(2) Basis for Separation: The applicant was informed of the following reasons: On 20 November 2012, the applicant was arrested for driving under the influence. On 7, 11, and 21 June and 6 and 17 September 2012, the applicant failed to report.

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

(4) Legal Consultation Date: On 14 December 2012, the applicant waived legal counsel.

(5) Administrative Separation Board: On 14 December 2012, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 18 December 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 June 2011 / 4 years

b. Age at Enlistment / Education / GT Score: 28 / GED / 109

c. Highest Grade Achieved / MOS / Total Service: E-5 / 91B20, Wheeled Vehicle Mechanic / 10 years, 5 months, 15 days / It appears the prior inactive service in the Army National Guard (ARNG) of 1 year, 4 months, 28 days is not reflected on the applicant's DD Form 214, indicating the applicant's total service is 11 years, 10 months, 13 days.

d. Prior Service / Characterizations: RA, 6 March 2001 – 23 November 2004 / HD
RA, 24 November 2004 – 23 November 2007 / HD
ARNG, 24 November 2007 – 21 April 2009 / HD
RA, 22 April 2009 – 29 June 2011 / HD

e. Overseas Service / Combat Service: SWA / Iraq (6 April 2003 – 27 November 2003; 6 October 2005 – 26 September 2006; 18 October 2011 – 10 November 2011)

f. Awards and Decorations: ARCOM-4, AAM-2, AGCM-3, NDSM, ICM-AH, GWOTEM, GWOTSM, ICM-CS, ASR, OSR

g. Performance Ratings: 11 December 2010 – 10 December 2011 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Lawton Police Department Arrest Report, dated 20 November 2012, reflects the applicant was arrested for driving under the influence (DUI). The applicant was administered a field sobriety test and performed poorly. The applicant was administered a breath test which resulted in .17 breath alcohol content (BRAC).

The State of Oklahoma court documents, reflects on 15 January 2013, the applicant plead guilty to DUI.

Six Developmental Counseling Forms, for driving under the influence and failing to report on divers occasions.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record Medical Care, dated 30 April and 4 May 2007, reflecting the applicant's problems listed as adjustment disorder, with anxious mood; and panic disorder without agoraphobia.

Department of Veterans Affairs Rating Decision, dated 4 March 2014, reflecting the applicant was rated 50 percent service-connected disabled for PTSD.

Drinking Driver Offender Assessment, undated, reflecting the applicant was evaluated on 22 May 2013 in response to the applicant's arrest for DUI on 20 November 2012. The applicant was involved in a vehicle accident and transported to the Lawton City Jail. The applicant agreed to a breathalyzer test, which resulted in 0.17 BAC. On the alcohol and/or drug abuse/dependency psychological and physiological classification criteria scale, the applicant met the criteria for substance abuse not dependency. The applicant is working with the Veterans System regarding a PTSD diagnosis.

(2) AMHRR Listed: Report of Medical History, dated 28 November 2012, reflects the applicant reported having panic attacks in 2005; had trouble falling asleep and staying asleep, and having mental health counseling in 2006. The examining medical physician noted in the comments section: No suicidal or homicidal ideation; seen by Community Mental Health Services, no medications; and anxiety.

Report of Mental Status Evaluation, dated 4 December 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; and met medical retention requirements. The applicant had been screened for PTSD and mild traumatic brain injury (mTBI) with negative results. The applicant was diagnosed with: Alcohol abuse, episodic; and anxiety disorder, not otherwise specified.

5. APPLICANT-PROVIDED EVIDENCE: Two DD Forms 214; two DD Forms 293; self-authored statement; Chronological Record of Medical Care; Roadback Outpatient Certificate of Completion, VA Rating Decision; Aggie Access college courses printout; college transcript and degree plan; Child Support Enforcement Record of Payments; Noncommissioned Officer Evaluation Report; Service School Academic Evaluation Report; Army Physical Fitness Test Scorecard; Record Fire Scorecard; Enlisted Record Brief; three Honorable Discharge Certificates; Drinking Driver Offender Assessment; and Combat Patch award.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought help for mental health issues and completed 54 hours of intensive outpatient care and is in aftercare treatment; is furthering the education; and is maintaining the responsibilities of paying child support.

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) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(4) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(5) Paragraph 14-12b, 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 a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD

Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends PTSD, which was undiagnosed at the time, affected behavior which led to the discharge. The applicant provided medical documents reflecting the applicant was diagnosed with adjustment disorder with anxious mood and panic disorder without agoraphobia. The VA granted the applicant 50 percent service-connected disability for PTSD. The record shows the applicant underwent a mental status evaluation (MSE) on 4 December 2012, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant had been screened for PTSD and mild traumatic brain injury (mTBI) with negative results. The applicant was diagnosed with: Alcohol abuse, episodic; and anxiety disorder, not otherwise specified. The MSE was considered by the separation authority.

The applicant contends family issues contributed to the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends the command did not assist the applicant with the mental health issues. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant sought help for mental health issues and completed 54 hours of intensive outpatient care and is in aftercare treatment; is furthering the education; and maintaining the responsibilities of paying child support. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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, Panic Disorder with Agoraphobia, and Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that Panic Disorder with Agoraphobia was diagnosed while the applicant was in service, and PTSD was diagnosed by the VA and related to combat exposure during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is service connected for PTSD, and the presence of PTSD mitigates the DUI, outlined in the basis of separation, given the nexus between PTSD and using alcohol to self-medicate symptoms. Misconduct characterized by multiple instances of FTR is also mitigated given the nexus between PTSD and avoidance behavior to include FTR. The applicant was also diagnosed with Panic Disorder with Agoraphobia and Anxiety Disorder NOS, while on active duty, which are potentially mitigating disorders. The panic and avoidant symptoms appear to be related to the applicant's PTSD, thus, the primary diagnosis of PTSD subsumes Panic Disorder, and Anxiety Disorder diagnoses.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD outweighed the DUI and multiple FTRs basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's DUI and multiple FTRs.

(2) The applicant contends PTSD, which was undiagnosed at the time, affected behavior which led to the discharge. The applicant contends the narrative reason for the discharge needs to be changed. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's DUI and multiple FTRs.

(3) The applicant contends family issues contributed to the discharge. 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 mitigating the applicant's DUI and multiple FTRs basis for separation.

(4) The applicant contends the event which led to the discharge from the Army was an isolated incident. 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 mitigating the applicant's DUI and multiple FTRs basis for separation.

(5) The applicant contends the command did not assist the applicant with the mental health issues. 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 mitigating the applicant's DUI and multiple FTRs basis for separation.

(6) The applicant contends good service, including a combat tour. 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 mitigating the applicant's DUI and multiple FTRs basis for separation.

(7) The applicant sought help for mental health issues and completed 54 hours of intensive outpatient care and is in aftercare treatment; is furthering the education; and maintaining the responsibilities of paying child support. 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 mitigating the applicant's DUI and multiple FTRs basis for separation.

c. The Board, based on the applicant's PTSD mitigating applicant DUI and multiple failures to report (FTRs) basis for separation, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it. The Board determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service.

d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a characterization of Honorable, therefore no further relief is available.

(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: No Change
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- a. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

1/17/2024



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