

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, the discharge is inequitable because of a single isolated event, which occurred during an otherwise honorable service. The applicant admits to having an alcohol problem. The death of a family member in 2013 aggravated the situation. While on active service, the applicant underwent an alcohol treatment program, but the alcohol and depression issues persisted. The applicant has since successfully completed the VA Substance Abuse Treatment Program, remained sober, and secured a stable job as a cook at a VA Medical Center. The applicant continues to attend the Alcoholics Anonymous meetings five times per week. The applicant is a positive, hardworking individual.

b. Board Type and Decision: In a records review conducted on 27 July 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service, time since discharge, and post-service accomplishments. 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 medical 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: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 3 April 2014**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 23 January 2014

(2) Basis for Separation: The applicant was informed of the following reasons based on having committed several serious offenses:

On 3 September 2011 and 25 May 2013, the applicant drove while intoxicated;

on 15 August 2012, the applicant failed to be at the appointed place of duty, 0700 accountability formation, and was disrespectful in language toward SGT C., by saying, "I know how to fucking read, and I did not need anyone to fucking read it to me," or words to that effect;

on 10 December 2012, the applicant failed to obey a noncommissioned officer on two separate occasions, by not replacing the patrol cap after being told to and failing to shave after being told to; and

on 11 January 2013, the applicant failed to be at the appointed place of duty, 0600 morning formation.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 22 (sic) January 2014

(5) Administrative Separation Board: On 22 (sic) January 2014, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: 12 March 2014 (by the GCMCA) / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 14 February 2011 / 3 years, 21 weeks

b. Age at Enlistment / Education / GT Score: 21 / High School Graduate / 92

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92G10, Food Service Specialist / 3 years, 1 month, 20 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Four Developmental Counseling Forms for failing to go at the time prescribed to the appointed place of duty on two separate occasions; being insubordinate and disrespectful in language towards an NCO; and failing to follow instructions and maintain equipment.

Bamberg Magistrate Case History, dated 19 November 2013, reflects the applicant pleaded guilty and was found guilty for the first offense of driving under the influence on 3 September 2011.

Military Police Report, dated 28 May 2013, reflects the applicant was apprehended for: driving while intoxicated (on post); unlicensed operation (on post); and failing maintain a single lane of travel (on post).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation (MSE), dated 18 December 2013, reflects the applicant was cleared for administrative separation. 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 mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The MSE reflects an "AXIS I" diagnosis of "Alcohol Dependence, by history," and the applicant was enrolled in the Army Substance Abuse Program from April to December 2012 and June to October 2013, for alcohol dependence.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 with listed attachments and DD Form 214.

6. POST SERVICE ACCOMPLISHMENTS: The applicant successfully completed the VA Substance Abuse Treatment Program, remained sober, secured a stable job as a cook at a VA Medical Center; attends the Alcoholics Anonymous meetings, and is positive and hardworking.

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 waivable and nonwaivable 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 waivable. 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 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 circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends having an otherwise honorable service. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the death of a family member in 2013 aggravated the situation and affected the behavior, and ultimately caused 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 and admits to having an alcohol problem. The applicant provided a VA letter indicating successful completion of the Substance Abuse Treatment Center Program, and will continue with therapy sessions and participation in the AA/NA meetings. The applicant's AMHRR contains documentation which supports a diagnosis of alcohol dependence. The record shows the applicant underwent a mental status evaluation (MSE) on 18 December 2013, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

The applicant contends having successfully completed the VA Substance Abuse Treatment Program, remained sober, secured a stable job as a cook at a VA Medical Center; attends the Alcoholics Anonymous meetings, and is positive and hardworking. 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.

The third-party letters provided with the application speak highly of the applicant character and performance and recognize the applicant's good conduct after leaving the Army.

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: Brain Syndrome. Additionally, the applicant asserts Depression, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is service connected by the VA for a brain syndrome, and the applicant self-asserts depression during 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 there is evidence of potentially mitigating BH conditions. The applicant is service connected by the VA for a brain syndrome, and the applicant self-asserts depression. While a brain syndrome can have a nexus with self-medicating, avoidance, and other difficulties, the medical record reveals that applicant's traumatic event leading to the brain syndrome occurred in October 2013. All of the misconduct that led to applicant's separation occurred prior to the date of this trauma. Therefore, applicant's brain syndrome did not contribute to any of the misconduct that led to applicant's separation and therefore, it provides no mitigation. The applicant self-asserts having Depression at the time of military service, but there is no medical evidence to support that applicant's Depression existed during military service. Applicant is not service connected for Depression, and it was not diagnosed by the VA until six years after discharge from the Army. Therefore, applicant's Depression does not provide mitigation for any of the misconduct that led to applicant's separation.

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends having an alcohol problem and having an otherwise honorable service. 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 length of

service, time since discharge, and post-service accomplishments outweighing the applicant's DUIs, FTR, disrespect and failure to obey basis for separation.

(2) The applicant contends the death of a family member in 2013 aggravated the situation and affected the behavior, and ultimately caused 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 length of service, time since discharge, and post-service accomplishments outweighing the applicant's DUIs, FTR, disrespect and failure to obey basis for separation.

(3) The applicant contends having successfully completed the VA Substance Abuse Treatment Program, remained sober, secured a stable job as a cook at a VA Medical Center; attends the Alcoholics Anonymous meetings, and is positive and hardworking. 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 length of service, time since discharge, and post-service accomplishments outweighing the applicant's DUIs, FTR, disrespect and failure to obey basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length of service, time since discharge, and post-service accomplishments. 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 medical 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 of service, time since discharge, and post-service accomplishments outweighed the applicant's misconduct of DUIs, FTR, disrespect and failure to obey. 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.

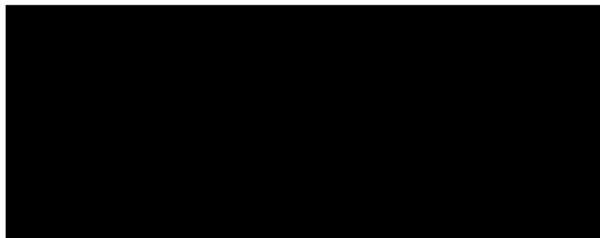
(3) The RE code will not change, due to applicant's medical diagnosis warranting consideration prior to reentry of military service.

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
- a. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

2/14/2024



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