

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 3 October 2020
- b. **Date Received:** 13 October 2020
- 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 under honorable conditions (general). The applicant requests an upgrade to honorable and a narrative reason change.

The applicant states in effect, the results of their discharge were unjust, during their service their records were free of misconduct until circumstances changed towards the latter part of their service. They were promoted to specialist and received multiple awards, the majority of the events reflected in the report and the actions they were accused of were reported inaccurately. The verbal disputes that led to military authorities' involvement and a few misconduct events during the same time frame never resulted in extra duty or reduction in rank which would usually be the preliminary step for misconduct. The only disciplinary action they received was a discharge. They are requesting an upgrade to honorable and removal of the current reason for separation to protect the reputation they have built as the original consequences outweighed the events; being inequitable. As they are preparing for law school, they are aware that their military discharge status will be a heavy factor on their application despite their multiple accomplishments. In the military, resilience is a major part of every soldier's life, and their record has shown resilience post discharge. They have obtained multiple degrees, certificates, mentored children, additionally they volunteer at a hospice and have maintained a successful finance career.

b. Board Type and Decision: In a records review conducted on 6 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Adjustment and Depressive Disorder diagnoses), 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 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 / JKQ / RE-3 / Under Honorable Conditions (General)

b. Date of Discharge: 14 October 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 29 Septemeber 2011

(2) Basis for Separation: The applicant was AWOL for 10 days, and since January 2011 they were involved in a number of violations of the UCMJ; including failure to obey an order and failure to be at their prescribed place of duty.

(3) Recommended Characterization: General, under honorable conditions.

(4) Legal Consultation Date: Waived legal consult 29 Septemeber 2011

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 3 October 2011 / General, under honorable conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 11 August 2010 / 4 years

b. Age at Enlistment / Education / GT Score: 23 / NIF / 101

c. Highest Grade Achieved / MOS / Total Service: E-4 (SPC) / 92Y10 Unit Supply Specialist / 3 years, 6 months, 29 days.

d. Prior Service / Characterizations: RA 20080306 – 20100810 / HD

e. Overseas Service / Combat Service: South Korea, Germany / None

f. Awards and Decorations: AAM-4, NDSM, GWTSM, ASR, OSR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides that the applicant enlisted in the United States Army Reserve at the rank of private (E-2) with an active duty obligation of 3 years and 20 weeks on 9 February 2008. They reenlisted 11 August 2010.

(2) A Personnel Action Document provides that the applicants duty status changed from present for duty (PDY) to absent without leave (AWOL) on 7 May 2011.

- The applicant's duty status changed from AWOL to dropped from rolls (PDY) on 17 May 2011.

(3) Report of Mental Status Evaluation document dated 9 June 2011, provides the applicant received a separation mental health evaluation. They were deemed unfit for duty due to a personality disorder or other mental disability.

- The service member manifests a long-standing, chronic pattern of difficulty adjusting
- At least two separate instances of maladaptive reaction to identifiable stressful life events

(4) A Report of Medical Examination provides the applicant received a separation medical assessment/examination.

(5) A memorandum, 172nd Infantry Brigade, APO, AE subject: Separation under the provisions of AR 635-200, Chapter 14-12c dated 29 Septemeber 2011 provides the applicant's immediate commander notified them of their intent to separate them for being AWOL, and for being involved in a number of violations of the UCMJ; including failure to obey an order and failure to be at their prescribed place of duty. The commander recommended a general, under honorable conditions characterization of service. The applicant completed their election of rights and waived consulting with counsel.

(6) On 29 Septemeber 2011 the chain of command endorsed and concurred with the commander's recommendation. On 3 October 2011 the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

(7) A DD Form 214 shows on 14 October 2011 the applicant was discharged, they completed a total active service of 3 years and 6 months and 29 days.

i. **Lost Time / Mode of Return:** AWOL; 7 May 2011 – 17 May 2011 / NIF

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Adjustment Disorder, Suicidal Ideation

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Discharge Review) application, a copy of their honorable discharge certificate, a copy of their Master's degree certificate, a copy of their Bachelor's degree certificate, and four additional enclosures in support of their application.

- A letter of recommendation from a captain in the U.S Army provides the applicant coached, mentored, and trained soldiers in the jobs they required to learn, leading from the front in every task and mission assigned. For their efforts the applicant received two Army Achievement Medals.
- A notarized letter dated 1 July 2011, provides the applicant had never kicked, punched, choked, or slapped their spouse. They described the applicant as a good soldier who has been loyal to the military.
- A recommendation for award document dated 18 October 2010 provides the applicant received an AAM for their exceptionally meritorious service.
- A recommendation for award document provides the applicant received an AAM for their outstanding performance while assigned as a supply sergeant.

POST SERVICE ACCOMPLISHMENTS: The applicant is preparing for law school. They have obtained a Master's degree, Bachelor's degree, and certificates. They mentor children and volunteer at a hospice and have maintained a successful finance career.

6. 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), dated 25 September 2019, 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 provides the authorized types of characterization of service or description of separation.

(1) 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.

(2) 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.

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons. Rehabilitative requirements are not required for individuals separated under Chapter 14-12c.

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards

(5) 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. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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.

(6) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met
- 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
- RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment

g. Army Regulation 630-10 (Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings) provides policies and procedures for reporting unauthorized absentees and deserters, the administering of absent without leave (AWOL) personnel and deserters, returning absentees and deserters to military control and the surrendering of military personnel to civilian law enforcement authorities.

(1) When a soldier returns from an absence that is or appears to be unauthorized, the unit commander informally investigates whether disciplinary action should be taken and if the soldier should be charged with time lost.

(2) Classification of an absence is dependent upon such factors as the following

- Orders and instructions, written and oral, the Soldier received before and during the absence
- Age, military experience, and general intelligence of the soldier
- Number and type of contact the soldier had with the military while absent

7. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable. The applicant's DD Form 214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge which is normally considered appropriate for a soldier discharged for serious misconduct.

b. Based on available evidence the applicant enlisted in the army at the age 23, they advanced to the rank specialist and received four Army Achievement Medals during their time in service. Nine months after they reenlisted, they were AWOL for 10 days; three months prior to being AWOL they were admitted into a mental hospital. The AMHRR is void of evidence surrounding the applicants' numerous violations of the UCMJ; due to the lack of evidence we are unable to provide all the specific facts and circumstances that led to the applicant's administrative separation. Notwithstanding the lack of evidence, the applicant had no records of disciplinary actions, including non-judicial punishments.

c. The applicant was notified of the intent to separate them for misconduct (commission of a serious offense), the initiating commander recommended a General discharge; the applicant acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. The appropriate authority approved their administrative separation, and a DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 14 October 2011.

d. Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

e. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

8. 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: Major Depressive DO, severe, without psychotic features (Note-Adjustment DO with disturbance of conduct is subsumed under MDD diagnosis).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA medical documentation states the condition began during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a BH condition which mitigates some of his misconduct. As there is an association between depression and avoidant behavior, there is a nexus between his depression and his AWOL and failure to report. Major Depressive DO, however, does not mitigate failure to obey an order or engaging in domestic violence as these conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the BH conditions did not outweigh the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends the results of their discharge were unjust. The Board considered this contention along with the totality of the applicant's records.

d. The Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Adjustment and Depressive Disorder diagnoses), 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 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.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service to Honorable based on the following reasons: The applicant has an in-service diagnosis of Adjustment DO with disturbance of conduct; Alcohol Abuse. The applicant is service-connected for Major Depressive DO, severe, without psychotic features, a history of Adjustment DO and Suicidal Ideation. The Board's Medical Advisor applied liberal consideration and opined the applicant has a BH condition which mitigates some of his misconduct. As there is an association between depression and avoidant behavior, there is a nexus between his depression and his AWOL and failure to report.

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Major Depressive DO, however, does not mitigate failure to obey an order or engaging in domestic violence as these conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. Based on the BH mitigation of the majority of the misconduct, lack of information on the DV statement, elapsed time since the misconduct and post service accomplishments, the Board concurred the current discharge served its intended purpose, is no longer equitable and warrants an upgrade.

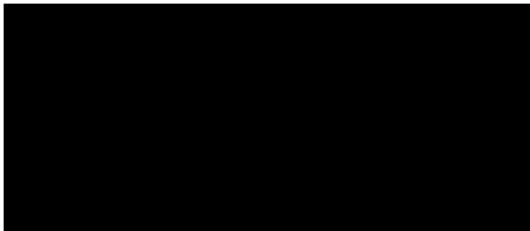
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

9. 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:



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