

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 3 September 2020
- b. **Date Received:** 5 October 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

(2) The applicant seeks relief stating throughout their time in the military, they had sleeping issues. They brought this up multiple times to their chain of command and no one could assist them with solving the issue. They were issued nonjudicial punishment under the provisions of Article 15 on two occasions. On 14 March 2020 they finally got an appointment for a Polysomnographic Diagnostic Testing; however, they did not receive the results until a month after their discharge from the military. They provided witness statements regarding their sleep issues during their separation proceedings, but they were unable to use their Polysomnographic Diagnostic Testing, which they learned later diagnosed them with Mild Obstructive Sleep Apnea.

b. Board Type and Decision: In a records review conducted on 2 February 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's length of service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, 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 reentry code remains RE-3.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Pattern of Misconduct / Army Regulation 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 7 May 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 7 February 2020

(2) **Basis for Separation:** failed to go at the time prescribed to their appointed place of duty on five occasions, from 6 July 2018 through 10 October 2019.

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

(4) **Legal Consultation Date:** 8 February 2020

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 23 April 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 8 November 2016 / 3 years, 27 weeks
- b. **Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 90
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 13F1O, Fire Support Specialist / 3 years, 6 months
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 4856 (Developmental Counseling Form), dated 29 August 2019, reflects the applicant received notification of the initiation of involuntary separation. The applicant agreed with the counseling, signed, and dated the form 3 September 2019.

(2) A memorandum, Headquarters and Headquarters Battery, 2nd Battalion, 17th Field Artillery Regiment, subject: Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], dated 7 February 2020, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12b, a pattern of misconduct, with a recommended characterization of service general (under honorable conditions) for adverse action described in previous paragraph 3c(2). On 21 February 2020, the applicant acknowledged the basis for the separation and of the right available to them.

(3) On 8 February 2020, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected to submit statements in their behalf stating –

(a) They are currently undergoing a medical board and they have sleep issues that have resulted in three nonjudicial punishment under the provisions of Article 15. His punishment consisted of a reduction in rank/grade to private/E-1. They have been trying to get help since 2018 and is currently waiting for a sleep study. They have included written statement from fellow Soldiers regarding their witnessing their [applicant's] sleep issues. They believe that they should not be chapter out of the military for something that is a medical issue.

(b) For their medical board, they are being separated for bilateral arthritis in their knees. They have has so much stress related to their sleep issues they have started smoking cigarettes to relieve the stress. They know the Army isn't for them, but they feel they have tried everything to resolve their sleep issues.

(4) A memorandum, Headquarters and Headquarters Battery, 2nd Battalion, 17th Field Artillery Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states the applicant's record of disciplinary action, including nonjudicial punishment are attached. [Note: the applicant's record of disciplinary action is not in evidence for review.]

(5) A memorandum, Headquarters and Headquarters Battery, 2nd Battalion, 17th Field Artillery Regiment, subject: Commander Recommendation on Separation Proceedings, dated 28 February 2020, reflects the company commander has reviewed the Narrative Summary, the circumstances of the applicant's misconduct, and all matters enclosed and recommend the applicant be separated under Army Regulation 635-200, paragraph 14-12b, a pattern of misconduct. The company commander states the applicant repeatedly failed to obey the orders of their noncommissioned officers (NCOs) and missed their required time to be at their place of duty. They did so both in the mornings and in the afternoons, negating their argument of a sleep disorder.

(6) A memorandum, Headquarters, 2nd Battalion, 17th Field Artillery Regiment, subject: Commander Recommendation on Separation Proceedings, dated 3 March 2020, reflects the battalion commander has reviewed the Narrative Summary, the circumstances of the applicant's misconduct, and all matters enclosed and recommend the applicant be separated under Army Regulation 635-200, paragraph 14-12b, a pattern of misconduct. The battalion commander states the applicant is a sub-standard performer in all regards. They have received and found guilty in multiple Field Grade Article 15 proceedings.

(7) A memorandum, Headquarters, 2nd Battalion, 2nd Stryker Brigade Combat Team, subject: Commander Recommendation on Filing Determination, dated 5 March 2020, reflects the brigade commander has reviewed the Narrative Summary, the circumstances of the applicant's misconduct, and all matters enclosed and recommend the applicant be separated under Army Regulation 635-200, paragraph 14-12b, a pattern of misconduct. The brigade commander states the applicant has a pattern of sub-standard performance. Their Medical Evaluation Board (MEB) is not the reason for their multiple failures to meet established standards.

(8) A memorandum, Headquarters, 7th Infantry Division, subject: Medical Evaluation Review for [Applicant], dated 26 March 2020, the division surgeon states –

(a) They have reviewed the medical information pertaining to the applicant and find that their behavioral health condition, Other Specified Trauma and Stressor Related Disorder, is not a direct or substantial contributing cause for the underlying misconduct. The applicant is pending administrative separation for a pattern of misconduct, including repeated failure to report both in the morning and afternoon to their place of duty.

(b) The applicant underwent a Mental Status Evaluation on 10 October 2019 [not in evidence]. They were screened for behavioral health conditions. A competent behavioral health provider found they met the criteria for Other Specific Trauma and Stressor Related Disorder and that they failed to meet medical retention standards. The provider found that the applicant's behavioral health condition was not a mitigating factor in the alleged behavior leading to administrative separation.

(c) The applicant was referred on 23 July 2019 for a MEB to be considered for medical retirement due to knee pain/injury. The MEB found that they did not meet retention

standards for this condition. During the MEB process, they were diagnosed with an Insomnia Disorder on 19 August 2019. They were found to meet medical retention standards for Insomnia Disorder.

(d) In their review of the record in concordance with the evaluations, although the applicant was diagnosed with an Insomnia Disorder during the MEB process, the applicant failed to report to their place of duty both in the morning and in the afternoon. They conclude that the applicant is responsible for all of their actions related to their misconduct. Their medical condition is not a direct or substantial contributing cause for the underlying misconduct.

(9) A memorandum, Headquarters, 7th Infantry Division, subject: Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], dated 23 April 2020, the separation authority, having reviewed the administrative separation packet and the MEB proceedings, determined the applicant's medical condition was not a direct or substantial contributing cause of the conduct that led to the recommendation for administrative separation. After careful consideration of all matter, the commanding general directed that the applicant be discharged from the Army prior to the expiration of current term of service, and their service be characterized as Genera (Under Honorable Conditions).

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 7 May 2020, with 3 years, and 6 months of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 10 December 2019
- item 18 (Remarks) –Member has not completed first full term of service

(11) An Enlisted Record Brief, dated 8 May 2020, reflects the applicant was advanced to the rank/grade of specialist/E-4 on 8 November 2018, reduced to the rank/grade of private two/E-2 on 15 April 2019, and reduced to the rank/grade of private/E-1 on 10 December 2019.

i. **Lost Time / Mode of Return:** None

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

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Madigan Army Medical Center, Sleep Medicine Service, Polysomnographic Diagnostic Testing, reflects the applicant's diagnosis of Mild Obstructive Sleep Apnea

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, and appointment, including medical fitness standards for retention and separation.

(1) Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement) states this chapter lists the various disqualifying medical conditions and/or physical defects which may render a Soldier unfit for further military service and which fall below the standards required. Soldiers with disqualifying conditions listed in this chapter who do not meet the required medical standards will be referred to the Disability Evaluation System.

(2) Paragraph 3-32 (Sleep Disorders) states the causes for referral to the Disability Evaluation System include chronic insomnia disorder. Insomnia is defined as difficulty initiating sleep, maintaining sleep, or waking earlier than desired which occurs at least three nights per week for at least 3 months with associated daytime impairment that can include symptoms of fatigue, mood disturbances/irritability, daytime sleepiness, decreased motivation, or increased propensity for errors/accidents. Insomnia which does not respond to cognitive behavioral therapy and/or requires medications to promote sleep over 6 consecutive months, and despite or due to therapy meets the definition of a disqualifying medical conditions or physical defect and requires a referral to the Disability Evaluation System.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs

prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

(5) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil 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 UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(6) Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

(7) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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 "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 DoD Instructions 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:

(1) 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.

(2) 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.

(3) 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.

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DoD Instruction 1332.28.

b. A review of the available evidence provides the applicant's Insomnia Disorder was considered during an administrative separation and found to meet retention standards. A DD Form 214 provides the applicant was discharged with a character of service of general (under honorable conditions) for a pattern of misconduct. They completed 3 years and 6 months on net active service; however, they did not complete their first full term of service of their 3-year, 27 week contractual obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members 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.

d. Published DoD 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.

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? **No**. The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

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

b. Prior Decisions Cited:

c. Response to Contention(s):

(1) The applicant contends throughout their time in the military, they had sleeping issues. They brought this up multiple times to their chain of command and no one could assist them with solving the issue.

The Board considered this contention non-persuasive during its deliberations.

(2) The applicant contends they were issued nonjudicial punishment under the provisions of Article 15 on two occasions. On 14 March 2020 they finally got an appointment for

a Polysomnographic Diagnostic Testing; however, they did not receive the results until a month after their discharge from the military.

The Board considered this contention during its deliberations.

(3) The applicant contends they provided witness statements regarding their sleep issues during their separation proceedings, and they were unable to use their Polysomnographic Diagnostic Testing, which they learned later diagnosed them with Mild Obstructive Sleep Apnea.

The Board considered this contention during its deliberations.

d. The Board determined the discharge is inequitable based on the applicant's length of service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, 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 reentry code remains RE-3.

e. Rationale for Decision:

(1) The Board carefully considered the applicant's request, supporting documents, evidence in the records, published Department of Defense guidance for liberal consideration of discharge upgrade requests, the applicant's statements, record of service, the frequency and nature of misconduct, and the reason for separation. The applicant completed a Polysomnographic Diagnostic Test, and the results revealed a Mild Obstructive Sleep Apnea diagnosis. Although the applicant's condition didn't contribute to not reporting to their place of duty, the Board deliberated that the discharge was inequitable due to the harshness of the discharge. The Board stated that missing formations is not a cause for separation of GD (Under Honorable Conditions) and voted 4-1 that the upgrade was warranted.

(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:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** RE-3
- e. **Change Authority to:** AR 635-200

Authenticating Official:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210005774

2/27/2024



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