

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 22 September 2020
- b. **Date Received:** 25 September 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 General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

(1) The applicant contends, they would like to have the opportunity to serve their country again. They have always aspired to serve, even preparing in high school through the JROTC program. Upon graduation with 16 college credit hours, they enlisted in the Army. Unfortunately, their age and immaturity, did not prepare them mentally for a physical encounter, when another Soldier broke their jaw, causing undue stress, embarrassment, and pain; this resulted in them acting out in ways in ways not normal to them. They did not know how to deal with the ordeal, consequently, they self-medicated with alcohol.

(2) Since their returned to civilian life, they have grown both spiritually and mentally, with the love and support of their family and friends. They do not abuse alcohol any longer and they are mindful of instances where drinking is involved, and do not drive afterwards; they have maintained a good balance in life. They have a strong relationship with their partner, who is graduating college. The applicant is attending college part-time and in their sophomore year, while holding a full-time job, working as an onsite technician for a petroleum company.

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. 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.

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:** 2 May 2018

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 10 April 2018

(2) **Basis for Separation:** Driving under the influence of alcohol (DUI)

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

(4) Legal Consultation Date: On 11 April 2018, the applicant elected to waive consultation with defense counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 16 April 2018 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 August 2016 / 3 years, 16 weeks

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / 106

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B10 Infantryman / 1 year, 8 months

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service:

- Poland / None (6 June – 29 August 2017)
- Germany / None (7 December 2016 – 30 April 2018)

f. Awards and Decorations: AAM, NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 6 June 2016, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; on 30 August 2016, they enlisted in the Regular Army for 3 years and 16 weeks, as a PV2.

(2) The Enlisted Record Brief provides on 1 July 2017, the applicant promoted to PFC; served overseas in Germany from 7 December 2016 – 30 April 2018 and was awarded an Army Achievement Medal. On 11, 14, and 15 November 2017, the applicant was flagged, Suspend Favorable Personnel Actions (FLAG), for an investigation (MA), alcohol adverse action (VA), and field-initiated involuntary separation (BA).

(3) On 15 December 2017, the applicant completed a mental status examination, with the Vilseck Behavioral Health Clinic and received a diagnosis of alcohol use disorder – moderate (alcohol dependence). The applicant acknowledges the presence of a number of stressors in their personal and professional life of which the command is aware; the applicant endorsed that they are being considered for involuntary separation and is planning on returning to CONUS and continue their college pursuits. The Provider recommended for the applicant to continue with Behavioral Health/Substance Abuse Disorder Clinical Care (SUDCC).

(4) On 10 January 2018, an Army Criminal Investigation Division (CID) final report provides the station was notified by telephone, the applicant was apprehended for Drunken Driving on 11 November 2017 by the German Police. Investigation through routine check by German Police, revealed the applicant was operating a vehicle while under the influence of alcohol. A preliminary breath alcohol test was administered, resulting in a blood alcohol content

(BAC) of 0.136. The applicant was transported to the German Police station where their blood was drawn and results returned with a BAC of 0.16. They were transferred into Military Police custody and transported to this station. The applicant was advised of their legal rights, which they invoked. After further processing, the applicant was issued a Notice of Suspended Driving Privileges and released to their unit. Their last deployment occurred April – October 2017.

(a) On 19 February 2018, the applicant accepted nonjudicial punishment in violation of Article 111, UCMJ, in Germany, for driving under the influence of alcohol; reduction to private (E1); forfeiture of \$819.00 pay per month, for 2 months; extra duty for 45 days, restriction to the limits of their company area, dining, medical facility, and place of worship for 45 days. The applicant did not appeal.

(b) On 3 March 2018, the applicant received an Administrative Reprimand for drunken driving, with a field alcohol test administered, resulting in a 0.136% BAC, and later confirmed with a blood test of 0.16% BAC. Further, under German roadways, for drivers under 21 years of age, the legal limit for operating a vehicle, is .00% BAC. This reprimand is imposed as an administrative measure under the provisions of AR 600-37 and considered for permanent filing in their OMPF. They were given ten calendar days to submit any statements or a rebuttal on their behalf. The applicant elected not to submit a statement on their behalf, as a result, on 26 April 2018, the reprimand was directed to be filed in their OMPF.

(5) On 15 March 2018, the applicant provided their medical history and completed their medical health examination, indicating an abnormality in their skin (lymphatics) with the present of warts on the palms of both hands (4 on the left; 5 on the right). The applicant noted chronic cough/night; broken jaw from another Soldier; high blood pressure since being in the Army; very little sleep/3 hours a night; monthly counseling; depression; jaw surgery. The Provider noted all of their concerns, stating they would follow up with BH and booked an appointment for their warts; the applicant was qualified for service and separation.

(6) On 10 April 2018, the company commander initiated action to separate the applicant under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense) with a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of their separation notice and elected not to submit a statement on their behalf. They declined to consult with defense counsel.

(7) On 16 April 2018, the intermediate commander concurred with the company commander. The appropriate separation authority approved the discharge and directed and the applicant be separated with a characterization of service of General (Under Honorable Conditions).

(8) On 18 April 2018, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 2 May 2018, with 1 year, 8 months, and 3 days of net service. The applicant has not completed their first full term of service.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** On 15 December 2017, the

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); Four Character Statements; DD Form 214 (Certificate of Release or Discharge from Active Duty); Enlisted Record Brief (ERB); Army Spurs Award

6. POST SERVICE ACCOMPLISHMENTS: The applicant has grown spiritually and mentally, with the love and support of family and friends. The applicant no longer abuse alcohol, being mindful, in those settings, while maintaining a good balance in their life. They are in a strong relationship with their partner, employed as an onsite technician at a petroleum company, and in their sophomore year of college (part-time).

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), 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.

(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) 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 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.

(5) 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:

(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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except

under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

h. Manual for Courts-Martial, United States (2016 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Article 111 (Drunk or reckless operation of vehicle) states in subparagraph the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement 2 years.

8. 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 Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available records provides the applicant enlisted in the RA for 3 years and 16 weeks, as PV2. They promoted to PFC, served overseas in Germany for 17 months, and received an Army Achievement Medal. They served 1 year, 2 months, and 11 days prior to their misconduct.

(1) In November 2017, during a routine traffic stop, the applicant was arrested for underage drinking and driving while under the influence of alcohol (DUI) by the German Police. They were flagged, Suspend Favorable Personnel Actions (FLAG), for alcohol adverse action (VA) and for field-initiated involuntary separation (BA). In February 2018, they accepted NJP for DUI, consequently, they were demoted to E-1, required to forfeit pay for 2 months with 45 days of restriction imposed; they elected not to appeal. In March 2018, they receive an administrative reprimand and elected not to submit matters on their behalf, as a result, the commander directed the reprimand be filed in their OMPF. Separation proceedings were initiated IAW AR 635-200, Chapter 14-12(c), Misconduct (Serious Offense). They elected to waive their consultation with defense counsel and was separated with a General (Under Honorable Conditions) with characterization of service.

(2) The applicant received a medical and mental health status evaluation with a diagnosis of alcohol use disorder – moderate (alcohol dependence); the provider recommended to continue with Behavioral Health/SUDCC and qualified them for separation. They completed 1 year, 10 months, and 27 days of their 3 year, 16 month contractual obligation.

c. AR 635-200, Chapter 14 establishes policy and prescribes procedures for separating 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 discharge under this chapter. However, the separation

authority may direct a general discharge if such is merited by the Soldier's overall record.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impeded 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. Response to Contentions: The applicant contends they were young, immature, and did not know how to deal with the ordeal of another Soldier breaking their jaw, in a physical encounter, causing undue stress, embarrassment, and pain; this resulted in them acting out of character. They would like to have the opportunity to serve their country again. They have always aspired to serve, even preparing in high school through the JROTC program. Upon graduation with 16 college credit hours, they enlisted in the Army. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

c. The Board determined the discharge is inequitable. 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.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on the following reasons: The applicant's acceptance of responsibility, one time offense with no other misconduct, as well as post service accomplishments. The Board discussed the applicant's contentions and carefully considered the applicant's request, supporting documents, medical review and evidence in the records, to include post service accomplishments as a technician at a petroleum company, and in their sophomore year of college (part-time). The Board determined the current discharge is inequitable, served it's intended purpose and therefore, warrants an upgrade.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210005993

(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.

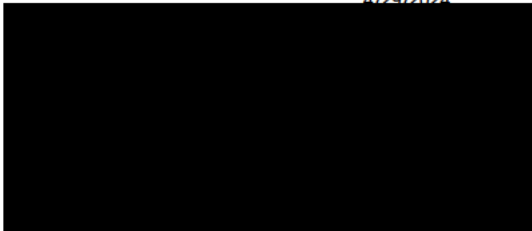
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:** No Change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

4/29/2024



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