

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 14 October 2020
- b. **Date Received:** 21 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 information during their separation was misrepresented such as their blood alcohol content (BAC) level given by the breathalyzers during the incident of 18 September 2016. The initial breathalyzer at 0657 hours results were 0.0819-percent BAC and a second reading taken at the police station at 0826 hours with a Intoxilyzer 8000 resulted in a 0.067-percent BAC. However, the police went with the higher BAC which ultimately recorded the results above the legal limit.

(3) They have completed the Army Substance Abuse Program and the Prime for Life course. The character of service provided on their separation packet does not reflect the majority of their time in the service and should be based on the evaluation of their achievements from periods of honorable service along with achievements since their discharge.

b. Board Type and Decision: In a records review conducted on 29 March 2024, and by a 3-2 vote, the majority of board determined the discharge is inequitable based on the applicant's length and quality of service, elapsed time since the misconduct, post service accomplishments, no real evidence of the assault and battery and the applicant's self-referral and completion of SUDCC and the Prime for Life Program outweigh the misconducts - driving under the influence (3x), assault and battery (2x), driving on a revoked license/cancel registration (2x)- accepted basis of separation. 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.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / Army Regulations 635-200, Paragraph 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 22 March 2018

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR), case separation file for approved separation is void of all documents except for their separation orders. On 27 April 2021 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files), as of this date there has been no response.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 11 March 2014 / 5 years, 32 weeks
- b. **Age at Enlistment / Education / GT Score:** 24 / bachelor's degree / 104
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 25B1O, Information Technology Specialist / 4 years, 12 days.
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Germany / None
- f. **Awards and Decorations:** AAM, AGCM, NDSM, GWTSM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A memorandum, Headquarters and Headquarters Detachment, 52nd Signal Battalion, dated 20 March 2015, reflects the applicant's company commander's request for a suspension of favorable personnel acts (Flag) be initiated against the applicant for pending adverse actions, failure to comply with Article 92 (Failure to Obey Order or Regulation), Uniform Code of Military Justice (UCMJ).

(2) A DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag) dated 13 October 2015, reflects the removal of the applicant's Flag, effective 7 October 2015.

(3) A Military Police Desk Blotter dated 18 September 2016, reflects the applicant as the named subject with the offense of Driving Under the Influence. The previous offense reflects Assault – Consummated by a Battery in violation of Article 128 (Assault), on or about 11 July 2015. The Case Narrative states, in part, at 0630 hours on 18 September 2018, German Police conducted a traffic stop on a car operated by the applicant. Upon approach the police detected an odor of an alcoholic beverage emitting from the applicant. The police administered a breathalyzer test at approximately 0657 hours with result reading 0.0819-percent BAC. The applicant was transported to the Provost Marshal Office and the applicant was administered an Intoxilyzer 8000 breath test at 0826 hours with results of 0.067-percent BAC. [Note: only page 1 of the Military Police Desk Blotter is in evidence for review.]

(4) A DA Form 4856 (Developmental Counseling Form) dated 19 September 2016, reflects the applicant received counseling for an Alcohol Offense and the initiation of a Flag for an Alcohol Abuse Adverse Action. The Key Points of Discussion reflects the applicant was stopped by the German Police at approximately 0630 hours at which point the police officer detected alcohol on their breath. They had a Breathalyzer administered at approximately 0657 hours in which the results were 0.0819-percent BAC. As a result of this event the applicant is being Flagged. The applicant agreed with the information and signed the form. The Leader Responsibilities included "Ensure that the SM [Service Member] is aware of any and all ASAP [Army Substance Abuse Program] appointments.

(5) A DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag) dated 19 September 2019, reflects the initiation of the applicant's Flag for Alcohol Abuse Adverse Action, effective 18 September 2016.

(6) A Military Police Desk Blotter dated 15 April 2017, reflects the applicant named as the subject with the offenses of Driving Under the Influence, Operating a Privately Owned Vehicle (POV) While License is Revoked, and Operating a POV with Cancelled Registration. The Case Narrative states, at 0714 hours, on 15 April 2017, military police observed the applicant driving their POV with an open trunk. The military police initiated a traffic stop to advise the applicant about the open trunk. Upon approach, the applicant made a spontaneous statement admitting they were driving with a suspended license. A further check revealed the applicant's license plate was cancelled for Failure to Comply with regulations. The applicant was then apprehended, searched, and transported to the Provost Marshall Office where they were administered an Intoxilyzer 8000 test at 0744 hours with results reading 0.063-percent BAC. The applicant was transported to the hospital for blood test with results pending.

(7) A DA Form 268 dated 3 May 2017 was initiated a Flag against the applicant for an involuntary separation.

(8) A memorandum, Headquarters, U.S. Army Medical Department Activity Bavaria, subject: ASAP Rehabilitation of [Applicant], dated 8 May 2017, reflects in consultation and upon recommendation of the ASAP, the applicant's company commander has declared the applicant as a treatment failure and has made a decision to separate the applicant from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 9 (Alcohol or Other Drug Abuse Rehabilitation Failure).

(9) A DA Form 4856 dated 19 May 2017, reflects the applicant received event-oriented counseling to inform them of the initiation of separation proceedings. The Key Points of Discussion reflects the commander made their decision based on the following: for a second time the applicant was arrested for Driving Under the Influence of Alcohol and their current enrollment in the Alcohol and Drug Abuse Prevention and Control Program resulted in the applicant considered an Alcohol and Drug Abuse Prevention and Control Program Failure. The commander determined that these incidents, taken as a whole, are acts of serious misconduct. These incidents have occurred within such proximity in time, as well as with such severity so as to warrant separation. The applicant has demonstrated an inability to overcome their problems. The commander believes the Army has expended all available time and resources, and further rehabilitation efforts are not practical.

(10) A DA Form 3822 (Report of Mental Status Evaluation) dated 23 May 2017, reflects the applicant is fit for duty, including deployment.

(a) Section IV (Impressions) reflects the applicant can understand and participate in administrative proceedings, appreciate the difference between right and wrong, and meets medical retention requirements (i.e., does not qualify for a Medical Evaluation Board).

(b) Section V (Diagnoses) reflects an Axis I (Psychiatric Conditions) of Alcohol Use Disorder.

(c) Section VI (Proposed Treatments) reflects follow up appointments at the Substance Use Disorder Clinic Care (SUDCC).

(d) Section VIII (Additional Comments) the Behavioral Health Provider states it is the professional opinion that the applicant will not respond to command efforts at rehabilitation or to any behavioral health treatment methods currently available in the military. The applicant is currently enrolled in the Substance Use Disorder Clinic Care.

(11) A memorandum, Headquarters, 21st Theater Sustainment Command, subject: Administrative Reprimand, dated 21 July 2017, reflects the commanding general reprimanded the applicant in writing for driving with a suspended license and willfully ignoring other host nation laws while operating a vehicle on German roadways. The commanding general states, Major General D____ G____ previously issued the applicant two written reprimands for driving under the influence of alcohol [Note: the applicant's two previous Administrative Reprimands are not in evidence for review.] The applicant's file show results from a breath alcohol test of 0.081 grams of alcohol per 210 liters of breath taken on 18 September 2016. Less than a year lapsed before they were once again found driving under the influence of alcohol. Military Police reported the applicant blew 0.063-percent BAC, according to an Intoxilyzer 8000 breath alcohol test administered on 15 April 2017; well in excess of the 0.05-percent BAC limit established under host nation law. The applicant acknowledged receive of the Reprimand on 25 July 2017 and elected to submit matters within 7 calendar days.

(12) In the applicant's rebuttal letter, undated, they state they are not contesting the charges that are being brought against them, they are remorseful for their decision to drive under the influence regardless of the circumstances. They attest to their military achievements, their volunteer work, and their participation in the ASAP meeting. They request the reprimand be filed locally as to not to have a critical impact on their military career or future.

(13) In the applicant's chain of command recommendation memorandums, dated 25 October 2017 through 31 October 2017, reflects –

(a) Their company commander recommends the reprimand be permanently filed in the applicant's AMHRR, stating this is the applicant's second offense for driving under the influence. This offense demonstrates a lack of self-motivation to change their behavior to match the Army Values and standards expected from professional Soldiers.

(b) Their battalion commander recommends the reprimand be permanently filed in the applicant's AMHRR, stating the applicant had multiple encounters with law enforcement and alcohol-related incidents. They have not served admirably, and the results of their actions should be permanently recorded in their official service record.

(c) The garrison commander recommends the reprimand be permanently filed in the applicant's AMHRR and states the applicant's continued and repeated alcohol related driving offenses warrant filing in their permanent file.

(14) On 7 November 2017, the commanding general, having carefully considered the applicant's reprimand, the circumstances of the misconduct, and all matters submitted by the applicant in their defense, along with recommendations of subordinate commanders, directed the reprimand be place permanently in the applicant's AMHRR.

(15) A memorandum, Headquarters, U.S. Army Medical Department Activity Bavaria, subject: Substance Use Disorder Clinic Care Summary of Treatment, dated 15 December 2017, reflects the applicant was a Self-Referral with no alcohol related incident 11 August 2016. After the incident it became a Command Referral based on an alcohol related incident which occurred on 15 April 2016. They continue to show progress in treatment and will be discharged from SUDCC Treatment Program, and their prognosis is excellent.

(16) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 22 March 2018, with 4 year and 12 days of net active service this period. The applicant has not completed their first full term of service. The DD Form 214 shows in –

- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKQ
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct (Serious Offense)

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: MSE/BHE as described in previous paragraph 4h (10).

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with a letter to the Board
- excerpts of their service record
- United Service Organizations Letter of Appreciation
- three Army and Air Force Exchange Service Personnel Evaluation Reports
- eight Army and Air Force Exchange Service certificates

6. POST SERVICE ACCOMPLISHMENTS:

- United Service Organizations Letter of Appreciation
- three Army and Air Force Exchange Service Personnel Evaluation Reports
- eight Army and Air Force Exchange Service certificates

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 DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 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 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 14-12c (2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(5) 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 "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 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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) dated 28 November 2016, provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components. 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, the Warrior Ethos, 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 Soldier who test positive for illicit drugs for the first time will be evaluated for dependency, disciplined, as appropriate, and processed for separation within 30 calendar days of the company commander receiving notification of the positive result from the ASAP. Retention should be reserved for Soldiers that show clear potential for both excellent future service in the Army and for remaining free from substance abuse. Soldiers diagnosed as drug dependent will be offered rehabilitation prior to separation.

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. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 92 (Failure to Obey Order, Regulation).

8. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation. Due to the lack of evidence the specific facts and circumstances surrounding the pattern of misconduct to be discharged under the provision on Army Regulation 635-200, paragraph 14-12c are unknown. However, the available evidence does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's signature which provides the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions). The applicant received a general (under honorable conditions) characterization of service rather than

a under other than honorable conditions which is normally considered appropriate. They completed 4 years and 12 days of their 5-year, 32-week enlistment 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 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.

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 Contention(s):

(1) The applicant requests an upgrade to Honorable. The board determined that this contention was valid and voted to upgrade the applicant characterization to Honorable and narrative reason code to Misconduct (Minor Infractions)/JKN based on the applicant's length and quality of service, elapsed time since the misconduct, post service accomplishments, no real evidence of the assault and battery and the applicant's self-referral and completion of SUDCC and the Prime for Life Program outweigh the misconducts - driving under the influence (3x), assault and battery (2x), driving on a revoked license/cancel registration (2x) - accepted basis of separation.

(2) The applicant contends information during their separation was misrepresented such as their blood alcohol content (BAC) level given by the breathalyzers during the incident of 18 September 2016. The initial breathalyzer at 0657 hours results were 0.0819-percent and a second reading taken at the police station at 0826 hours with a Intoxilyzer 8000 resulted in a 0.067 BAC. However, the police went with the higher BAC which ultimately recorded the results above the legal limit. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted as outline above in paragraph 9b (1).

(3) The applicant contends they have completed the Army Substance Abuse Program and the Prime for Life course. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted as outline above in paragraph 9b (1).

(4) The applicant contends their character of service provided on their DD Form 214 does not reflect the majority of their time in the service and should be based on the evaluation of their achievements from periods of honorable service along with achievements since their discharge. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted as outline above in paragraph 9b (1).

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 change 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. No change to the reentry code.

d. Rationale for Decision:

(1) The board carefully considered the applicant's request, elapsed time since the misconduct, post service accomplishments, no real evidence on the assault and battery, applicant's self-referral to SUDCC and Prime for Life Program enrollment (applicant complete both courses) outweigh the misconducts - driving under the influence (3x), assault and battery (2x), driving on a revoked license/cancel registration (2x) - Thus, the prior characterization is no longer appropriate.

(2) The board voted to change the reason for the applicant's 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210006143

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: 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, paragraph 14-12a

Authenticating Official:

7/17/2024



Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs