

Applicant's Name: [REDACTED]

- a. **Application Date:** 20 October 2020
- b. **Date Received:** 27 October 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant did not properly annotate the enclosed application requesting a possible discharge upgrade. The Army Discharge Review Board considered the applicant for a possible upgrade as instructed in pertinent part by Department of Defense Instruction 1332.28, which stipulates a request for review from an applicant without an honorable discharge shall be treated as a request for a change to an honorable discharge unless the applicant requests a specific change to another character of discharge.

b. The applicant seeks relief contending, in effect, the applicant has depression and alcoholism.

c. **Board Type and Decision:** In a records review conducted on 2 October 2024, and by a 5-0 vote, the board determined the discharge is inequitable base on liberal consideration, improper Chapter MSE, applicant's length of service and assertion of depression. 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. There is no change to the reentry code.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 22 July 2020

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 23 April 2020

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant willfully disobeyed a general order; and refused to take an intoxilyzer breath test.

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

(4) **Legal Consultation Date:** On 5 May 2020, the applicant waived legal counsel.

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

(6) Separation Decision Date / Characterization: 18 May 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 15 August 2016 / 4 years and 3 months (Applicant extended their initial enlistment for a period of 3 months on 7 September 2017)

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / 127

c. Highest Grade Achieved / MOS / Total Service: E-4 / 25S10, SATCOM System Operator-Maintainer / 3 years, 11 months, and 8 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Japan / None

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 4833 (Commander Report of Disciplinary or Administrative Action) shows the applicant was referred on 25 April 2015 for Curfew Violation on 12 January 2018. This report shows:

(a) On 15 January 2018, the applicant was referred to the drug/alcohol abuse agency.

(b) On 21 May 2018, the applicant was referred to the legal office.

(c) On 30 May 2018, the applicant received an oral reprimand and a FG Article 15 for Failure to Obey Order or Regulation and Curfew Violation. The punishment consisted of \$819 for 1 month; and reduction from E-4 to E-1.

(2) Law Enforcement Report - Final, 8 June 2018, shows an investigation established the applicant committed the offense of Curfew Violation on 12 January 2018. The applicant arrived at Camp Foster intoxicated.

(3) The 78th Signal Battalion, memorandum, subject: Disqualification of the Army Good Conduct Medal (AGCM), 10 July 2019, shows the applicant was informed that they were disapproved for award of the AGCM for the period of 12 January 2018 to 12 June 2018 due to an Article 15.

(4) Two DD Forms 1408 (Armed Forces Traffic Ticket), 16 December 2019, shows the applicant was driving while intoxicated (DWI) (Refusal) and had no vehicle registration in possession.

(5) A DA Form 4833 (Commander Report of Disciplinary or Administrative Action) shows the applicant was referred on 31 January 2020 for Driving Under the Influence on 16 December 2019. This report shows on 17 December 2019, the applicant was referred to the drug/alcohol abuse agency. On 31 January 2020, the applicant received a written reprimand.

(6) General Officer Memorandum of Reprimand, 31 January 2020, shows the applicant refused to complete a lawfully requested test to measure alcohol content. On 16 December 2019 at 0820 hours the applicant attempted to leave Camp Foster in a vehicle and was given a random sobriety test which indicated the presence of alcohol in the applicant's breath. Marine military police transported the applicant to the Marines Corps Air Station Futenma to take an intoxilyzer breath test, and the applicant refused to take it.

(7) On 18 February 2020, the applicant acknowledged receipt of the reprimand and elected not to submit any matters.

(8) On 20 March 2020, the GOMOR authority directed the reprimand be permanently placed in the applicant's AMHRR.

(9) Law Enforcement Report - 2nd Corrected Final, 30 March 2020, shows an investigation established the applicant committed the offense of Driving Under the Influence.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293.

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

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 1-16 (Counseling and rehabilitative requirements), states except as otherwise indicated in this regulation, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for minor disciplinary infractions or a pattern of misconduct (paragraphs 14-12a and 14-12b).

(a) The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality, Soldier. Such circumstances may include:

- Two consecutive failures of the Army physical fitness test
- Pregnancy while in entry-level status
- Highly disruptive or potentially suicidal behavior, particularly in reception battalions

- Active resistance of rehabilitative efforts
- Soldiers assigned to small installations or at remote locations
- Situations in which transfer to a different duty station would be detrimental to the indebtedness, participation in the Alcohol and Drug Abuse Prevention and Control Program, Mental Health Treatment Program, and so forth)

(b) When a Soldier's conduct or performance becomes unacceptable, the commander will ensure that a responsible official formally notifies the Soldier of their deficiencies. At least one formal counseling session is required before separation proceedings may be initiated for one or more of the reasons specified in subparagraph 7d(1)(a), above. In addition, there must be evidence that the Soldier's deficiencies continued after the initial formal counseling.

(2) Paragraph 3-7a states an honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian 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 Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

(7) 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 (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 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.

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 will be considered for an upgrade to honorable. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 3 years, 11 months, and 8 days. The applicant received a FG Article 15 for Failure to Obey Order or Regulation and Curfew Violation and a GOMOR for Driving Under the Influence and refusing to take an intoxilyzer breath test. The applicant's DD Form 214 shows the applicant was discharged on 22 July 2020 under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, the applicant has depression and alcoholism.

(1) Two DA Forms 4833 (Commander Report of Disciplinary or Administrative Action) shows the applicant was referred to the drug/alcohol abuse agency on 15 January 2018 for intoxication and on 17 December 2019 for driving under the influence. There was no response from the applicant. The Command Management Division provided CID reports to the applicant on 12 April 2024 requesting comments but received no response from the applicant.

(2) The Army Review Board Agency requested supporting documentation for the applicant's claim of depression and alcoholism in December 2023 and July 2024. There was no response from the applicant.

(3) The applicant's AMHRR is void a mental status evaluation.

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? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records which were void. However, the Chapter MSE was improper as documentation is void of screenings or any evaluation/record review allowing for a legal determination he was without a condition influencing his misconduct. The applicant's assertion of depression is always sufficient evidence to potentially establish the existence of a condition that could have mitigated or excused the discharge. In this case, the applicant's assertion of depression is accepted given the lack of behavioral health evaluation and clearance to the contrary.

(2) Did the condition exist, or experience occur during military service? **Yes.** Depression.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the acceptance of asserted depression, due to an improper Chapter MSE, and nexus between depression and substance misuse/related behavior, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the board determined that the applicant's assertion of depression mitigated the basis for separation - willfully disobeyed a general order, refusing to take an intoxilyzer breath test and driving under the influence (DUI) – for the aforementioned reasons.

b. Response to Contention: The applicant contends, in effect, the applicant has depression and alcoholism. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based the medical opine, liberal consideration, applicant length of service and the applicant's asserted of depression outweighing the applicant's misconduct (willfully disobeyed a general order, refusing to take an intoxilyzer breath test and driving under the influence) - basis for separation.

c. The board determined the discharge is inequitable based on liberal consideration to the evidence, including the Board Medical Advisor opine and applicant's length of service and determined that the applicant's assertion of depression mitigated the basis for separation (willfully disobeyed a general order, refusing to take an intoxilyzer breath test and driving under the influence). 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. There is no change to the reentry code.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable because based on liberal consideration to the evidence, including the Board Medical Advisor opine and applicant's length of service and asserted depression outweighed the basis for

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210006409**

separation misconduct (willfully disobeyed a general order, refusing to take an intoxilyzer breath test and driving under the influence). Thus, the prior characterization is no longer appropriate.

(2) The board voted to change the reason for discharge to Misconduct (Minor Infractions), under the same pretexts. Thus, 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 / 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:

6/15/2025

**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