

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 13 October 2020
- b. **Date Received:** 20 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 requests an upgrade to Honorable. The applicant seeks relief contending, they were dealing with disabilities at the time and had no bad conduct prior to their discharge.

b. **Board Type and Decision:** In a records review conducted on 24 April 2024, and by a 4-1 vote, the Board voted to grant relief in the form of a discharge upgrade based on the applicant's length, combat service, medical circumstances surrounding the discharge (Adjustment Disorder), and severe family matters. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE code was 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:** 25 June 2009

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** Undated

(2) **Basis for Separation:** absent without leave (AWOL) from 8 January – 1 September 2007 and from 14 May 2008 – 3 March 2009

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

(4) **Legal Consultation Date:** On 18 June 2009, they waived their right to counsel.

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

(6) **Separation Decision Date / Characterization:** undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 23 March 2005 / 3 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 22 / NIF / 110

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c. Highest Grade Achieved / MOS / Total Service: E-4 / 11C10 Indirect Fire Infantryman / 2 years, 5 months

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (16 September 2005 – 15 September 2006)

f. Awards and Decorations: NDSM, GWOTSM, ICM-CS2, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 23 March 2005, the applicant enlisted in the Regular Army for 3 years, 16 weeks as a PVT. The Enlisted Record Brief provides the applicant deployed for one year (16 September 2005 – 15 September 2006) to Iraq and promoted to SPC (28 January 2008). On 14 May 2008, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

(2) Six Personnel Action documents provide the following duty status changes:

| Date | Status Changed From | Status Changed To |
|------------------|----------------------------|-----------------------------|
| 5 January 2007 | Present for Duty (PDY) | Absent without Leave (AWOL) |
| 4 February 2007 | AWOL | Dropped From Rolls (DFR) |
| 1 September 2007 | DFR | PDY |
| 14 May 2008 | PDY | AWOL |
| 14 June 2008 | AWOL | DFR |
| 3 March 2009 | DFR | PDY |

(3) On 12 June 2008, the commander reported the applicant as a wanted deserter/absentee, completed an investigation, notified authorities, and sent letter(s) to their next of kin, when the applicant was reported AWOL (14 May 2008) and DFR (15 June 2008), to urge the applicant to return to military control. Block 19 notes marijuana use and an alternate spelling of their name.

(4) On 20 June 2008, the applicant was charged for having been AWOL from or about 14 May 2008. The charge was preferred.

(5) On 2 Mar 2009, they surrendered to military control (Fort Sam Houston) and was transferred to their military control unit (Fort Campbell, KY).

(6) On 3 April 2009, the applicant completed their medical history for their physical at LaPointe Health Clinic. Their current medications are listed as Alprazolam – Xanax and Ambien.

(a) Block 29 lists the following explanations of “yes answers:

- 11f: they wear glasses
- 17a: panic attacks
- 17d: trouble with sleep; taking Ambien
- 17f: depression; taking Xanax

(b) Block 30a provides the examiner's notes:

- 11f: SM wears prescription eyewear. Their last exam was less than a month ago and no changes were made to the correct prescription.
- 17a, d, e, f: SM has been diagnosed with Adjustment Disorder with Anxiety. They have been treated by Adult Behavioral Health at BACH, Fort Campbell, KY, for panic attacks, trouble sleeping, and depression/excessive worry.
- 21: SM was a "daily outpatient" at University Hospital in San Antonio, TX in March 2009.

(7) On 10 April 2009, they were flagged for adverse action (AA).

(8) On 22 April 2009, the applicant completed their medical examination at LaPointe Health Clinic for their separation and was qualified for service with no recommendations listed. For block 40, the examiner noted history of Adjustment Disorder with Anxiety.

(9) On the same day, the applicant accepted nonjudicial punishment in violation of Article 86, UCMJ for having been AWOL from on or about 8 January – 1 September 2007. For punishment, they were reduced the PV2I; required to forfeit \$764.00 pay per month for two, suspended to be automatically remitted if not vacated before 5 November 2009; extra duty for 45 days; restriction to the limits of Fort Campbell for 45 days. They did not appeal.

(10) Although undated, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense) and recommended a General (Under Honorable Conditions) characterization of service. On 17 June 2009, the applicant acknowledged receipt of the separation notice, elected to waive their right to legal consultation and not to submit a statement on their behalf.

(a) On 18 June 2009, the battalion commander concurred with the recommendation to separate the applicant with a General (Under Honorable Conditions) characterization of service.

(b) Although undated, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(11) On 23 June 2009, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 25 June 2009, with 2 years, 9 months, and 27 days of total service. The applicant has not completed their first full term of service.

i. **Lost Time / Mode of Return:** 1 year, 5 months, 15 days

- AWOL, 7 months, 27 days (5 January – 31 August 2007) / Returned to Military Control
- AWOL, 9 months, 18 days (14 May 2008 – 1 March 2009) / Returned to Military Control

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

(1) **Applicant provided:** On 13 October 2020, the applicant provided a VA Summary of Benefits, which provides they have a service-connected disability with a 90 percent rating;

however, the letter does not include the diagnoses/disabilities for the applicant.

(2) AMHRR Listed: On 1 June 2009, the applicant completed a mental status evaluation due to misconduct, with Adult Behavioral Health (BH) at Blanchfield Army Community Hospital (BACH) and was psychiatrically cleared for administrative action deemed appropriate by command. They had the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets retention requirements of Chapter 3, AR 40-501. AXIS I and II lists "deferred".

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); VA Summary of Benefits Letter

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this 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), 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.

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 14-12c, 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 631-10 (Absence, Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings) provides policies and procedures for reporting unauthorized absentees and deserters, the administering of absent without leave (AWOL) personnel and deserters, returning absentees and deserters to military control and the surrendering of military personnel to civilian law enforcement authorities. When a soldier returns from an absence that is or appears to be unauthorized, the unit commander informally investigates whether disciplinary action should be taken and if the soldier be charge with time lost.

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

- Order and instructions, written/oral, the Soldier received before/during absence
- Age, military experience, and general intelligence of the Soldier
- Number and type of contact the Soldier had with the military absent
- Complete or incomplete results of a court-martial decision if any

(2) An absence immediately following authorized leave is classified as AWOL. Should the absence subsequently be reclassified, the soldiers leave is corrected to reflect the reclassified absence, except if the absence is caused by the following:

- Mental incapacity
- Detention by civilian authorities
- Early departure of a mobile unit due to operational commitments

h. Manual for Courts-Martial (2008 Edition), United States, states 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 orders and discipline in the Armed Forces. Article 86 (absence without leave) states in subparagraph being absence without leave for more than 30 days, the maximum punishment consists of a forfeiture of all pay and allowances, and confinement for one year.

i. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered, medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

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 26 months as a PVT. They deployed for one year to Iraq and promoted to SPC.

(1) Three and a half months after redeployment, the applicant went AWOL and remained so for nearly eight months. They returned to military control, served over eight months, and went AWOL again, for over nine months. They surrendered to military control (Fort Sam Houston) and received nonjudicial punishment for having been AWOL (8 January – 31 August 2007) and was reduced to PV2. Their separation proceedings were initiated IAW AR 635-200, Chapter 14-12C, Misconduct (Serious Offense). The applicant elected to waive their right to defense counsel and elected not to submit a statement on their behalf.

(2) The applicant completed their medical examination for their separation and was qualified for service with no recommendations listed. The examiner noted history of Adjustment Disorder with Anxiety. On their medical history document, the physician noted the applicant has been diagnosed with Adjustment Disorder with Anxiety. They have been treated by Adult Behavioral Health at BACH, Fort Campbell, KY, for panic attacks, trouble sleeping, and depression/excessive worry. SM was a "daily outpatient" at University Hospital in San Antonio, TX in March 2009, which is the month of their redeployment. In addition, the applicant provided their VA Summary of Benefits letter indicating their 90% service-connected disability rating.

(3) They completed 2 years, 9 months, and 18 days of their 3 year, 16 week 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? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses: the applicant held an in-service diagnosis of Adjustment Disorder and Depression although reported trauma symptoms upon return from deployment. Post-service, the applicant is service connected for combat related Post-Traumatic Stress Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Adjustment Disorder and Depression although reported trauma symptoms upon return from deployment.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that while the applicant provided logistical reasons for going Absent Without Leave, there is a nexus between trauma and avoidance which likely contributed to the applicant's decision.

(4) Does the condition or experience outweigh the discharge? **Yes.**

b. Response to Contention(s): The applicant seeks relief contending, they were dealing with disabilities at the time and had no bad conduct prior to their discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's medical diagnosis (Adjustment Disorder), length, combat service, and severe family matters fully outweighing the applicant's Absent Without Leave basis for separation.

c. The Board determined, based on the applicant's medical diagnosis (Adjustment Disorder), length, combat service, and severe family matters, the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE code was 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 because the applicant's the applicant's medical diagnosis (Adjustment Disorder), length,

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combat service, and severe family matters mitigated the applicant's misconduct of Absent Without Leave. 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 the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

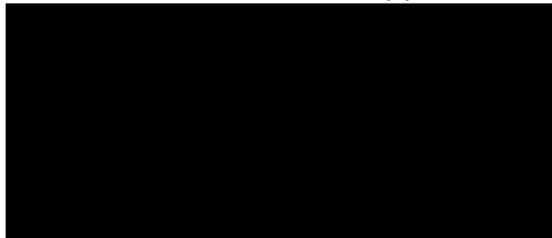
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

6/3/2024



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