

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 19 October 2020
- b. **Date Received:** 26 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.

b. The applicant seeks relief contending, in effect, the applicant suffered from mental health issues which contributed to the applicant's discharge.

c. **Board Type and Decision:** In a records review conducted on 26 February 2024, and by a 5-0 vote, the Board, based on the circumstances surrounding the applicant's discharge (Post-Traumatic Stress Disorder diagnoses), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board 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 characterization of service was proper and equitable and voted not to change it.

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:** 1 February 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 4 November 2020

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant disobeyed a lawful order and failed to report to the appointed place of duty on multiple occasions.

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

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

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

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

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 September 2007 / 5 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 / 25U10, Signal Support System Specialist / 4 years, 2 months, 1 day

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (26 August 2009 - 11 August 2010)

f. Awards and Decorations: ARCOM, AGCM, NDSM, GWTSM, ICM-CS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Thirteen developmental counseling forms for patterns of misconduct including failure to report, failure to obey a direct order of a noncommissioned officer (NCO), failure to follow directions, lying to a senior NCO, lack of integrity, failure to communicate accurately and effectively, failure to follow instructions, not meeting financial obligations, and defaulted on rental car contract, resulting in car being reported as stolen.

(2) On 29 June 2011, the applicant was counseled for initiation of chapter 14-12b, pattern of misconduct.

(3) FG Article 15, 29 September 2017, for:

- Failed to obey a lawful order on or about 15 August 2011
- Failed to go at the time prescribed to the appointed place of duty on or about 5, 25, and 31 May, 29 June, 6 and 13 July, 1, 4, 24, and 26 August 2011
- The punishment consisted of a reduction from E-4 to E-3; forfeiture of \$975.00 pay per month for 2 months (suspended); extra duty and restriction for 45 days; and an oral reprimand

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:**

(a) Emergency Physician Record, Psych Disorder, Suicide Attempt, Overdose report, 14 June 2011, reflects the doctor annotated PTSD and depression. The physician recommended that the applicant be transferred to specialty care.

(b) Chronological Record of Medical Care, 23 June and 6, 7 and 14 July 2011, reflects the applicant was seen for nightmare disorder, adjustment disorder with disturbance of emotions, and military combat stress reaction. The applicant was prescribed medications for psychiatric care. Records for 7 and 14 July 2011, reflects the applicant was diagnosed with adjustment disorder with mixed anxiety and depression, nightmare disorder, and acute combat stress reaction.

(c) Chronological Record of Medical Care, 22 September 2011, reflects the applicant was seen for chapter 14-12b.

(d) Report of Medical History, 26 October 2011, reflects the examining medical physician noted in the comments section: The applicant was recently released from behavioral health care, no further need to follow up, and instructed to return if symptoms returned.

(e) Report of Mental Status Evaluation, page 2 of 3 only, reflects the applicant had been screened for PTSD and mTBI with positive PTSD results.

(f) Report of Medical Assessment, 26 October 2011, reflects the examining medical physician noted in the comments section: The applicant was treated by behavioral health but no longer requires treatment and symptoms are controlled with medication.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; military medical documents.

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 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(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.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per 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 requests 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 4 years, 2 months, and 1 day during which the applicant served 11 months and 16 days in Iraq between 2009 and 2010. The applicant received 13 developmental counseling forms, for various acts of misconduct. The applicant also received a FG Record of Proceedings under Article 15 for failing to obey a lawful order and failure to report to the appointed place of duty on multiple occasions. The applicant was discharged with a general (under honorable conditions) characterization of service on 28 November 2011.

c. The applicant contends, in effect, the applicant suffered from mental health issues which contributed to the applicant's discharge. The applicant provided military medical documents that reflects PTSD, depression, adjustment disorder with mixed anxiety and depression, nightmare disorder, and acute combat stress reaction. Report of Mental Status Evaluation, page 2 of 3 only, reflects the applicant had positive PTSD results.

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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder; Nightmare Disorder; Combat Stress Reaction; Post-Traumatic Stress Disorder (50% Service Connected).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found Adjustment Disorder, Nightmare Disorder and Military Combat Stress Reaction occurred during active service. VA service connection for Post-Traumatic Stress Disorder establishes it occurred and/or began during active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating Behavioral Health condition, Post-Traumatic Stress Disorder. As there is an association between Post-Traumatic Stress Disorder, avoidant behavior and difficulty with authority figures, there is a nexus between his diagnosis of Post-Traumatic Stress Disorder, his multiple Failure to Report and his disobedience of a lawful order. [Note: Adjustment Disorder, Nightmare Disorder and Military Combat Stress Reaction are all subsumed under Post-Traumatic Stress Disorder diagnosis.]

(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 Post-Traumatic Stress Disorder outweighed the Failure to Report and his disobedience of a lawful order basis for separation for the aforementioned reason(s).

b. Response to Contention: The applicant contends, in effect, the applicant suffered from mental health issues which contributed to the applicant's 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 Post-Traumatic Stress Disorder fully outweighing the applicant's Failure to Report and his disobedience of a lawful order basis for separation.

c. The Board determined, based on the circumstances surrounding the applicant's discharge (Post-Traumatic Stress Disorder diagnoses), the narrative reason for the applicant's separation is now inequitable. Therefore, the Board 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 characterization of service was proper and equitable and voted not to change it.

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AR20210006565

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post-Traumatic Stress Disorder mitigated the applicant's misconduct of Failure to Report and his disobedience of a lawful order. 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.

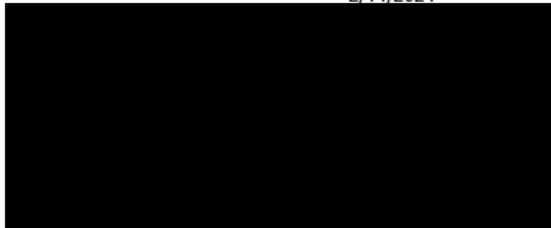
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / 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**

Authenticating Official:

2/14/2024



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