

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 21 December 2020
- b. **Date Received:** 12 January 2021
- 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 and a change of their separation code and reentry code.

(2) The applicant seeks relief stating the reason for their request is to further their education and provide a better life for their family. They have been selected as a candidate for the police department and continuing their education would also help them advance in their career as a police officer.

b. Board Type and Decision: In a telephonic review conducted on 14 June 2024, the Board voted 5-0, to upgrade the applicant's characterization of service to Honorable. The Board determined that the applicant's PTSD and TBI partially mitigated the applicant's misconduct (dereliction of duty, failure to report, lateness, disobeying lawful orders). While the remaining offense of lying to a NCO is not mitigated (as these conditions did not affect the applicant ability to tell right from wrong and act in accordance with the right), the offense is not grievous enough to warrant the current characterization. Therefore, the Board granted relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a, and the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry eligibility (RE) code was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Pattern of Misconduct / Army Regulation 635-200, Paragraph 14-12B / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 28 June 2012

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 16 April 2012

(2) **Basis for Separation:** on 9 March 2012, received a Company Grade Article 15 for Dereliction of Duty and failure to go to appointed place of duty on five occurrences and on 26 March 2012, received a Field Grade Article 15 for failure to go to appointed place of duty.

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

(4) **Legal Consultation Date:** 26 April 2012

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

(6) Separation Decision Date / Characterization: 22 May 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 17 September 2008 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 88
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 25L10, Cable System Installer / Maintainer / 3 years, 9 months, 28 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Bahrain, SWA / Iraq (16 July 2009 – 16 July 2010)
- f. **Awards and Decorations:** AGCM, NDSM, GWTSM, ICM-CS, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Seven DA Forms 4856 (Developmental Counseling Form) dated 31 October 2011 through 11 March 2012, reflects the applicant received event oriented counseling for multiple acts of misconduct to include failure to report, lateness, disobeying a lawful order and lying to a senior noncommissioned officer (NCO).

(2) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 9 March 2012, reflects the applicant received nonjudicial punishment for, five occurrences of failure to go at the time prescribed to their appointed place of duty, in violation of Article 86 (Absence Without Leave), Uniform Code of Military Justice (UCMJ) and for dereliction in the performance of duties, in violation of Article 92 (Failure to Obey Order or Regulation), UCMJ. The applicant's punishment consisted of reduction in rank/grade from private first class/E-3 to private/E-2, forfeiture of \$389.00 pay, extra duty for 14 days and an oral reprimand. The applicant elected not to appeal.

(3) A DA Form 3822 (Report of Mental Status Evaluation) dated 15 March 2012; reflects the applicant was fit for full duty, including deployment. The applicant can understand and participate in any administrative proceedings and can appreciate the difference between right and wrong. They meet medical retention standards.

(a) Section IV (Diagnoses) – reflects an Axis I (Psychiatric Condition) diagnosis as Occupational Problem.

(b) Section VIII (Additional Comments) – the behavior health provider marked "The service member shows no evidence of a disorder that would limit his/her potential to succeed in the military. He/she is cleared to participate in advanced military training."

(4) A DA Form 2627 dated 26 March 2012, reflects the applicant received nonjudicial punishment for, on or about 11 March 2012, without authority, failed to go at the time prescribed to their appointed place of duty, in violation of Article 86, UCMJ. Their punishment consisted of

forfeiture of \$835.00 pay for 2 months and extra duty and restriction for 30 days. The applicant elected not to appeal.

(5) A memorandum, Bravo Company, 67th Expeditionary Signal Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], dated 16 April 2012, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12b, a pattern of misconduct, with a recommended characterization of service general (under honorable conditions) for adverse action described in previous paragraph 3c(2). On that same date, the applicant acknowledged the basis for the separation and of the rights available to them.

(6) On 26 April 2012, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They understood they many expect to encounter substantial prejudicial in civilian life if a general (under honorable conditions) discharge is issued to them. They elected to submit statements in their behalf. [Note: statements in their behalf are not in evidence for review.]

(7) A memorandum, Bravo Company, 67th Expeditionary Signal Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], undated, the applicant's company commander submitted a request to separate them from the Army prior to their expiration of current term of service.

(8) A memorandum, Headquarters, 35th Signal Brigade (Theater Tactical), subject: Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], dated 22 May 2017, the separation authority, having reviewed the separation packet directed that the applicant be separated from the Army prior to the expiration of current term of service with a service be characterization of General (Under Honorable Conditions). The separation authority determined the applicant will not be transferred to the Individual Ready Reserve and a rehabilitative transfer would serve no useful purpose.

(9) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 28 June 2012, with 3 years, 9 months, and 12 days of net active service this period. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private Two
- item 4b (Pay Grade) – E-2
- item 12i (Effective Date of Pay Grade) – 9 March 2012
- item 18 (Remarks) – in part, Member has not completed first full term of service
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKA
- item 27 (Reentry Code) - 3

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** DA Form 3822, reflecting a diagnosis of "Occupational Problem."

5. **APPLICANT-PROVIDED EVIDENCE:** None provided with application.

6. **POST SERVICE ACCOMPLISHMENTS:** None provided with application.

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 15-6 (Procedures for Investigating Officers and Boards of Officers) establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Paragraph 5-2 states IOs may use whatever method they deem most efficient and effective for acquiring information. Although witnesses may be called to present formal testimony, information may also be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

d. 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 Instruction 1332.28.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 September 2011, 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 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs

prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

(5) 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 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil 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 UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(6) Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

(7) 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.

f. 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).

g. 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.

h. Manual for Courts-Martial, United States (2012 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 86 (Absence Without Leave) and Article 92 (Failure to Obey Order or Regulation).

7. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides the applicant received multiple event-oriented counseling for acts of misconduct, two occurrences of nonjudicial punishment for multiple acts of misconduct, which led to their involuntary discharge. A DD Form 214 provides the applicant was discharged with a character of service of general (under honorable conditions) for a pattern of misconduct. They completed 3 years, 9 months, and 12 days of net active service; however, they did not complete their first full term of service of their 4-year contractual service 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 DoD 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.

8. 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: PTSD, TBI. [Note-diagnosis of Anxiety DO is subsumed under the diagnosis of PTSD].

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the VA service connection for PTSD and TBI and establishes that they occurred and/or began during active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has two BH conditions, PTSD and TBI, which mitigate most of their misconduct. As there is an association between PTSD/TBI, avoidant behavior and problems with authority figures, there is a nexus between the applicant's diagnosis of these conditions, multiple FTRs, dereliction of duty and disobeying of lawful orders. PTSD and TBI did not mitigate lying to an NCO because they do not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **Yes.** The board concurred with the opinion of the Board's Medical Advisor, a voting member. As a result, the ADRB applied liberal consideration and found that the applicant's PTSD and TBI outweighed the misconduct (dereliction of duty, failure to report, lateness, disobeying a lawful orders) – the basis of separation for the aforementioned reason. However, the remaining misconduct (lying to an NCO) is not mitigated as these conditions do not affect one's ability to tell right from wrong and act in accordance with the right.

b. Response to Contention(s):

(1) The applicant contends stating the reason for their request is to further their education and provide a better life for their family. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted as detailed in paragraphs 9a (3-4).

(2) The applicant contends, stating they have been selected as a candidate for the city police department and continuing their education would also help them advance in their career as a police officer. The board considered this contention along with the totality of the applicant's service record but does not grant relief to gain employment or enhance employment opportunities.

c. The board determined the discharge is inequitable based on the applicant's PTSD and TBI mitigating most of the applicant's misconduct (dereliction of duty, failure to report, lateness, disobeying a lawful orders). Therefore, the board voted to grant partial 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. However, the misconduct of lying to an NCO is not mitigated as this condition did not affect one's ability to tell right from wrong and act in accordance with the right. No other relief to the narrative reason or RE-code are warranted.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD and TBI partially mitigated most of the applicant's misconduct (dereliction of duty, failure to report, lateness, disobeying a lawful orders). Thus, the prior characterization is no longer appropriate. The remaining offense of lying to an NCO is not mitigated as this condition did not affect the applicant ability to tell right from wrong and act in accordance with the right.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210006660

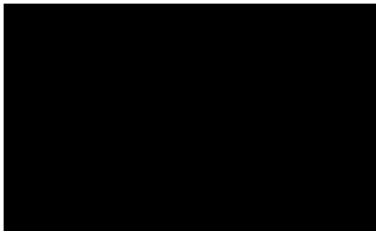
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

9. 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:

8/28/2024



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