

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 21 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, they believe they deserve an upgrade to their discharge. In August 2016, they received a driving under the influence of alcohol (DUI), which led to their discharge out of the service. This was their first and only criminal or civil charge against them during their career in the Army. Before this event they would consider themselves a great leader to the Soldiers who served under them and it even showed to the command above them. Since then, they have taken the step to change their life for the better. The applicant served a year probationary period with the court system through the Veterans Treatment Court (VTC) program, in which they completed, and graduated from the program, with no set back or complaints against them. They have also enrolled in school, nearing graduation, with two different majors, in Criminal Justice and Health and Human Performance.

c. **Board Type and Decision:** In a records review conducted on 24 April 2024, and by a 5-0 vote, the Board determined the applicant's separation is now inequitable based on the applicant's length, quality, combat, prior period of honorable service, and post service accomplishments. 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 reentry 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 January 2017

c. Separation Facts:

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF

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

(6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 30 April 2015 / 3 years (2nd Reenlistment)

b. **Age at Enlistment / Education / GT Score:** 23 / High School Diploma / 100

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 11B20 Infantryman / 5 years, 9 months, 21 days

d. **Prior Service / Characterizations:**

- Regular Army, (6 April 2011 – 3 February 2014) Honorable
- Regular Army, (4 February 2014 – 29 April 2015) Honorable

e. **Overseas Service / Combat Service:** SWA / Afghanistan (17 September 2012 – 26 May 2013; 29 January – 11 October 2015)

f. **Awards and Decorations:** ARCOM, AGCM, NDSM, ACM-CS-2, GWOTSM, ASR, NATOMDL-2, AIR ASLT

g. **Performance Ratings:** SGT (1 October 2015 – 30 September 2016) / Not Qualified

h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 30 April 2015, the applicant completed their second reenlistment in the Regular Army for 3 years as a SPC, with 4 years and 26 days of prior active service. The Enlisted Record Brief provides they promoted to SGT (1 October 2015) and served two tours deployed to Afghanistan for nearly 17 months, receiving an Army Commendation Medal and their Army Good Conduct Medal. On 4 January 2017, they were flagged, Suspend Favorable Personnel Actions (FLAG), for field-initiated involuntary separation (BA).

(2) On 18 November 2017, 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 January 2017, with 6 years, 1 month, and 18 days of active service. The applicant has completed their first full term of service.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

a. DD Form 293 (Application for the Review of Discharge); DD Form 214 (Certificate of Release or Discharge from Active Duty); Army Commendation Medal; DA Form 638 (Recommendation for Award); (DA Form 1059) Service School Academic Evaluation Report; DA Form 2166-9-1 (NCO Evaluation Report (SGT)); Self-Authored Statement; Three Character Letters

b. An undated character letter from the applicant's former platoon leader, provides they wholeheartedly vouch for the applicant's character and integrity. Leaders across the battalion recognized the applicant as a non-commissioned officer who exemplified the consummate professional, was completely trustworthy, and who they regularly entrusted, with responsibility that far exceeded their rank. The applicant has only one semester remaining before they earn their bachelor's degree in Criminal Justice, in perfect keeping with the applicant's desire to continue serving. Upgrading the applicant's discharge status would enable them to continue to serve as a police officer, which has been a life-long goal.

c. An undated character letter from SSG, who worked with the applicant, stating they are a great Soldier, who served with distinction, honor, and dedication every day, who took care of their Soldiers, their family and them, even while they were deployed. They would trust the applicant with their life and their family's life, any day of the week. They were cut short before they could finish making a difference with the Soldier's under them.

d. On 19 November 2019, SSG provides a character letter, providing they met the applicant at their company's Recon platoon. The applicant was always positive and a motivational figure for other Soldiers, that were attending the same try outs. They would lead from the front, set the example, and was a solid source for anyone who had a question about the task at hand. The applicant had an impact on their subordinates and their willingness to listen and execute any task given to them due to the loyalty gained from the applicant's positive leadership. They continued to be a positive leader and mentor despite their fate in the Army. They have no doubt that they applicant is more than qualified and will carry over their same willingness to learn, adapt, and later develop those the applicant will be in charge of in their new career.

6. POST SERVICE ACCOMPLISHMENTS: They served in a year probationary period with the court system through the Veterans Treatment Court (VTC) program, completed and graduated from the program, with no set back or complaints against them. They have also enrolled in school, nearing graduation, with two different majors, in Criminal Justice and Health and Human Performance.

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.

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. A review of the record provides administrative irregularity in the proper retention of records, specifically the AMHRR is void of the entire separation proceedings and whether the applicant underwent a mental health and/or mental examination prior to their separation. Based on this, the specific facts and circumstances surrounding their having been discharged, are unknown.

(1) The available evidence provides the applicant completed their second reenlistment for 3 years as a SPC, with 4 years and 26 days of prior active service. They promoted to SGT, served two tours in Afghanistan for nearly 17 months, and earned both an Army Commendation Medal and an Army Good Conduct Medal. They served 5 years, 8 months, and 29 days, prior to the indiscipline, which led to their separation. They were flagged, Suspend Favorable Personnel Actions (FLAG), for field-initiated involuntary separation (BA). Notwithstanding the lack of evidence, a DD Form 214, shows the applicant's electronic signature and they were separated under the provisions of AR 635-200, Chapter 14-12C, Misconduct (Serious Offense), with a General (Under Honorable Conditions) characterization of service.

(2) There is no record of a mental and/or medical examination(s) completed for separation. They served 1 year, 8 month, and 4 days of their 3-year contractual obligation.

b. 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.

c. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge?
N/A

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant seeks relief contending, they believe they deserve an upgrade to their discharge. In August 2016, they received a driving under the influence of alcohol (DUI), which led to their discharge out of the service. This was their first and only criminal or civil charge against them during their career in the Army. Before this event they would consider themselves a great leader to the Soldiers who served under them and it even showed to the command above them. Since then, they have taken the step to change their life for the better. The applicant served a year probationary period with the court system through the Veterans Treatment Court (VTC) program, in which they completed, and graduated from the program, with no set back or complaints against them. They have also enrolled in school, nearing graduation, with two different majors, in Criminal Justice and Health and Human Performance. The Board determined that this contention was valid and voted to upgrade the characterization of service due to the applicant's length, quality, and combat service, prior period of honorable service, and post service accomplishments mitigate the applicant's misconduct - driving under the influence of alcohol.

(2) Three character statements from their former platoon leader and other colleagues contend an upgrade would clear the way for the applicant to serve as a police officer; leaders across the battalion recognized the applicant as an exemplary NCO, who served with distinction, honor, and dedication every day, took care of their Soldiers and had a lasting impact on their subordinates with their positive leadership. The Board determined that this contention was valid and voted to upgrade the characterization of service based on the applicant's length, quality, combat service, prior period of honorable service, and post service accomplishments mitigate the applicant's misconduct - driving under the influence of alcohol.

c. The Board determined the narrative reason for the applicant's separation is now inequitable based on the applicant's length, quality, combat service, prior period of honorable service, and post service accomplishments mitigate the applicant's driving under the influence of alcohol misconduct. 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),

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and the separation code to JKN. The Board determined the reentry 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 length, quality, combat service, prior period of honorable service, and post service accomplishments mitigate the applicant's misconduct of driving under the influence of alcohol. 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.

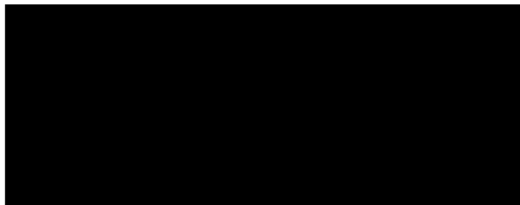
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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



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