

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 31 January 2021
- b. **Date Received:** 4 February 2021
- 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 as they were not properly diagnosed with Post-Traumatic Stress Disorder (PTSD) until 2013 which the Department of Veterans Affairs (VA) rated at a 100-percent disability.

b. **Board Type and Decision:** In a records review conducted on 27 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and the circumstances surrounding the discharge (PTSD diagnosis). Therefore, the Board voted to grant 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. No change to the reentry code RE-3.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct, (Serious Offense) / Army Regulation 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 15 September 2006

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** On or after the applicant acknowledgment of Receipt of Notification of Separation, dated 18 August 2006.

(2) **Basis for Separation:** failure to go at the time prescribed to their appointed place of duty on or about 27 April 2006; and absent without leave (AWOL) from on or about 13 April 2006 until on or about 19 April 2006 and from on or about 15 May 2006 until on or about 11 June 2006.

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

(4) **Legal Consultation Date:** 23 August 2006

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

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

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** The applicant extended the most recent enlistment by a period of 2 years and 4 months on 14 December 2004, giving the applicant a new ETS of: 31 July 2009.

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AR20210007670

b. Age at Enlistment / Education / GT Score: 19 / Less Than HS Graduate / 120

c. Highest Grade Achieved / MOS / Total Service: E-5 / 25Q1P, Multichannel Transmission Operator/Maintainer / 3 years, 4 months, 11 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (16 January 2004 – 15 January 2005 and 21 November 2005 – 24 March 2006)

f. Awards and Decorations: AAM, NDSM, GWTEM, GWTSM, ICM, ASR, OSR-2

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Alpha Detachment, 203rd Personnel Services Detachment, Iraq, Orders 016-30, dated 16 January 2006, reflects the applicant's promotion to the rank/grade of sergeant/E-5, effective 1 February 2006.

(2) Two DA Forms 4187 (Personnel Action), dated 13 April 2006 and 20 April 2006, reflects the applicant's duty status as AWOL from on or about 13 April 2006 to on or about 20 April 2006.

(3) A DA Form 4856 (Developmental Counseling Form), dated 27 April 2006, reflects the applicant received event oriented counseling for not showing up for formation on 26 April 2006 and 27 April 2006. The applicant agreed with the counseling and signed the form.

(4) Two DA Forms 4187, dated 16 May 2006 and 12 June 2006, reflects the applicant's duty status as AWOL, from on or about 15 May 2006 to on or about 11 June 2006. On 12 June 2006, the applicant received event oriented counseling for having been absent without leave from 15 May 2006 to 11 June 2006. The applicant agreed with the counseling and signed the form.

(5) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice), dated 21 June 2006, reflects the applicant received nonjudicial punishment for absent without leave from 11 April 2006 to 19 April 2006, and for failing to go at the time prescribed to their place of duty, on or about 26 April 2006 and on or about 27 April 2006. Their punishment consisted of a reduction in rank/grade to specialist/E-4, forfeiture of \$927.00 pay for 2 months, extra duty and restriction for 45 days, and an oral reprimand.

(6) A DA Form 4187, dated 21 June 2006, reflects the applicant was reduced in rank/grade to specialist/E-4, effective 21 June 2006.

(7) A DD Form 2697 (Report of Medical Assessment), dated 11 July 2006, reflects the applicant's self-assessment of their left foot condition, involving a fracture of the navicular bone.

(8) A DD Form 2807-1 (Report of Medical History) dated 12 July 2006, reflects in item 29 (Explanation of "Yes" Answers) the applicant's comments regarding the fracture of the navicular bone in their left foot and being seen in Behavior Health Clinic. Item 30 (Examiner's Summary and Elaboration of all Pertinent Data) reflects the examiner's comments of the

applicant's left foot navicular fracture and the applicant being seen at Behavioral Health, enrolled in BIOD [unknown of acronym] course, with their situation improving.

(9) A DD Form 2808 (Report of Medical Examination), dated 12 July 2006, reflects in –

- item 40 (Psychiatric) as normal
- item 74a (Examinee/Applicant) is qualified for service/separation
- item 77 (Summary of Defects and Diagnoses) a diagnosis of navicular fracture, left foot
- item 78 (Recommendations) – Orthopedic Follow-up as scheduled

(10) A DA Form 3822-R (Report of Mental Status Evaluation) dated 12 July 2006, reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets retention requirement. The psychologist remarked the applicant is cleared for any administrative actions deemed appropriate by command.

(11) A DA Form 4856, dated 19 July 2006, reflects the applicant's counseling with the key points of the initiation of chapter proceedings, under the provisions of paragraph 14-12c, commission of a serious offense.

(12) A memorandum, Headquarters and Headquarters Company (Rear) (Provisional), 29th Signal Battalion (Rear) (Provisional), subject: Separation under Army Regulation 635-200, Chapter 14, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense with a recommended characterization of service of general (under honorable conditions) for absent without leave on or about 13 April 2006 until on or about 19 April 2006 and from on or about 15 May 2006 until on or about 11 June 2006 and failure to go at the time prescribed to their appointed place of duty on or about 27 April 2006. On 18 August 2006, the applicant acknowledged the basis for the separation and of the rights available to them.

(13) A memorandum, Headquarters and Headquarters Company (Rear) (Provisional), 29th Signal Battalion (Rear) (Provisional), subject: Separation under Army Regulation 635-200, Chapter 14, the applicant's company commander submitted a request to separate them prior to their current term of service.

(14) On 23 August 2006, 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.

(15) A memorandum, Headquarters, 142nd Signal Brigade, subject: Separation under Army Regulation 635-200, Chapter 14, undated, the separation authority directed that the applicant be discharged from the U.S. Army and recommended the applicant's service be characterized as General (Under Honorable Conditions).

(16) On 15 September 2006, the applicant was discharged accordingly, the DD Form 214 provides the applicant completed 3 years, 4 months, and 11 days of net active service this period. Item 18 (Remarks) shows –

- Continuous Honorable Active Service – 20030401 - 20051213
- Member has not Completed First Full Term of Service

a. Lost Time / Mode of Return:

- 20060413 – 20060419 / NIF
- 20060515 – 20060611 / NIF

b. Behavioral Health Condition(s):

(1) Applicant provided: VA eBenefits printout and VA letter, reflecting the applicant's service connection for PTSD rated at 100-percent.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- VA eBenefits printout, reflecting the applicant's service connected, 100-percent rating for PTSD with major depressive disorder, generalized anxiety disorder, polysubstance disorder, and alcohol use disorder
- VA Letter, reflecting the applicant's summary of benefits with a combined service-connected evaluation of 100-percent

6. POST SERVICE ACCOMPLISHMENTS: None submitted with application.

7. 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 15-180 (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 DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 July 2005, 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.

(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 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. 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. Paragraph 14-12c (Misconduct, Serious Offense), stated, commission of a serious military or civil 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.

(5) 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.

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, paragraph 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 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.

g. 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):

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

b. The applicant's AMHRR reflects the applicant received developmental counseling for periods of absent without leave and received nonjudicial punishment for absent without leave from 11 April 2006 to 19 April 2006, and for failing to go at the time prescribed to their place of duty, on or about 26 April 2006 and on or about 27 April 2006. A properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's signature which provides the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions). The applicant received a general (under honorable conditions) characterization of service rather than a under other than honorable conditions which is normally considered appropriate. They completed 3 years, 4 months, and 11 days of net active service; however, they did not complete their first full term of service

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. Neither the applicant's Army Military Human Resource Record nor the applicant provide evidence of a diagnosis of a PTSD during the applicant's term of service.

e. 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.

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 DO with depressed mood; Atypical Depressive DO; PTSD (100%SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the diagnoses of Atypical Depressive DO and Adjustment DO with depressed mood were made while on active duty. VA service connection for PTSD establishes it began or occurred while on active duty.

(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 BH condition, PTSD. As PTSD is associated with avoidant behaviors, there is a nexus

between his PTSD, his history of FTR and his two incidents of being AWOL. [Note-the diagnoses of Adjustment DO with depressed mood and Atypical Depressive DO are subsumed under the diagnosis of PTSD.]

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

Based on liberally considering all the evidence before the Board, the ADRB determined that the PTSD condition outweighed the basis of separation- (FTR and AWOL).

b. Prior Decisions Cited: None

c. Response to Contention(s): The applicant contends they were not properly diagnosed with Post-Traumatic Stress Disorder (PTSD) until 2013 which the Department of Veterans Affairs (VA) rated at a 100-percent disability.

The Board considered this contention valid.

(1) Neither the AMHRR nor the applicant provide evidence that shows PTSD.

(2) Although the applicant submitted a copy of a VA disability rating. Disabilities which occur or which worsen after a Soldier is separated are treated by and compensated for by the VA. Any claims or issues concerning treatment or compensation for service-connected disabilities should be addressed to that Agency. Title 38, United States Code, permits the VA to award compensation for disabilities which were incurred in or aggravated by active military service. Title 38, United States Code, permits the VA to award compensation for disabilities which were incurred in or aggravated by active military service. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and the circumstances surrounding the discharge (PTSD diagnosis). Therefore, the Board voted to grant 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. No change to the reentry code RE-3.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service because of the following reasons: The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, PTSD. As PTSD is associated with avoidant behaviors, there is a nexus between his PTSD, his history of FTR and his two incidents of being AWOL. [Note-the diagnoses of Adjustment DO with depressed mood and Atypical Depressive DO are subsumed under the diagnosis of PTSD.] The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board concurred with the conclusion of the medical advising official that the applicant's PTSD mitigates the basis of separation (FTR and AWOL) and warrants a change to the character of discharge. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation was inequitable.

(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.

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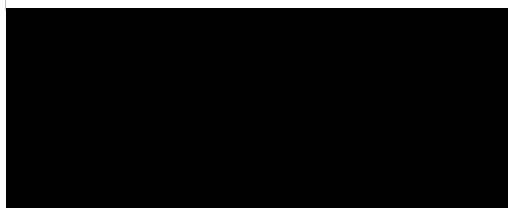
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

4/3/2024



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