

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 22 September 2020
- b. **Date Received:** 5 October 2020
- 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.

(2) The applicant requests relief, stating, the reason for the request is to change their character of service to "Honorable" so they can obtain their Montgomery G.I. Bill, and further their education and proceed with their career in criminal justice. Their character of discharge defers them from employers and makes them look like a bad candidate for employment opportunities, especially with any type of law enforcement agency. With the way the world is today, they still want to protect and serve their community in the field of law enforcement, but at a higher level, for example, with the Federal Bureau of Investigation or the United States Marshall's service.

b. Board Type and Decision: In a records review conducted on 7 February 2024, and by a 5-0 vote, the Board, based on the circumstances surrounding the applicant's discharge (Major Depressive 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.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct, (Serious Offense) / Army Regulation 635-200, Paragraph 14-12c / JKQ / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 20 December 2018

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 5 November 2018

(2) **Basis for Separation:** on 29 March 2018, while younger than 21 years old, they were arrested after they administered a breathalyzer that registered a 0.149 BrAC [Breath Alcohol Concentration]

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

(4) **Legal Consultation Date:** 3 December 2018

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

(6) Separation Decision Date / Characterization: 10 December 2018 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 17 August 2015 / 5 years
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Diploma / 101
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 31B1O, Military Police / 3 years, 4 months, 4 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Korea / None
- f. **Awards and Decorations:** NDSM, GWTSM, KDMS, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 4856 (Developmental Counseling Form), dated 29 March 2018, reflects the applicant received event oriented counseling for on 29 March 2018, they were apprehended by local civilian police department for a driving under the influence. As a result of this incident the applicant was directed to enroll in Army Substance Abuse Program (ASAP).

(2) A memorandum, Headquarters, Fort Stewart, subject: General Officer Memorandum of Reprimand (GOMOR), dated 24 April 2018, reflects the applicant was reprimanded for driving a motor vehicle while younger than 21 years old with a blood alcohol content (BAC) that violated state law. On or about 29 March 2018, local law enforcement arrested them after they administered a breathalyzer test that registered a 0.149 BAC.

(3) On 29 May 2018, the GOMOR issuing authority, having carefully considered the applicant's GOMOR, the circumstances of unprofessional and inappropriate conduct, and all matters submitted by the applicant in their defense, extenuation, or mitigation, if any, along with recommendation of subordinate commanders, directed the GOMOR be placed permanently in the applicant's Army Military Human Resource Record (AMHRR).

(4) A DA Form 4856, dated 4 June 2018, reflects the applicant received notification of recommendations of separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Section III, Chapter 14-12c, Separation for Patterns of Misconduct.

(5) A DA Form 3822 (Report of Mental Status Evaluation) dated 16 August 2018, reflects the applicant has no duty limitations due to behavioral health reasons. They currently meet medical retention standards and is cleared for administrative action.

(a) Section IV (Diagnosis) reflects the Behavioral Health diagnosis of Alcohol Abuse, Uncomplicated.

(b) Section VI (Recommendations and Comments for Commander) reflects the applicant screened negative for post-traumatic stress disorder (PTSD), depression, traumatic brain injury, substance, current substance misuse; however, positive for previous substance

misuse. They are currently responsible for their behavior, can distinguish from right and wrong, and possesses sufficient mental capacity to understand and participate in any administrative or judicial proceedings. The applicant's condition does not amount to a medical disability, and they are considered compatible with effective military service. Specifically, there were accused of and cited for driving under the influence with under-age alcohol consumption and riding an all-terrain vehicle on city streets. They engaged in and successfully completed Substance Disorder Clinical Care alcohol program.

(6) A DD Form 2808 (Report of Medical Examination), dated 28 August 2018, reflects the applicant is qualified for service. In item 77 (Summary of Defects and Diagnoses) reflects no diagnosis.

(7) A memorandum, Headquarters, 139th Military Police Company, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of Serious Offense, [Applicant], 5 November 2018, 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, on 29 March 2018, while younger than 21 years old, was arrested after they administered a breathalyzer that registered a 0.149 BrAC. On the same day the applicant acknowledged the basis for the separation and of the right available to them.

(8) On 3 December 2018, 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 elected to submit statements in their behalf (Note, statement in the applicant's behalf is not in evidence for review.) They understood they may be ineligible for many or all benefits as a veteran under both Federal and State laws and they may expect to encounter substantial prejudice in civilian life.

(9) A memorandum, Headquarters, 139th Military Police Company, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], dated 4 December 2018, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states further attempts at rehabilitation are not in the best interest of this command or the United States Armed Forces.

(10) A memorandum, U.S. Army Installation Management Command, Headquarters, U.S. Army Garrison Fort Stewart, subject: Separation Under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 10 December 2018, the separation authority, having reviewed the applicant's separation packet, directed that the applicant be separated from the Army prior to the expiration of current term of service. The separation authority directed the applicant's service be characterized as General (Under Honorable Conditions).

(11) DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 20 December 2018, with 3 years, 4 months, and 4 days of net active service this period. The applicant has not completed the first full term of service of 5 years.

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

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

(1) **Applicant provided:** None

(2) AMHRR Listed: MSE/BHE as described in previous paragraph 4h(5).

5. APPLICANT-PROVIDED EVIDENCE: None

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the 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), dated 19 December 2016, 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 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 (Commission of a Service Offense), stated 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 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers

suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, misconduct (serious offense).

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 Instruction 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):

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

b. The available evidence provides the applicant received a GOMOR for driving a motor vehicle while younger than 21 years old with a BAC that violated state law. 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 4 days of net active service this period; however, they did not complete their first full term of service of their 5 year contractual enlistment 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.

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: Major Depressive Disorder (MDD)-70% Service Connected.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for Major Depressive Disorder establishes it began and/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, Major Depressive Disorder. As there is an association between Major Depressive Disorder and self-medication with alcohol to treat emotional symptoms, there is a nexus between this condition and the applicant's arrest for Driving Under the Influence and underage drinking.

(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 Major Depressive Disorder outweighed the Driving Under the Influence and underage drinking basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends the reason for the request is to change their character of service to "Honorable" so they can obtain their Montgomery G.I. Bill, and further their education and proceed with their career in criminal justice. 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 Major Depressive Disorder fully outweighing the applicant's Driving Under the Influence and underage drinking basis for separation.

(2) The applicant contends their character of discharge defers them from employers and makes them look like a bad candidate for employment opportunities, especially with any type of law enforcement agency. With the way the world is today, they still want to protect and serve their community in the field of law enforcement, but at a higher level, for example, with the Federal Bureau of Investigation or the United States Marshall's service. served in the Army for almost 6 years without being subject to any disciplinary actions prior to their DUI. 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 Major Depressive Disorder fully

outweighing the applicant's Driving Under the Influence and underage drinking basis for separation.

(3) The applicant contends with the way the world is today, they still want to protect and serve their community in the field of law enforcement, but at a higher level, for example, with the Federal Bureau of Investigation or the United States Marshall's service. served in the Army for almost 6 years without being subject to any disciplinary actions prior to their DUI. 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 Major Depressive Disorder fully outweighing the applicant's Driving Under the Influence and underage drinking basis for separation.

c. The Board, based on the circumstances surrounding the applicant's discharge (Major Depressive 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.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Major Depressive Disorder mitigated the applicant's misconduct of Driving Under the Influence and underage drinking basis. 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.

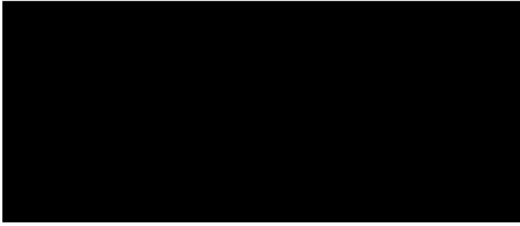
10. BOARD ACTION DIRECTED:

- 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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210007998



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