

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 9 November 2020
- b. **Date Received:** 16 November 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 under other than honorable conditions. The applicant requests an upgrade to honorable, change of their separation authority, separation code, reentry code, and the narrative reason for separation.

(2) The applicant seeks relief stating the upgrade of their character of service will alleviate so much stress. They believe they were suffering from Post-Traumatic Stress Disorder (PTSD) while deployed to Afghanistan. They were diagnosed after separation and rated 100-percent service-connected. After their deployment they made bad choices while on leave, their non-stop drinking led them to being absent without leave. They believe that if they would have received help for their PTSD they would not have gone absent without leave and discharged from the Army.

b. Board Type and Decision: In a records review conducted on 5 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's diagnosis of Generalized Anxiety Disorder, Dysthymic Disorder and Post Traumatic Stress Disorder and the applicant's length, quality, and combat service mitigate the basis of separation (AWOL). 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), and the separation code to JKN. The Board determined the reentry code was appropriate and voted not to change it.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request).

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (AWOL) / Army Regulation 635-200, Paragraph 14-12c (1) / JKD / RE-3 / General (Under Honorable Condition)

b. Date of Discharge: 10 May 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 5 April 2011

(2) **Basis for Separation:** on 1 March 2011, the applicant was found guilty on summary court-martial for Article 86 (Absent Without Leave), absent themselves from their unit, without authority between 30 August 2010 to 25 January 2011.

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

(4) Legal Consultation Date: 6 April 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 20 April 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 December 2008 / 6 years

b. Age at Enlistment / Education / GT Score: 23 / GED / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 / 12B1O, Combat Engineer / 3 years, 8 months, 17 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (3 July 2009 – 15 July 2010)

f. Awards and Decorations: ACM-CS, ARCOM, AGCM, NDSM, GWTSM, ASR, OSR; NATOMDL

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Three DA Forms 4187 (Personnel Action), dated 30 August 2010 through 2 February 2011, reflects the applicant's duty status change from present for duty to absent without leave, on 30 August 2010, dropped from the rolls on 28 September 2010, and present for duty on 25 January 2011.

(2) A Mental Status Evaluation dated 10 February 2011, reflects the applicant has the mental capacity to understand and participate in the proceedings, meets retention requirement, and was mentally responsible. The psychologist states the applicant is mentally responsible for their behavior, can distinguish right from wrong and possesses sufficient mental capacity to participate in any administrative proceedings. They were evaluated for symptoms of PTSD and Traumatic Brain Injury, and they do not exhibit PTSD or TBI or any other mental health disorder that would require a medical evaluation board. The applicant is cleared from a behavioral health perspective for any administrative action deemed appropriate by command.

(3) A DA Form 2808 (Report of Medical Examination) dated 15 February 2011, reflects the applicant is qualified for service/chapter 14 processing with no physical profile limitations. In item 77 (Summary of Defects and Diagnoses) the physician indicated high cholesterol and weight issues.

(4) A DA Form 458 (Charge Sheet) dated 16 February 2011, reflects charges were preferred against the applicant, in violation of Article 86 (Absence Without Leave), Uniform Code of Military Justice (UCMJ), for , on or about 30 August 2010, without authority, absent themselves from their unit, and did so remain absent until on or about 25 January 2011.

(5) A DA Form 4430 (Department of the Army Report of Result of Trial) dated 1 March 2011, reflects the applicant was found guilty of the charge preferred against them. Their punishment consisted of reduction in rank/grade from private first class/E-3 to private/E-1 and confinement for 30 days.

(6) A memorandum, 1st Battalion, 17th Infantry Regiment, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, (Applicant) dated 5 April 2011, 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, for on 1 March 2011, the applicant was found guilty on summary court-martial for Article 86 (Absent Without Leave), absent themselves from their unit, without authority between 30 August 2010 to 25 January 2011, with a recommended characterization of service of general (under honorable conditions). On the same day, the applicant acknowledged receipt of separation notice.

(7) On 6 April 2011, the applicant completed their election of rights signing they had been advised by counsel of the basis for the contemplated action to separate them, and its effects; and of the rights available to them; and of the effect of any action taken by them in waiving their rights. They elected to not to submit statements in their behalf. They understood that they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them.

(8) A memorandum, 1st Battalion, 17th Infantry Regiment,, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant] dated 7 April 2011, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states there is no medical or other data meriting consideration in the overall evaluation to separate the applicant and in the determination as to the appropriate characterization of service.

(9) A memorandum, 2nd Brigade (Stryker Brigade Combat Team), 2nd Infantry Division, subject: Separation under Army Regulation 635-200, Chapter 14-12b, A Pattern of Misconduct, [Applicant], dated 20 April 2011, the separation authority directed the applicant be separation from the U.S. Army prior to the expiration of their current term of service. The applicant will be discharged from the U.S. Army with a service characterization of general (under honorable conditions).

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 10 May 2011, with 3 years, 8 months, and 17 days of net active service this period. They completed the first full term of service. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 1 March 2011
- item 24 (Characterization of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKD
- item 22 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation – Misconduct (AWOL)
- item 29 (Dates of Time Lost During This Period) – 30 August 2010 – 24 January 2011 and 1 March 2011 – 24 March 2011

i. Lost Time / Mode of Return:

- AWOL, 30 August 2010 – 24 January 2011 / Apprehended by Civil Authorities

- CMA, 1 March 2011 – 24 March 2011 / Released from Confinement

j. Behavioral Health Condition(s): None

(1) Applicant provided: Department of Veterans Affairs (VA) disability rating decision, 23 May 2014, reflecting the applicant's disability rating for PTSD (also claimed as sleep disturbance, stress and depression) was increased to 100-percent, effective 11 May 2011.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Army Good Conduct Medal Certificate
- Army Commendation Medal Certificate
- DD Form 214
- VA Rating Decision

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), 17 December 2009, 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. Paragraph 14-12c(1), stated, an absentee returned to military control from a status of

absent without leave or desertion may be separated for commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

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 "JKD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c(1), misconduct (AWOL).

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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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. Manual for Courts-Martial, United States (2008 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).

h. 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 Department of Defense Instruction 1332.28.

b. The applicant's AMHRR reflects the applicant was absent without leave from 30 August 2010 to 25 January 2011, which led to their involuntary separation from the service. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12c(1), by reason of Misconduct (AWOL), with a characterization of service of general (under honorable conditions). The applicant completed 3 years, 8 months and 17 days, completing their first full term of service; however, they did not complete their 6-year reenlistment contractual 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. The applicant's AMHRR does not reflect documentation of a diagnosis of PTSD during their military service. The applicant's VA Rating Decision reflects a diagnosis of PTSD was service connected with a rating of 100-percent, effective the day after their separation.

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

9. BOARD DISCUSSION AND DETERMINATION:

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Generalized Anxiety Disorder (GAD); Dysthymic Disorder; Post Traumatic Stress Disorder. [Note-diagnosis of Anxiety Disorder Not Otherwise Specified is subsumed under diagnosis of Generalized Anxiety Disorder. Attention Deficit Hyperactivity Disorder is a pre-existing condition and does not fall under purview of liberal consideration.]

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the Generalized Anxiety Disorder and Dysthymic Disorder were diagnosed during active service. VA service connection for Post Traumatic Stress Disorder (100%) establishes it occurred or began during active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has several mitigating Behavioral Health conditions, Generalized Anxiety Disorder, Dysthymic Disorder and Post Traumatic Stress. As there is an association between these conditions and

avoidant behaviors, there is a nexus between these conditions and the applicant's offense of being absent without leave.

(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 Generalized Anxiety Disorder, Dysthymic Disorder and Post Traumatic Stress outweighed the basis for separation (absent without leave) for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends stating the upgrade of their character of service will alleviate so much stress. They believe they were suffering from PTSD while deployed to Afghanistan. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

(2) The applicant contends stating after their deployment they made bad choices while on leave, their non-stop drinking led them to being absent without leave. They believe that if they would have received help for their PTSD they would not have gone absent without leave and discharged from the Army. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

(3) The applicant contends stating they were diagnosed after separation and rated 100-percent service-connected. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

c. The Board determined the discharge is inequitable based on the applicant's diagnosis of Generalized Anxiety Disorder, Dysthymic Disorder and Post Traumatic Stress Disorder and the applicant's length, quality and combat service mitigate the basis of separation (AWOL). 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), and the separation code to JKN. The Board determined the reentry code was appropriate and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on the applicant's diagnosis of Generalized Anxiety Disorder, Dysthymic Disorder and Post Traumatic Stress Disorder and the applicant's length, quality, and combat service mitigate the basis for separation (AWOL). 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.

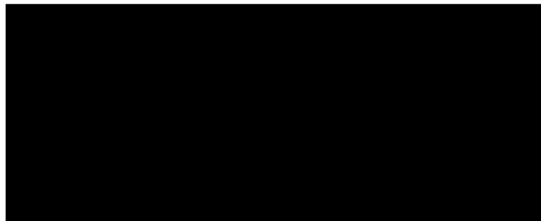
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

7/5/2024



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