

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 24 June 2020
- b. **Date Received:** 1 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.

b. The applicant requests an upgrade for service in the Army because the applicant received three ARCOMs, three AAMs, and various other awards, including amazing ratings on noncommissioned officer evaluation reports (NCOERs). The applicant's service as a whole was very honorable.

c. **Board Type and Decision:** In a records review conducted on 6 December 2023, and by a 5-0 vote, the Board determined the discharge is inequitable and voted to grant relief in the form of an upgrade of the characterization of service to Honorable, 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. There's no change to the RE code.

*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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 19 December 2019

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

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 2 August 2018 / 6 years

**b. Age at Enlistment / Education / GT Score:** 25 / High School Graduate / 124

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 88M20, Motor Transport Operator / 7 years, 2 months, and 11 days

**d. Prior Service / Characterizations:** 9 October 2012 - 1 August 2018 / HD

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** ARCOM-3, AAM-4, AGCM-2, NDSM, NCOPDR, ASR

**g. Performance Ratings:** 1 April 2017 - 31 March 2018 / Highly Qualified  
1 April 2018 - 18 June 2019 / NIF

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

(1) DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 2 May 2019, shows the applicant was flagged for alcohol abuse adverse action (VA), effective 30 April 2019.

(2) Five development counseling forms provide various incidents of indiscipline to include failing to report, driving under the influence, and for being absent without leave. The counseling referring to AWOL indicated the applicant left their appointed place of duty; however, was spoken to on the same day.

(3) DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 21 May 2020, shows the applicant was flagged for adverse action (AA), effective 20 May 2020.

(4) General Officer Memorandum of Reprimand (GOMOR), 30 May 2019, shows the applicant was driving under the influence (0.163%), speeding, and was in possession of a loaded handgun on the driver's side floor of the applicant's vehicle.

(5) On 7 June 2019, the applicant accepted nonjudicial punishment for failing to their appointed place of duty on 2 January 2019 and failing to go to their appointed place of duty and leaving their appointed place of duty without authority on or about 16 May 2019. Punishment consisted of reduction from E-5 to E4, extra duty for 30 days, and an oral reprimand.

(6) The applicant's DD Form 214 shows the applicant's reduction from E-5 to E-4 effective 19 June 2019.

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

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

(1) Applicant provided: None

(2) AMHRR Listed: None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

**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) 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) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards

(5) 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. Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform

Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

**(6)** Chapter 15 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 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. It provides 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 missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

**f.** Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

**g.** Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per 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. Review of the AMHRR provides administrative irregularity in the proper retention of records, specifically the AHMRR is void of the commander notification, service member acknowledgement, Commander's report, chain of command endorsements, the approval authority disposition, and the separation medical and mental health examinations.

b. The AMHRR does provide:

(1) The applicant received counseling, NJP, and a GOMOR for various acts of misconduct to include failure to report, driving under the influence, speeding, possession of a loaded handgun and not being at their appointed place of duty within a 6-month period.

(2) A properly constituted DD Form 214 with the applicant's signature that shows they were discharged under the provisions of Army Regulation 635-40, Chapter 14-12b (Pattern of Misconduct) with a characterization of service of general (under honorable conditions) rather than a under other than honorable conditions which is normally considerate appropriate. They completed 7 years, 2 months, and 11 days of net active service and approximately 4 months and 16 days of their 6-year reenlistment obligation prior to their first act of misconduct.

c. Due to the lack of evidence, we are unable to provide the specific facts and circumstances surrounding of the administrative processing, whether rehabilitative efforts were made or waived, or if the applicant was referred to ASAP, and/or any medical and/or mental health issues were present prior to being discharged.

d. 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: The applicant experienced multiple IPV events as a victim from 2014 to 2016. Post-service, the applicant is service connected for GAD.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant experienced multiple IPV events as a victim from 2014 to 2016.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant does not link anxiety, behavioral health symptoms, or IPV to the pattern of misconduct and documentation does not support a nexus. However, given the multiple IPV events, the Board

could consider an upgrade.

**(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 IPV experience outweighed the basis of separation.

**b.** Prior Decisions Cited: None

**c.** Response to Contentions: The applicant did not make any contentions.

**d.** The Board determined the discharge is inequitable based on length, quality and combat service and voted to grant relief in the form of an upgrade of the characterization of service to Honorable, change 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. There's no change to the RE code.

**e.** Rationale for Decision:

**(1)** 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 found sufficient evidence of in-service mitigating factors (Length, Quality, Combat) and concurred with the conclusion of the medical advising official that the applicant being a victim of IPV events does outweigh the applicant's misconduct (DUI, FTRs, not meeting standard, and possession of a firearm while intoxicated). Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were inequitable.

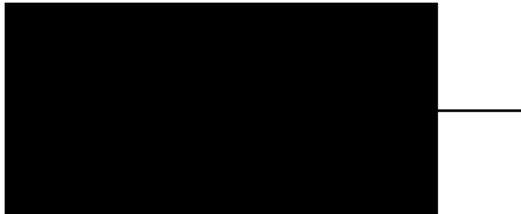
**(2)** The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

**(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, paragraph 14-12a

**Authenticating Official:**



**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