

1. Applicant's Name: [REDACTED]**a. Application Date:** 2 February 2021**b. Date Received:** 8 February 2021**c. Counsel:** None**F****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 and a change in their separation code and narrative reason for separation.

(2) The applicant seeks relief contending during their Iraqi deployment, where they were a part of the quick reaction force, their military vehicle was crashed into on the passenger's side by a civilian fuel tanker during an Improvised Explosive Device attack on their convoy. They continued to perform in their duty position until they were redeployed back to the United States. When they returned, they were flagged to see mental health and continued to see mental health until they were discharged. They have made multiple attempts to get their mental health records and they have not received those records. They were not properly diagnosed until they enrolled in the Department of Veterans Affairs (VA).

b. Board Type and Decision: In a records review conducted on 25 June 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, the circumstances surrounding the discharge (OBHI and PTSD diagnoses), and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to 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. The Board determined the reentry code is proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Pattern of Misconduct / Army Regulation 635-200, Paragraph 14-12B / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 2 February 2006**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 12 December 2005

(2) **Basis for Separation:** left their appointed place of duty, resisted arrest, and was disorderly in conduct.

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

(4) **Legal Consultation Date:** 28 December 2005

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

(6) Separation Decision Date / Characterization: 17 January 2006 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 January 2003 / 6 years

b. Age at Enlistment / Education / GT Score: 19 / HS Diploma / 104

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92G1O, Food Service Operations Specialist / 3 years, 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (7 September 2003 – 29 September 2004)

f. Awards and Decorations: ARCOM, NDSM, GWTEM, GWTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 19 July 2005, reflects the applicant received nonjudicial punishment for, in that they, did, at Fort Riley, KS, on or about 10 July 2005, resisted being apprehended, by a person authorized to apprehend them, in violation of Article 95 (Resisting Apprehension), UCMJ; and was disorderly, which conduct was of a nature to bring discredit upon the Armed Forces, in violation of Article 134 (Disorderly Conduct), UCMJ. Their punishment consisted of a reduction in rank/grade from specialist/E-4 to private first class/E-3, forfeiture of \$361.00 pay and 14 days of extra duty. The applicant elected not to appeal.

(2) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ), dated 27 September 2005, reflects the applicant received nonjudicial punishment for, in that they, did at Fort Riley, Kansas, on or about 16 September 2005, without authority, go from their appointed place of duty, in violation of Article 86 (Going from Place of Duty), UCMJ. Their punishment consisted of a reduction in rank/grade from private first class/E-3 to private two/E-2, forfeiture of \$300.00 pay and extra duty for 14 days. The applicant elected not to appeal.

(3) A memorandum, Headquarters/Alpha Company, 101st Forward Support Battalion, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12b, undated, reflects the applicant's company commander notified them of their initiating action to separate them for a pattern of misconduct. The reasons for the proposed action is described above in paragraph 3c(2). On 12 December 2005, the applicant acknowledged receipt of the notification separation memorandum and they have been advised to their right to consult with counsel prior to making any election of rights.

(4) In the applicant's memorandum, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12b, dated 28 December 2005, reflects the applicant acknowledged they have been afforded the opportunity to consult with appointed counsel. They have been advised by their consulting counsel of the basis for the contemplated action to separate them for commission of a serious offense, and its effect; of the rights available to them;

and of the effect of any action taken by them in waiving their rights. They understand they may expect to encounter substantial prejudice in civilian life if their service is characterized as general (under honorable conditions). They requested consulting counsel and elected to submit statements in their own behalf. (Note: statements in their behalf are not in evidence for review.)

(5) A memorandum, Headquarters/Alpha Company, 101st Forward Support Battalion, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12b, undated,, reflects the applicant's company commander's recommendation to separate them from the Army prior to the expiration of their current term of service. The company commander description of rehabilitation attempts as, the applicant has been counseled, and through subsequent behavior, has demonstrated a lack of acceptance of rehabilitative measures. The commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant has demonstrated through repeated conduct, after formal counseling, that other disposition would be inappropriate. After review of this case, and tempered by common sense and sound judgment, a rehabilitative transfer of this Soldier would serve no useful purpose. Therefore, they request that the requirements for a rehabilitative transfer in this case be waived. This request for waiver is based upon the determination that further duty of the Soldier would not be in the best interest of the Army as it would not produce a quality Soldier. The commander indicated a Report of Mental Status Evaluation or psychiatric report is attached; however, attachments are not in evidence for review.

(6) A memorandum, Headquarters, 101st Forward Support Battalion, 1st Brigade, 1st Infantry Division (Mechanized), subject: Separation under Army Regulation 635-200, Paragraph 14-12b, undated, reflects the applicant's battalion commander recommended the applicant be separated from the Army prior to the expiration of their current term of service. They recommended the applicant's service be characterized as General (Under Honorable Conditions) and that the requirement for a rehabilitative transfer in this case be waived.

(7) A memorandum, Headquarters, 1st Brigade, 1st Infantry Division (Mechanized), subject: Separation under Army Regulation 635-200, Paragraph 14-12b, dated 17 January 2006, reflects the separation authority directed the applicant be separated from the Army prior to the expiration of their current term of service for a pattern of misconduct. They directed the applicant receive a General (Under Honorable Conditions) discharge and directed the requirement for a rehabilitative transfer in this case be waived.

(8) On 2 February 2006 the applicant was discharged from the Regular Army. Their DD Form 214 (Certificate of Release or Discharge from Active Duty) provides they completed 3 years and 3 days of net active service this period. Their DD Form 214 shows in:

- item 4a (Grade, Rate or Rank) – Private Two
- item 4b (Pay Grade) – E-2
- item 12h (Effective Date of Pay Grade) – 27 September 2005
- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12B
- item 26 (Separation Code) – JKA
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Pattern of Misconduct

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

j. **Behavioral Health Condition(s):** None

5. APPLICANT-PROVIDED EVIDENCE: None submitted with the application.

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 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 Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) dated 6 September 2011 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 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

(5) 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 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting

of one of the following – discreditable involvement with civil 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 UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(6) Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

(7) 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 "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).

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. 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

(Going from Place of Duty), Article 95 (Resisting Apprehension), and Article 134 (Disorderly Conduct).

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. A review of the available evidence provides the applicant received two occurrences of nonjudicial punishment under the provisions of Article 15, UCMJ, for violation of Article 86 (Going from Place of Duty), Article 95 (Resisting Apprehension), and Article 134 (Disorderly Conduct); and was involuntarily discharged from the U.S. Army. Their DD Form 214 provides they were discharged with a character of service of general (under honorable conditions) for a pattern of misconduct, rather than a discharge under other than honorable conditions, which is normally considered appropriate. They completed 3 years and 3 days of net active service this period and did not complete their first full term of service, of their 6-year enlistment 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 the applicant's military service, nor did the applicant provide such evidence.

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: PTSD and Antisocial Personality Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** Antisocial Personality Disorder would have been present in-service as it's a condition originating in late adolescence, early adulthood. Combat trauma clearly occurred during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that while there is a longstanding pattern of arrests and legal involvement resulting in an Antisocial Personality Disorder, it is possible combat trauma aggravated existing difficulties. Accordingly, given the trauma occurred prior to the misconduct, there is a nexus between trauma and avoidance, the basis is partially mitigated, i.e. leaving appointed place of duty. While resisting arrest and disorderly conduct could be mitigated if secondary to substance use, documentation of the specifics is void for a firm determination.

(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 applicant's length, Quality, and Combat experience when added to the medical mitigation outweighed the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends after their Iraqi deployment, where they were a part of the quick reaction force, their military vehicle was crashed into on the passenger's side by a civilian fuel tanker during an Improvised Explosive Device attack on their convoy. They continued to perform in their duty position until they were redeployed back to the United States.

(2) The applicant contends when they returned from their deployment, they were flagged to see mental health and continued to see mental health until they were discharged. The applicant contends they have made multiple attempts to get their mental health records, and they have not received those records. The applicant contends they were not properly diagnosed until they enrolled in the VA. The Board liberally considered this contention and determined that it was valid due to the applicant's antisocial personality disorder, it is possible combat trauma aggravated it, outweighing the applicant's FTRs. The applicant's length, to include combat, and quality of service outweighed the unmitigated offense of resisting arrest and disorderly conduct. Therefore, a discharge upgrade is warranted.

d. The Board determined: 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, Combat, Quality) and concurred with the conclusion of the medical advising official that the applicant's combat trauma could aggravate existing difficulties. Given the trauma occurred prior to the misconduct and the nexus between trauma and avoidance the basis for separation is partially mitigated. The Board voted that the mitigation outweighed the unmitigated basis. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable.

e. Rationale for Decision:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210008814**

(1) The Board voted to change the applicant's characterization of service to Honorable due to the applicant's antisocial personality disorder, aggravated by combat trauma, outweighing the applicant's FTRs. The applicant's length, to include combat, and quality of service outweighed the unmitigated offense of resisting arrest and disorderly conduct. 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:** No Change

Authenticating Official:

6/27/2025

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