

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 8 January 2021
- b. **Date Received:** 12 January 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 under honorable conditions (general) the applicant is requesting a re-entry code change.

b. The applicant states they are requesting to change their discharge to honorable to be eligible for enrollment in school. They carried their self to a high standard in both of their military contracts. They completed one honorable term, and their second term was not honorable due to toxic leadership and favoritism.

c. **Board Type and Decision:** In a records review conducted on 27 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, as well as the circumstances surrounding the discharge (TBI). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. No change to the reentry code.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200 / JKQ / RE-3 / Under Honorable Conditions (General)

b. **Date of Discharge:** 16 October 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** wrongfully used indecent language and communicated a threat to soldiers.

(3) **Recommended Characterization:** General (under honorable conditions)

(4) **Legal Consultation Date:** NIF

(5) **Administrative Separation Board:** N/A

(6) **Separation Decision Date / Characterization:** 29 September 2020 / General (under honorable conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 30 January 2010 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 100

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B20 Infantryman / 5 years, 1 month 23 days.

d. Prior Service / Characterizations: Continuous honorable service 24 August 2015 – 29 January 2018

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, AGCM, NDSR, GWTSM, NCOPDR, ASR

g. Performance Ratings: NIF

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides the applicant re-enlisted in the Army at the rank of Specialist (E-4) for 4 years on 30 January 2018.

(2) A Service School Academic Evaluation Report signed 20 March 2020 provides the applicant successfully completed the Basic Leader Course with a 3.6 grade point average.

- Set the example by displaying high standards and emphasizing the need to do what is right
- Led the way in performance, personal appearance, and physical fitness
- Consistently displayed the ability to promote teamwork, cohesion, and cooperation

(3) An Enlisted Record Brief (ERB) provides the applicant advanced to the rank of E-5 on 1 May 2020 and was flagged for adverse action on 13 August 2020.

(4) A memorandum, C Company, 1st Battalion, 21st Infantry Regiment, Schofield Barracks, Hawaii subject: Commanders Report – Proposed Separation under AR 635-200, Ch 14-12c, commission of a serious offense provides the applicants immediate commander proposed to separate the applicant for wrongfully using indecent language and communicating a threat to soldiers and stated the applicant's continued presence in the unit would reduce morale, effectiveness, and readiness.

(5) On 24 September 2020 the chain of command endorsed the recommendation to separate the applicant prior to their expiration terms of service with a general (under honorable conditions) characterization of service. On 29 September 2020 the appropriate authority approved the separation and directed the applicant be separated with a General (under honorable conditions) characterization of service.

(6) A Certificate of Release or Discharge from Active-Duty document (DD Form 214) provides on 16 October 2020 the applicant was discharged from the army.

- Authority: 635-200, Chapter 14-12c
- Narrative Reason: Misconduct (Serious Offense)
- Service Characterization: Under Honorable Conditions (general)

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210009792

- Remarks: Continuous Honorable Active Service 20150824 – 20180129; Member has completed first full term of service
- Net Service: 5 years, 1 month, and 23 days
- Signature: Electronically signed by the applicant

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: ARBA asked the applicant to provide medical documents to support their mental health condition on 9 September 2021; the applicant did not provide any documentation to support their TBI diagnosis.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Discharge Review) application and a copy of their DD Form 214.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their 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), dated 25 September 2019, 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 provides the authorized types of characterization of service or description of separation.

(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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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. 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.

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 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 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:

- 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
- 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

- 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. The applicant's DD-214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge which is normally appropriate for misconduct (serious offense).

b. Based on the available evidence the applicant enlisted in the army at the age of 18, during their enlistment they received the Army Achievement Medal, the Army Good Conduct Medal and advanced to the rank of Sergeant. They had an immediate reenlistment and reenlisted for an additional 4 years of service. 2 years and 6 months into their contractual obligation they were flagged adverse action and processed for administrative separation due to using indecent language and communicating a threat to soldiers.

c. A Review of the record provides administrative irregularity occurred in the proper retention of official records, specifically, the AMHRR is void of specific documents required in the separation packet to include documentation to support if the applicant consulted with counsel and if they received the required medical and mental health separation examinations. Due to the lack of evidence, we are unable to provide all the specific facts and circumstances surrounding the applicant administrative separation. Notwithstanding the lack of evidence, the record provides the appropriate authority approved the separation and the applicant signed a properly constituted DD Form 214, that shows they were discharged under the provisions of Army Regulation 635-200, Chapter 14 Misconduct (serious offense) with an under honorable conditions (general) characterization of service on 16 October 2020.

d. Chapter 14 establishes policy and prescribes procedures for members being separated 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.

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: TBI, mild; Adjustment DO with mixed disturbance of emotions and conduct; Adjustment DO, unspecified; Anxiety DO, unspecified; Chronic Adjustment DO (30%SC).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the diagnoses of TBI, mild; Adjustment DO with mixed disturbance of emotions and conduct; Adjustment DO, unspecified; Anxiety DO, unspecified, were made during active duty. Service connection for CAD establishes it occurred or began during military 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 a mitigating BH condition, TBI. As there is an association between TBI and impaired frontal lobe dysfunction resulting in poor judgment, increased impulsivity and angry behaviors, there is a nexus between his diagnosis of TBI, his use of offensive language and his "homicidal joke" which was interpreted as a threat by command. While the applicant had a prior history of mild impulsivity, irritability and anger, medical record review indicates that these symptoms worsened significantly after he incurred the Dec 2018 and May 2019 TBIs. Prior to these TBIs, the applicant had no h/o self-cutting or suicidal ideation. After the TBIs, he was noted to engage in frequent self-cutting behaviors and was often suicidal, resulting, on one occasion, in psychiatric hospitalization. Additionally, prior to his TBIs, he had no history of impulsively making threats, using bad language, or having "strange ideas". His other psychiatric conditions of Chronic Adjustment DO, Adjustment DO with mixed disturbance of emotions and conduct; Adjustment DO, unspecified and Anxiety DO, unspecified, do not mitigate his misconduct as none of these conditions are associated with frontal lobe dysfunction.

(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 condition outweighed the basis of separation - wrongfully used indecent language and communicated a threat to soldiers.

b. Response to Contention:

(1) The applicant contends carried himself to a high standard in both of their military contracts and their second contract was not honorable due to toxic leadership and favoritism. The Board considered this contention during board proceedings along with the totality of the applicant's service record.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, as well as the circumstances surrounding the discharge (TBI). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. No change to the reentry code.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service based on the following reasons. The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, TBI. As there is an association between TBI and

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210009792

impaired frontal lobe dysfunction resulting in poor judgment, increased impulsivity and angry behaviors, there is a nexus between his diagnosis of TBI, his use of offensive language and his “homicidal joke” which was interpreted as a threat by command. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board concurred with the conclusion of the medical advising official that the applicant's BH condition, TBI mitigates the basis of separation and warrants a change to the characterization of separation. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation was inequitable.

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

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

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No change
- e. Change Authority to: AR 635-200

Authenticating Official:

4/3/2024



AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs