

1. Applicant's Name: [REDACTED]**a. Application Date:** 10 December 2020**b. Date Received:** 19 December 2020**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable and a change in their separation code.

(2) The applicant seeks relief stating they have battled Post-Traumatic Stress Disorder (PTSD) for more than a decade. It has cost them their marriage, friendships, jobs, and religion. However, after finally getting help from the Department of Veterans Affairs (VA), they have been able to come to grips with the fact that the things they have seen and done were out of their control. With an upgrade in their discharge to honorable, they hope to finally lay to rest the demons that have haunted them.

b. Board Type and Decision: In a records review conducted on 9 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and Major Depressive Disorder partially mitigated some of the applicant's misconduct - disrespect, disobeying, FTR, and insubordination, the medically unmitigated misconduct (assault) was outweighed by length, quality and combat, and there were several improper decisions made by the chain of command. 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. The Board determined the reentry code was 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: 19 March 2009**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 12 February 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: multiple occurrences of Failure to Report, dereliction of duties, and conduct prejudice to the good order and discipline of the Armed Forces.

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

(4) **Legal Consultation Date:** 17 February 2009

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 11 March 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 5 January 2004 / 6 years

b. Age at Enlistment / Education / GT Score: 24 / HS Graduate / 105

c. Highest Grade Achieved / MOS / Total Service: E-4 / 19D10, Cavalry Scout / 5 years, 2 months, 15 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (19 January 2005 – 18 January 2006 and 10 March 2007 – 8 May 2008)

f. Awards and Decorations: ARCOM-2, AGCM, NDSM, GWTEM, GWTSM, ICM-CS, 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 30 April 2008, reflects the applicant received nonjudicial punishment for, on or about 30 January 2008, was disrespectful in language towards a noncommissioned officer (NCO) and was disrespectful in deportment towards an NCO, by picking up their [applicant] weapon like they were going to strike them [NCO] with it. Their punishment consisted of a reduction to the rank/grade private /E-1, and forfeiture of \$674.00 pay for 2 months.

(2) A DA Form 3822 (Report of Mental Status Evaluation), dated 24 September 2008, reflects the applicant has the mental capacity to understand and participate in the proceedings, is mentally responsible. The remarks section reflects –

(a) While the applicant was deployed to Iraq, they received three Field Grade and one Company Grade Article 15, between June 2007 and April 2008, for infractions such as two assaults, disrespect to an NCO, and failure to follow a direct order. They were psychiatrically hospitalized for 24 hours in May 2006 as the result of Posttraumatic Stress. The received mental health treatment on a weekly basis in theatre from 5 February 2008 to 29 April 2008, and then after returning to the United States, presented to Outpatient Mental Health Service, Fort Benning for three sessions of therapy and twice as a walk-in in August and September 2008. They continue to struggle with symptoms of posttraumatic stress and depression.

(b) Diagnoses reflects an Axis I (Psychiatric conditions) PTSD, Chronic and Major Depressive Episode, Moderate.

(c) No mental health problems were seen which require disposition through medical channels at this time. They screened negative for Traumatic Brain Injury (TBI). Their psychiatric condition does not amount to disability but may continue to significantly interfere with their assignment to, or performance of, duties at this time and in the future. Therefore, it is

recommended that this individual be separated from the military in accordance with Army Regulation 635-200, paragraph 5-17, or any other appropriate chapter.

(d) The applicant was and is mentally responsible, able to distinguish right from wrong, and adhere to the right. They have the mental capacity to understand and participate in administrative or legal proceedings. They are psychiatrically cleared for any administrative action deemed necessary by Command.

(3) Four Developmental Counseling Forms dated 18 September 2008 through 10 October 2008, reflects the applicant received developmental counseling for several failure to report, insubordinate conduct toward an NCO, failure to obey order or regulation, and assault.

(4) A DD Form 2807-1 (Report of Medical History), dated 17 October 2008, reflects the applicant marked "Yes" to multiple medical conditions to include mental health symptoms. Item 30a (Comments) reflects the examiner blanketed comment "Current Continued Care at Hospital" for the applicant's PTSD condition, inpatient and outpatient treatment for mental health, and hospitalization.

(5) A DD Form 2808 (Report of Medical Examination), dated 20 October 2008, reflects the applicant is qualified for service. Item 77 (Summary of Defects and Diagnoses) reflects "No disqualifying conditions."

(6) A memorandum, Headquarters and Headquarters Company, 1st Battalion, 15th Infantry Regiment, 3rd Infantry Division subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12b(2), Patterns Misconduct, dated 12 February 2009, notified the applicant of initiating actions to separate them for a Pattern of Misconduct, for several failure to report, dereliction of duties, and conduct prejudice to the good order and discipline of the Armed Forces. The applicant acknowledged the basis for the separation and of the rights available to them.

(7) On 16 February 2009, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service, stating, the applicant had demonstrated by their actions that they will not become a quality Soldier desired by the U.S. Army.

(8) On 17 February 2009, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected to submit a statement on their behalf; however, the statement is not in evidence for review.

(9) A memorandum, Headquarters, 3rd Brigade Combat Team, 3rd Infantry Division Fort Benning, GA, subject: Separation under Army Regulation 635-200, Paragraph 14-12b, [Applicant], 11 March 2008, the separation authority directed that the applicant be separated from the U.S. Army prior to the expiration of their current term of service and furnished a General (Under Honorable Conditions) Discharge Certificate.

(10) On 19 March 2009, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 5 years, 2 months, and 15 days of net active service this period, and did not complete their first full term of service obligation of 6 years.

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

j. Behavioral Health Condition(s):

(1) Applicant provided: None

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with attached letter.

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

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, Title 10, U.S. Code, Section 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense (DoD) Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 July 2005, 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) Paragraph 5-17 (Other Designated Physical or Mental Conditions) stated commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability and excluding conditions appropriate for separation processing that potentially interfere with assignment to or performance of duty. When commanders determine that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation.

(6) 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.

(7) 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.

(8) 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 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. 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 they received nonjudicial punishment for disrespectful in language and disrespectful in deportment towards an NCO and received developmental counseling on multiple occasions for various acts of misconduct. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of a pattern of misconduct, with a characterization of service of general (under honorable conditions). They completed 5 years, 2 months, and 15 days of net active service; however, they did not complete their 6-year contractual enlistment agreement 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 Army Military Human Resource Record provides documentation of a diagnosis of PTSD and Major Depressive Episode during the applicant's term of service. However, their Mental Health Status Evaluation reflects their psychiatric condition does not amount to a disability but may continue to significantly interfere with their assignment to, or performance of, duties at this time and in the future.

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: In-service diagnoses of PTSD and MDD. Post-service, service connected for PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** In-service diagnoses of PTSD and MDD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma, difficulty with authority, and avoidance, and in breaking down the misconduct captured under the separation categories, disrespect, disobeying, FTRs, and insubordination are mitigated. However, assault is not. Consideration was given to a lack of guiding policies at that time which would have placed the applicant on Rear-D for the second deployment given PTSD diagnosis and ongoing symptoms and/or early redeployment given active PTSD symptoms requiring care while deployed. Additionally, the deployment provider believed PTSD was related to his disciplinary issues. Lastly, irrespective of the Chapter MSE, the applicant was eligible for a MEB referral; PTSD is a boardable condition that he receive consistent care for more than a year with hospitalization, that impacted occupational functioning, and required duty limitations. He would have been ineligible for a 5-17 which is for lesser conditions such as Adjustment Disorder.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD and MDD outweighed the medically unmitigated misconduct of assault.

b. Response to Contention(s): The applicant contends they have battled PTSD for more than a decade. It has cost them their marriage, friendships, jobs, and religion. However, after finally getting help from the VA, they have been able to come to grips with the fact that the things they have seen and done were out of their control. The Board considered this contention and determined that relief was warranted based on the applicant's PTSD diagnosis, length and quality of service, including combat.

c. The Board determined the discharge is inequitable based on the applicant's PTSD and Major Depressive Disorder partially mitigated some of the applicant's misconduct - disrespect, disobeying, FTR, and insubordination, the medically unmitigated misconduct (assault) was outweighed by length, quality and combat, and there were several improper decisions made by the chain of command. Specifically the board determined the discharge was improper due to the missed opportunities by the chain of command to prevent escalation of PTSD, the applicant should not have been deployed a second time based on the diagnosis of PTSD, there was an error in not referring the applicant for MEB consideration, and during the timeframe of the misconduct (September through October 2008) there was stigma and lack of education regarding the proper treatment and ability to deploy a service member with a diagnosis of PTSD. 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

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corresponding separation code of JKN. The Board determined the reentry code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because PTSD and Major Depressive Disorder partially mitigated some of the applicant's misconduct - disrespect, disobeying, FTR, and insubordination, the medically unmitigated misconduct (assault) was outweighed by length, quality and combat, and there were several improper decisions made by the chain of command. Thus, the prior characterization is no longer appropriate.

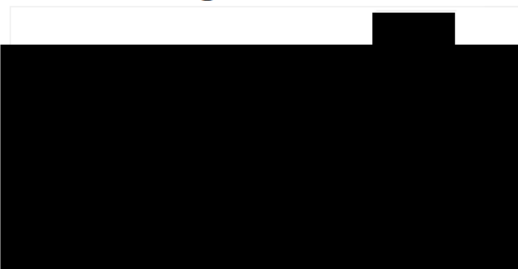
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change, based on the applicant's medical diagnosis the Board determined it was proper and equitable.

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:



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
UOTH – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs