

1. Applicant's Name: [REDACTED]**a. Application Date:** 1 January 2021**b. Date Received:** 13 January 2021**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable, a change of the separation code, reentry code and of the narrative reason for separation. The applicant asks that any negative documents be set aside in their entirety.

(2) The applicant states, through counsel, they wish this petition to be reviewed and in the interest of equity, fairness, and justice. The appeal is based on three errors –

- the underlying basis of their separation was procedurally defective at the time of discharge, their command did not wait to find out the results of an investigation
- the adverse action, to include the administrative discharge, was unfair at the time, the applicant was never offered or provided with rehabilitation
- the General (Under Honorable Conditions) discharge is inequitable now as it does not serve a further purpose and the events that took place are no longer relevant to the applicant's life and they have lived since, in a responsible manner

(3) An upgrade of their characterization of service would allow them to go back to school and pursue a better career.

b. Board Type and Decision:

(1) The issues regarding setting aside any negative documents are not within the purview of this Board. These issues should be addressed by the Army Board of Correction of Military Records (ABCMR). A DD Form 149 is enclosed for the applicant's use

(2) In a records review conducted on 10 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's trauma mitigated excessive alcohol use. 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 reentry code will not change based on the applicant's medical diagnosis. Please see Section 9 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct, (Serious Offense) / Army Regulation 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 17 August 2017

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 28 June 2017

(2) Basis for Separation: on 29 April 2017, driving under the influence (DUI), voluntarily submitted to a Standardized Field Sobriety test and failed; and administered a breathalyzer test which resulted in a Blood Alcohol Content of 0.125-percent.

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

(4) Legal Consultation Date: 5 July 2017

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 1 August 2017 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 3 March 2015 / 5 years

b. Age at Enlistment / Education / GT Score: 20 / HS Diploma / 82

c. Highest Grade Achieved / MOS / Total Service: E-4 / 31B1O, Military Police / 2 years, 5 months, 15 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, Lewis-McChord, WA, subject: Law Enforcement Report – 1st Corrected Final, dated 4 May 2017, reflects the applicant as the named subject with the offense of Criminal Traffic – Driving Under the Influence (Alcohol), with the occurrence of 0300 hours, 29 April 2017. The Report Summary states on 29 April 2017, at 0300 hours, Joint Base Lewis-McChord Police while on patrol observed a stranded individual along the roadway. Investigation revealed the individual was stranded and waiting to be picked up by the applicant. Upon contact with the applicant, an odor of an alcoholic beverage was detected omitting from them. They submitted to voluntary Standardized Field Sobriety Tests, which showed signs of impairment. They submitted to a voluntary Preliminary Breath Test, with results of 0.142. They were apprehended and transported to the station and advised of their Constitutional Rights, which they invoked and was provided a public defender. They were read the Implied Consent for breath and submitted to a BAC, with result of 0.125.

(2) A memorandum, Headquarters, 593rd Expeditionary Sustainment Command, subject: General Officer Memorandum of Reprimand (GOMOR), dated 24 May 2017, reflects the applicant was reprimanded in writing for driving under the influence of alcohol. A Joint Base Lewis-McChord police officer was called to conduct a citizen's assist. A Soldier reported that the

applicant had their vehicle and was waiting to be picked up by the applicant. Upon contact, the officer detected a strong odor of intoxicants emitting from the applicant. They voluntarily submitted to Standardized Field Sobriety Tests and failed. They were then transported to the police station and administered a breathalyzer test which resulted in a Blood Alcohol Content of 0.125-percent. This is in violation of Article 111 (Drunken or Reckless Operation of Vehicle), Uniform Code of Military Justice (UCMJ).

(3) A memorandum, Headquarters, I Corps, subject: Memorandum of Reprimand Filing Determination, undated, reflects the deputy commanding general directed the permanently filing of the GOMOR into the applicant's Army Military Human Resource Record (AMHRR).

(4) A DA Form 3822 (Report of Mental Status Evaluation) dated 25 May 2017, reflects the applicant has no duty limitations due to behavioral health reasons, meets medical retention standards, and is cleared for administrative action. The applicant was screened for Post-Traumatic Stress Disorder (PTSD), Depression, Traumatic Brain Injury, and Sexual Assault, and screening were negative. The applicant's behavioral health diagnosis is shown as Alcohol Use Disorder. The behavioral health provider states, a records review indicates the applicant has a history of Substance Use Disorder Clinical Care. From a behavioral health perspective, the applicant meets the medial fitness standards for retention. Based on their reported information, there is no indication of a behavioral health disorder interfering with their ability to perform all assigned military duties without limitations, and no documented history of hospitalization or profile associated with any behavioral health condition.

(5) A memorandum, 571st Military Police Company, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 28 June 2017, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense with a recommended characterization of service of general (under honorable conditions) for on 029 April 2017, driving under the influence. On the same day the applicant acknowledged the basis for the separation and of the rights available to them.

(6) On 5 July 2017, the applicant completed their election of rights, signing they had been advised of their rights available to them and of the effect of any action taken by them in waiving their rights. They understand that they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them and they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected to submit statements on their behalf. (Note: the applicant failed to submit matters on their behalf.)

(7) On 17 July 2017, the applicant's company commander submitted a request to separate them prior to their expiration term of service, stating they do not consider it feasible or appropriate to accomplish other disposition as the applicant has not demonstrated sufficient desire to overcome their shortcomings and become a contributing member of the unit or the Army. The company commander indicated there were no rehabilitation attempts.

(8) A memorandum, 42nd Military Police Brigade, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 1 August 2017, the separation authority, having reviewed the applicant's separation packet and careful consideration of all matters, directed that the applicant be separated from the Army prior to the expiration of their current term of service. The separation authority directed the applicant's service be characterized as General (Under Honorable Conditions).

(9) On 17 August 2017, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 2 years, 5 months, and 15 days of net active service this period. They did not complete their full 5-year, contractual enlistment obligation. Their DD Form 214 show in –

- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKQ
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct (Serious Offense)

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** A DA Form 3822 (Report of Mental Status Evaluation) reflecting a diagnosis of Alcohol Use Disorder.

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Applicant's Legal Brief in Support of Discharge Upgrade
- Standard Form 180 (Request Pertaining to Military Records)

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 DoD Instruction 1332.28.

d. 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. 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 mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

e. 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 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. 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 14-12c (Commission of a Service Offense), stated 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.

(5) 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.

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 14-12c, 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 DoD Instruction 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.

h. Manual for Courts-Martial, United States (2016 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 111 (Drunk or Reckless Operation of Vehicle).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DoD Instruction 1332.28.

b. The available evidence reflects the applicant's military occupational specialty as Military Police and that they received a GOMOR for driving under the influence of alcohol. They were involuntarily discharge from the U.S. Army. The DD Form 214 provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct, (serious offense). They completed 2 years, 5 months, and 16 days of net active service this period; however, they did not complete their 5-year contractual enlistment 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. Published DoD 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: Other Reactions to Severe Stress. This advisor determines the applicant met criteria for a more formal trauma diagnosis although not diagnosed in-service secondary to the applicant's ongoing request to keep it off his records.

(2) Did the condition exist, or experience occur during military service? **Yes.** Other Reactions to Severe Stress. This advisor determines the applicant met criteria for a more formal trauma diagnosis although not diagnosed in-service secondary to the applicant's ongoing request to keep it off his records.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that while the applicant was not formally diagnosed with a trauma condition, symptoms had escalated impairing his functioning. It is this advisor's opinion irrespective of a formal diagnosis, trauma did influence the excessive alcohol use.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's trauma outweighed the alcohol abuse basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends they wish this petition to be reviewed and in the interest of equity, fairness, and justice

(2) The applicant contends the underlying basis of their separation was procedurally defective at the time of discharge, their command did not wait to find out the results of an investigation.

(3) The applicant contends the adverse action, to include the administrative discharge, was unfair at the time, the applicant was never offered or provided with rehabilitation.

(4) The applicant contends the general (under honorable conditions) discharge is inequitable now as it does not serve a further purpose and the events that took place are no longer relevant to the applicant's life and they have lived since, in a responsible manner.

(5) The applicant contends an upgrade of their characterization of service would allow them to go back to school and pursue a better career.

c. The Board determined the discharge is inequitable based on the applicant's trauma mitigated excessive alcohol use. 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 reentry code will not change based on the applicant's medical diagnosis.

d. Rationale for Decision:

The Board voted to change the applicant's characterization of service to Honorable because the applicant's trauma outweighed the applicant's misconduct of alcohol abuse. Thus, the prior characterization is no longer appropriate.

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(1) 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.

(2) 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:

1/7/2025

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