

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 26 March 2021**b. Date Received:** 1 April 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 requests an upgrade to honorable, and a narrative reason change.

The applicant states in effect, they went to Iraq and now they suffer from Post-Traumatic Stress Disorder. They did not know it at the time, but it caused them to act out in a manner that was deemed inappropriate. They were discharged early because of it and received a general discharge. They want the narrative reason of their separation removed, as it causes a stigma when applying to jobs.

**b. Board Type and Decision:** In a records review conducted on 30 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's medical diagnoses, in-service factors (length and combat service), and severe family matters. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the Reentry code was proper and equitable and voted not to change it.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Pattern Of Misconduct / AR 635-200 / JKA / RE-3 / Under Honorable Conditions (General).

**b. Date of Discharge:** 21 November 2021

**c. Separation Facts:**

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

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** NIF

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

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

(6) **Separation Decision Date / Characterization:** NIF / General, under honorable conditions.

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 6 January 2009 / 3 years, 17 weeks.
- b. **Age at Enlistment / Education / GT Score:** 19 / NIF / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** / 12B10 Combat Engineer / 2 years, 10 months, 11 days.
- d. **Prior Service / Characterizations:** None.
- e. **Overseas Service / Combat Service:** None / Iraq; 20090822 – 20091217
- f. **Awards and Decorations:** MUC, NDSM, GWTSM, ASR
- g. **Performance Ratings:** N/A
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) An Enlistment/Reenlistment Document provides the applicant enlisted in the Army Reserve at the rank of private (E-1) with a 3 year and 17 week active duty obligation on 14 November 2008.

(2) Orders 307-0016, provides the applicant was notified of their separation date on 3 November 2011.

(3) A Certificate of Release or Discharge from Active Duty (DD Form 214) provides on 21 November 2011 the applicant was discharged from the army.

- Authority: 635-200, Chapter 14-12c
- Narrative Reason: Pattern Of Misconduct
- Service Characterization: Under Honorable Conditions (general)
- Remarks: Has not completed first full term of service
- Net Service: 2 years, 10 months, and 11 days
- Signature: Electronically signed by the applicant

- i. **Lost Time / Mode of Return:** 31 August 2011 – 5 September 2011 / NIF
- j. **Behavioral Health Condition(s):** PTSD

(1) **Applicant provided:** Department of Veteran Affairs medical documents.

(2) **AMHRR Listed:**

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293 (Discharge Review) application, Inpatient discharge medical document, and additional medical documents that provides the applicant is 100% service connected for Post-Traumatic Stress Disorder and a copy of their DD Form 214 in support of their application.

**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 14-12b provides for the separation of Soldiers when they have a pattern of misconduct involving acts of

discreditable involvement with civil or military authorities and conduct which is prejudicial to good order and discipline.

(6) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 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. 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.

g. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable. The applicant's DD Form 214 provides that the applicant received a General (under honorable conditions) characterization of service,

rather than an under other than honorable conditions characterization of service, which is normally considered appropriate for a soldier discharged for misconduct.

b. A Review of the record provides administrative irregularity occurred in the proper retention of official records, specifically, the AMHRR is void of the applicant's entire separation packet. Due to the lack of evidence, we are unable to provide all the specific facts and circumstances surrounding the applicant's involuntary separation. Notwithstanding the lack of evidence, the record provides they applicant deployed to Iraq in 2009, and they had 5 days of time lost in 2011. The applicant signed a properly constituted DD Form 214, that shows they were discharged under the provisions of Army Regulation 635-200, Chapter 14 (Pattern of Misconduct) with an under honorable conditions (general) characterization of service on 21 November 2011.

#### 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: The applicant was diagnosed in-service with Major Depressive Disorder (MDD) with substance diagnoses of Opioid Dependence, Amphetamine Abuse, Cannabis Abuse, and Cocaine Abuse EPTS. Post-service, combat related PTSD with ongoing substance diagnoses.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant was diagnosed in-service with Major Depressive Disorder (MDD) with substance diagnoses of Opioid Dependence, Amphetamine Abuse, Cannabis Abuse, and Cocaine Abuse EPTS. Post-service, combat related PTSD with ongoing substance diagnoses.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the VA diagnosis of combat related PTSD, misconduct occurring after combat, and nexus between trauma, avoidance, and substance use, the basis is partially mitigated; driving without a license is not mitigated as there is no indication this occurred while under the influence.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's BH conditions outweighed the basis for separation. The medical condition partially mitigated the basis for separation, and the applicant's in-service factors (length and combat service) and severe family matters outweighed the remaining misconduct.

b. Prior Decisions Cited: None.

c. Response to Contention(s):

(1) The applicant contends their PTSD caused them to act out in a manner that was inappropriate, and they were discharged early because of it. The Board considered the applicant's contention during deliberations.

d. The Board determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the Reentry code was proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board voted to upgrade the applicant's characterization of service to Honorable because the applicant's medical diagnoses partially mitigated the basis for separation, specifically the applicant's FTRs, AWOL, and drug use with relapses are medically mitigated. The applicant's in-service factors of length and combat service outweigh the applicant's remaining misconduct (driving with a suspended license).

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same rationale, 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:**

11/6/2024

