

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 19 April 2021**b. Date Received:** 19 April 2019**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 general (under honorable conditions). The applicant did not properly annotate the enclosed application requesting a possible discharge upgrade. The Army Discharge Review Board considered the applicant for a possible upgrade as instructed in pertinent part by Department of Defense Instruction 1332.28, which stipulates a request for review from an applicant without an honorable discharge shall be treated as a request for a change to an honorable discharge unless the applicant requests a specific change to another character of discharge.

**b.** The applicant seeks relief contending, in effect, there is a requirement for a rehabilitation transfer into a different unit. Upon request the applicant was denied and never given an alternate choice and was discharged under chapter 14-12b. The applicant's leadership was aware the applicant was going to pain management, but was never given time to complete because of the discharge. The applicant had 5 months to complete the applicant's enlistment and was willing to do so. A magnetic resonance imaging showed that the applicant had three bulging discs, two herniated discs, and fragmentations of vertebral disc. Long term pain has effects on the applicant's brain and body central nervous system and the applicant has problems due to various causes of service related disability. The applicant's application was marked for having other mental health condition.

**c. Board Type and Decision:** In a records review conducted on 4 September 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service and the circumstances surrounding the discharge (OSA, mTBI diagnoses). 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 is 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, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 10 March 2017

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 17 January 2017

**(2) Basis for Separation:** The applicant was informed of the following reasons:

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

**AR20210011921**

(a) On 21 January 2015, the applicant failed to obey a lawful order from Sergeant (SGT) C\_\_ R\_\_ to have the applicant's last name sewn on the applicant's issued rucksack, assault pack, fighting load carrier, and Army combat helmet.

(b) On 17 March 2015, the applicant failed to report to the 0600 accountability formation at B Company, 5th Battalion, 20th Infantry Regiment.

(c) On 13 June 2016, the applicant left Rose Field, the applicant's appointed place of duty, at 0630, without proper authorization.

(d) On 14 June 2016, the applicant was derelict in the performance of the applicant's duties by sleeping while on duty.

(e) On 30 September 2016, the applicant failed to report to 0900 work call at the I Corps Protocol Office.

(f) On 3 October 2016, the applicant failed to obey a lawful order from Staff Sergeant (SSG) F\_\_ to show up 15 minutes prior to all hard times.

(g) On 3 October 2016, the applicant wrongfully overindulged in alcoholic beverages hindering the applicant's ability to perform the applicant's duties sufficiently.

(h) On 20 October 2016, the applicant failed to report to the 0600 accountability formation at Rose Field.

(i) On 2 November 2016, the applicant failed to report to 0900 work call at Headquarters and Headquarters Company, 5th Battalion, 20th Infantry Regiment.

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

**(4) Legal Consultation Date:** 20 January 2017

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

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

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 28 July 2014 / 3 years and 16 weeks

b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 110

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 2 years, 7 months, and 13 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** ARCOM, NDSM, GWOTSM, ASR

g. **Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:**

(1) Developmental Counseling Form, 26 January 2015, for failing to obey an order or regulation.

(2) Developmental Counseling Form, 6 March 2015, for February 2015 monthly performance counseling shows the applicant did not have any problems making it to formations and always showed up on time.

(3) Developmental Counseling Form, 17 March 2015, for failing to obey an order or regulation.

(4) Two Developmental Counseling Forms, for March and April 2015 monthly performance counselings shows the applicant was always in the right place, right uniform, and time. The applicant accomplished outstanding work.

(5) A Health Record, 23 June 2015, shows the applicant was diagnosed with mild obstructive sleep apnea.

(6) Developmental Counseling Form, 1 October 2015, for missing an appointment on 25 September 2015.

(7) Developmental Counseling Form, 5 October 2015, for September 2015 monthly performance counseling shows the applicant performed fairly.

(8) Developmental Counseling Form, 24 November 2015, for November 2015 monthly performance counseling shows the applicant was late one time.

(9) Developmental Counseling Form, 10 March 2016, for February 2016 monthly performance counseling states the applicant was on profile for their neck and always in the right place, right uniform, and time.

(10) Developmental Counseling Form, 9 June 2016, for May 2016 monthly performance counseling states the applicant was on profile for their neck.

(11) Two Developmental Counseling Forms, for disappearing after the first formation on 13 June 2016 and sleeping during duty on 14 June 2016.

(12) Developmental Counseling Form, 11 July 2016, for June 2016 monthly performance counseling shows the applicant was still on profile for their neck.

(13) Three developmental counseling forms, for being late to duty on 30 September and 1 October 2016, poor performance on 1 October 2016, and failure to report on 20 October 2016.

(14) Two developmental counseling forms, 27 October 2016, for recommendation for separation under AR 635-200, Chapter 14-12b and initiation of a flag for pattern of misconduct.

(15) A memorandum for record, 31 October 2016, shows the applicant acknowledged notice of an involuntary separation. On this same date, the applicant was flagged for Involuntary separation/field initiated (BA), effective 31 October 2016.

(16) Two developmental counseling forms, for being late to work on 2 November 2016, and failure to report on 22 November 2016.

(17) FG Article 15, 30 November 2016, shows the applicant was found not guilty of all specifications.

(18) Report of Medical History, 12 December 2016, the examining medical physician noted the applicant's medical conditions in the comments section: bilat generalized shoulder pain with no significant trauma, back of neck pain (CT scans and X-rays negative), right knee pain, and sleep apnea.

(19) Report of Medical Examination, 13 December 2016, the examining medical physician noted the applicant's medical conditions in the comments section: neck pain and sleep apnea.

(20) On 17 January 2017, the company commander initiated action to separate the applicant under AR 635-200, chapter 14-12b, pattern of misconduct.

(21) On 27 January 2017, the Senior Defense Counsel requested to suspend separation of the applicant and requested a rehabilitative transfer to give the applicant a fair chance to prove themself.

(22) The applicant submitted an undated statement, requesting that the applicant's contract not be terminated so that the applicant may complete their last 10 months and to continue to grow and set themselves up for the next chapter in their life.

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

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

(1) **Applicant provided:** VA Disability Rating Decision, no date (missing pages 1, 5 and 6), shows the applicant was denied service connection for mental health condition, insomnia, and sleep disorder.

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 16 November 2016, shows the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mild TBI with negative results. The applicant was diagnosed with employment problem. However, this condition did not present as a clinically significant impairment to meeting military obligations and is not sufficient to mitigate current chapter 14 proceedings.

*The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.*

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; VA Rating Decision; Armed Forces Classification Test Results memorandum; and DA Form 638.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the 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), 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 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

**(1)** Paragraph 1-16 (Counseling and rehabilitative requirements), states except as otherwise indicated in this regulation, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for minor disciplinary infractions or a pattern of misconduct (paragraphs 14-12a and 14-12b).

**(a)** The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier. Such circumstances may include:

- Two consecutive failures of the Army physical fitness test
- Pregnancy while in entry-level status
- Highly disruptive or potentially suicidal behavior, particularly in reception battalions
- Active resistance of rehabilitative efforts
- Soldiers assigned to small installations or at remote locations
- Situations in which transfer to a different duty station would be detrimental to the indebtedness, participation in the Alcohol and Drug Abuse Prevention and Control Program, Mental Health Treatment Program, and so forth)

**(b)** When a Soldier's conduct or performance becomes unacceptable, the commander will ensure that a responsible official formally notifies the Soldier of their deficiencies. At least one formal counseling session is required before separation proceedings may be initiated for one or more of the reasons specified in subparagraph 7d(1)(a), above. In addition, there must be evidence that the Soldier's deficiencies continued after the initial formal counseling.

**(2)** 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.

**(3)** 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.

**(4)** 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.

**(5)** Paragraph 14-3, prescribes 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.

**(6)** Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian 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 Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

(7) 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 (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 (Certificate of Release or Discharge from Active Duty). 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 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 will be considered for an upgrade to honorable. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214, shows the applicant served 2 years, 7 months, and 13 days. The applicant received 11 developmental counseling forms for misconduct. The applicant's DD Form 214 shows the applicant was discharged on 10 March 2017 under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, there is a requirement for a rehabilitation transfer into a different unit. Upon request the applicant was denied and never given an alternate choice and was discharged under chapter 14-12b. The applicant's leadership was aware the applicant was going to pain management, but was never given time to complete because of the discharge.

The applicant had 5 months to complete the applicant's enlistment and was willing to do so. A magnetic resonance imaging showed that the applicant has three bulging discs, two herniated discs, and fragmentations of vertebral disc. Long term pain has effects on the applicant's brain and body central nervous system and the applicant has problems due to various causes of service related disability.

(1) The applicant provided a VA Rating Decision, no date (missing pages 1, 5 and 6), that shows that applicant received service connection effective 11 March 2017 for the disabilities listed below. All disabilities and the overall rating is not displayed on the pages that were provided with the application. On 1 August 2024, the Military Review Board representative requested the missing VA documents and there has been no response from the applicant.

- cervical strain with degenerative disc and joint diseases, 20 percent
- right foot plantar fasciitis, 10 percent
- temporomandibular joint disorder, 0 percent
- restless legs syndrome, 0 percent

(2) AR 635-200, states:

(a) The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier.

(b) 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

(c) The AMHRR shows the applicant received 11 developmental counseling forms for misconduct.

d. Analyst notes the applicant checked the other mental health box on the DD Form 293.

(1) The applicant provided VA Disability Rating Decision, no date (missing pages 1, 5 and 6), that shows the applicant was denied service connection for mental health condition, insomnia, and sleep disorder.

(2) The AMHRR shows the applicant underwent a Mental Status Evaluation on 16 November 2016, which indicates the applicant could appreciate the difference between right and wrong. The applicant was diagnosed with employment problem.

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: Mild TBI, Obstructive Sleep Apnea (OSA-50%SC).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found both OSA and mTBI were diagnosed on active duty.

(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 applicant had two conditions, Obstructive Sleep Apnea and mild TBI, which mitigate some of his misconduct. As there is an association between OSA, mTBI, and insomnia, there is a nexus between his diagnosis of OSA, mTBI, failure to report (OSA, mTBI), sleeping on duty (OSA, mTBI) and overindulgence of alcohol (mTBI). OSA and mTBI do not mitigate the remainder of his misconduct as there is no association between these conditions, his refusal to obey lawful orders and his leaving his appointed place of duty w/o proper authorization.

(4) Does the condition or experience outweigh the discharge? **Partial.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition and experience partially outweighed the basis of separation.

b. Prior Decisions Cited:

c. Response to Contention(s): N/A

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service and the circumstances surrounding the discharge (OSA, mTBI diagnoses). 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 is proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were inequitable. The Board determined that the BH conditions (Obstructive Sleep Apnea (OSA) and mild TBI (mTBI), mitigate failure to report (OSA, mTBI), sleeping on duty (OSA, mTBI) and overindulgence of alcohol (mTBI). The Board determined the applicant's length and quality of service mitigate the remaining misconduct (refusal to obey lawful orders and leaving the appointed place of duty without proper authorization).

(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:**

9/17/2024

