

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 29 March 2021
- b. **Date Received:** 5 April 2021
- c. **Representative:** 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.

(2) The applicant seeks relief contending, they were an outstanding Soldier and they were discharged unfairly. They were very young, only 18 years old, when they joined the U.S. Army, willing to sacrifice their life for their country and fellow Americans, if needed. Being so young, they have accomplished achievements, they were awarded an Army Achievement Medal and have other outstanding acts of courage. They feel that they deserve an honorable characterization of service.

**b. Board Type and Decision:** In a records review conducted on 31 July 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's quality of service, 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:** Misconduct, (Serious Offense) / Army Regulation 635-200, Paragraph 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 8 June 2016

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 3 May 2016

(2) **Basis for Separation:** on or about 12 December 2015, arrested for driving while intoxicated after recording a breath alcohol content of 0.168-percent.

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

(4) **Legal Consultation Date:** 9 May 2016

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

**(6) Separation Decision Date / Characterization:** 19 May 2016 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 18 November 2014 / 3 years, 18 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 95
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 12B1O, Combat Engineer / 1 year, 6 months, 21 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** AAM, NDSM, GWTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A memorandum, Headquarters, 7th Infantry Division, subject: General Officer Memorandum of Reprimand, dated 22 March 2016, reflects the applicant was reprimanded in writing for driving under the influence of alcohol. The issuing authority states on 11 December 2015, the applicant was leaving a party that attracted the attention of civilian police. The applicant repeatedly and loudly revved their engine and spun their tires and sped off going 45 miles per hour in a 30 miles per hour zone. The civilian police stopped the applicant and state patrol officers came to assist smelled an odor of alcohol coming from the applicant, noticed the applicant was unsteady on their feet, and had bloodshot watery eyes. The applicant displayed signs of impairment during field sobriety tests. Their Breath Alcohol Content was 0.164-percent. Under state law, a person under the age of 21 is not allowed to have a Breath Alcohol Content over 0.02-percent within 2 hours of operating a motor vehicle.

(2) A DA Form 3822 (Report of Mental Status Evaluation) dated 28 March 2016 reflects the applicant is fit for fully duty, including deployment. Section V (Diagnoses) reflects no diagnosis. The behavioral health provider commented the applicant has already been evaluated by Army Substance Abuse Program and no further referral is indicated. The applicant meets the medical fitness standards as there is no indication of a boardable behavioral health disorder at this time. The applicant is cleared from a behavioral health perspective for administrative separation.

(3) A memorandum, Bravo Company, 14th Brigade Engineer Battalion, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, dated 3 May 2016, 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 or about 12 December 2015, arrested for driving while intoxicated after recording a Breath Alcohol Content of 0.168-percent. The applicant acknowledged the basis for the separation and of the rights available to them.

(4) A memorandum, Bravo Company, 14th Brigade Engineer Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c,

Commission of a Serious Offense, [Applicant], dated 3 May 2016, reflects 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's action were not in keeping with Army Values. Soldier has not displayed adequate initiative in the months following the incident to indicate that they have been rehabilitated or desire self-improvement.

(5) The applicant's memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, dated 9 May 2016, reflects 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 requested consulting counsel and representation by military counsel. 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 in their own behalf. [Note: statements in the applicant's behalf are not in evidence for review.]

(6) A memorandum, Headquarters, 2nd Stryker Brigade Combat Team, 2nd Infantry Division, subject: Separation of under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 19 May 2016, the separation authority states they have reviewed the separation packet of the applicant and direct they be separated from the Army prior to the expiration of their current term of service and their service be characterized as General (Under Honorable Conditions). The separation authority after reviewing the rehabilitative transfer requirement determined the requirements are waived as the transfer will serve no useful purpose or produce a quality Soldier.

(7) On 8 June 2016, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant completed 1 year, 6 months, and 21 days of net active service this period. They did not complete their first full term of service. The DD Form 214 shows in:

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 16 March 2016
- 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:** NA

j. **Behavioral Health Condition(s):** None

5. **APPLICANT-PROVIDED EVIDENCE:** None submitted with the application.

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 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.

**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 "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).

**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 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 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.

g. 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.

h. Manual for Courts-Martial, United States (2012 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 received a general officer memorandum of reprimand for driving under the influence of alcohol and was 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 1 year, 6 months, and 21 days of net active service this period and did not complete their first full term of service of 3 years, 18 weeks.

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? **No**. The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends they were an outstanding Soldier and they were discharged unfairly. They were very young, only 18 years old, when they joined the U.S. Army, willing to sacrifice their life for their country and fellow Americans, if needed. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(2) The applicant contends being so young, they have accomplished achievements, they were awarded an Army Achievement Medal and have other outstanding acts of courage. The Board acknowledged this contention and voted to grant relief based on the applicant's quality of service.

(3) The applicant contends they feel they deserve an honorable characterization of service. The Board acknowledged this contention.

d. The Board determined the discharge is inequitable based on the applicant's quality of service, 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 1x DUI was outweighed by in-service factor (Quality). Additionally, the applicant was 18 years old, thus under state law, the applicant was also guilty of underage drinking. Though one Board Member voted that the discharge was both proper and equitable because the applicant was charged with underage drinking along with DWI and there was no medical mitigation, the majority of Board Members stated the applicant was immature at the time of the offense (18 years of age), had a one-time offense of DWI, and the misconduct took place almost 10 years ago.

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

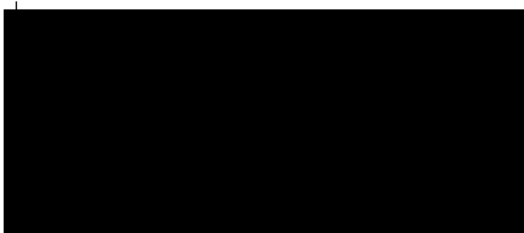
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

8/8/2024



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

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

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

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