

1. Applicant's Name: [REDACTED]**a. Application Date:** 29 June 2021**b. Date Received:** 29 June 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 general (under honorable conditions). The applicant requests an upgrade to honorable and a change of their narrative reason of separation.

(2) The applicant seeks relief contending, they were suffering from Post Traumatic Stress Disorder (PTSD) for years and didn't receive treatment or get diagnosed at that time. Their discharge has also affected their job search and career opportunities in the past and present. They served 3 years on their first enlistment, completing two deployments to Iraq, where they developed PTSD and failed to be treated during their second enlistment. Their mental health played a reason in their alcohol abuse and decision making at that time.

b. Board Type and Decision: In a records review conducted on 15 November 2024, and by a 5-0 vote, the board voted the discharge is inequitable. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable and change 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 eligibility (RE) code will not change.

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: 9 April 2009**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 March 2009

(2) **Basis for Separation:** on 11 October 2008, arrested for Driving Under Influence (DUI)

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

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

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

(6) **Separation Decision Date / Characterization:** 17 March 2009

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 11 June 2008
- b. Age at Enlistment / Education / GT Score:** 23 / HS Graduate / 94
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 92Y1O, Unit Supply Specialist / 9 months, 29 days
- d. Prior Service / Characterizations:** AD, 22 October 2003 – 16 February 2007 / HD
USAR, 16 February 2007 – 11 June 2008 / HD
- e. Overseas Service / Combat Service:** SWA / Iraq (28 May 2004 – 16 July 2004;
13 July 2006 – 8 November 2006); Kuwait (20 November 2005 – 12 July 2006)
- f. Awards and Decorations:** NDSM, GWTEM, GWTSM, ICM, ASR, OSR-2
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) A memorandum, 18th Airborne Corps and Fort Bragg, subject: General Officer Memorandum of Reprimand, dated 14 January 2009, reflects the applicant was reprimanded in writing for driving or were in physical control of a motor vehicle while their blood-alcohol level was 0.16 grams of alcohol per 210 liters of breath.

(2) A DA Form 3822-R (Report of Mental Status Evaluation) dated 22 January 2009 reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets the retention requirements. The applicant's diagnosis is shown as Occupational Problem. The behavioral health provider remarks, there is no psychological condition that warrants disposition through medical channels and the applicant is psychologically cleared for administrative actions deemed appropriate by the command.

(3) A memorandum, Charlie Battery, 1st Battalion, 7th Air Defense Artillery Battalion, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12c (Commission of a Serious Offense), dated 10 March 2009, 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 misconduct as described above in paragraph 3c(2). On the same date the applicant acknowledged receipt of notification.

(4) In the applicant's memorandum, subject: Election of Rights under Army Regulation 635-200 Notice Procedures, undated, the applicant acknowledged they have been given the opportunity to confer with counsel. They elected to submit statements on their behalf. [Note: statements in their behalf are not in evidence for review.]

(5) A memorandum, Headquarters, 108th Air Defense Artillery Brigade, subject: Separation under Army Regulation 635-200, Paragraph 14-12c (Commission of a Serious Offense), dated 17 March 2009, the separation authority thoroughly reviewed the discharge packet and directs the applicant be separated and issued a general (under honorable conditions) discharge.

(6) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 9 April 2009, with 9 months and 29 days of net active service this period. The DD Form 214 shows in –

- item 18 (Remarks) – Member has completed First Full Term of Service
- 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: Department of Veterans Affairs (VA) webpage printout reflecting a service-connected disability for PTSD with a 50-percent disability rating effective 29 March 2020.

(2) AMHRR Listed: Report of Mental Status Evaluation as described in previous paragraph 4h (2), reflecting a diagnosis of Occupational Problem.

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 with supporting documents
- VA Letter, Summary of Benefits
- VA webpage printout

6. POST SERVICE ACCOMPLISHMENTS: None provided with 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 (Active Duty Enlisted Administrative Separations), dated 6 July 2005, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 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 Department of Defense (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 (2008 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 (Drunken Driving).

i. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

8. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides the applicant received general officer memorandum of reprimand for driving under the influence and was involuntarily separated. Their DD Form 214 (Certificate of Release or Discharge from Active Duty), which provides the applicant was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of General (Under Honorable Conditions). They completed 9 months and 29 days of net active service this period and did not complete their first full term of service; however, they did not complete their second enlistment contractual obligation of 3 years and 10 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. The applicant's AMHRR reflects documentation of a diagnosis of Occupational Problem. There is no evidence of a diagnosis or treatment for PTSD. The applicant did provide VA evidence of a service-connected disability for PTSD with a 50-percent disability rating effective 29 March 2020.

e. 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/experiences: PTSD with Depressive Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection of 70% for PTSD with Depressive DO establishes nexus with active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has two mitigating BH conditions, PTSD and Depressive Disorder. As there is an association between these two conditions and self-medication with alcohol, there is a nexus between these two conditions and the applicant's offense of DUI.

(4) Does the condition or experience outweigh the discharge? **Yes.** The board concurred with the opinion of the Board's Medical Advisor, a voting member. As a result, the ADRB applied liberal consideration and found that the applicant's PTSD with Depressive Disorder outweigh the misconduct arrested for Driving Under Influence (DUI).

b. Response to Contention(s):

(1) The applicant contends they were suffering from PTSD for years and didn't receive treatment or get diagnosed at that time. The board considered this contention during proceedings and determined that relief was warranted based on the applicant's diagnosis of PTSD with Depressive Disorder outweigh the basis for separation.

(2) The applicant contends their discharge has also affected their job search and career opportunities in the past and present. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the information outlined above in paragraph 9a (3-4) and 9b (1) of this document.

(3) The applicant contends they served 3 years on their first enlistment, completing two deployments to Iraq, where they developed PTSD and failed to be treated during their second

enlistment. Their mental health played a reason in their alcohol abuse and decision making at that time.

The board considered and appreciated the applicant's five years of service, including two combat tours in Iraq but ultimately did not address the contention due to an upgrade being granted based on the information outlined above in paragraph 9a (3-4) and 9b (1) of this document.

c. The board determined the discharge is inequitable based on the applicant's PTSD with Depressive Disorder mitigated the applicant's basis for separation (arrested for DUI). The board also considered the applicant's in-service factors (length, quality, combat, prior HD). 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 with no change to the reentry code.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable because the applicant's PTSD with Depressive Disorder mitigated the applicant's basis for separation (arrested for DUI). The board also considered the applicant's in-service factors (length, quality, combat, prior HD). Thus, the prior characterization is no longer appropriate.

(2) The board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

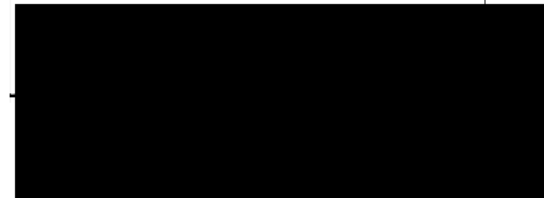
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10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: 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, paragraph 14-12a

Authenticating Official:

11/25/2024



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