

1. Applicant's Name: [REDACTED]

- a. Application Date: 6 April 2021
- b. Date Received: 17 May 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.

(2) The applicant seeks relief contending, during the time of their incident they were going through a rough time mentally with dealing with deaths in their family that they were not able to fully process or grieve over. Unfortunately, they became depressed which led to a great mistake that they are truly sorry for. They beg the Board to consider their request for an upgrade.

b. Board Type and Decision: In a records review conducted on 13 December 2024, and by a 5-0 vote, the Board determined that the discharge was too harsh based on the applicant's length of service, and as a result it is inequitable. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

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: 12 April 2018

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 7 March 2018

(2) Basis for Separation: on 10 December 2017, arrested for driving while intoxicated with a Blood Alcohol Content (BAC) of 0.18-percent.

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

(4) Legal Consultation Date: 7 March 2018

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: Undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 7 March 2016 / 5 years
- b. Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 89
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 31B1O, Military Police / 2 years, 1 month, 6 days
- d. Prior Service / Characterizations:** NIF
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** NDSM, ASR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 2627-1 (Summarized Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 27 December 2017, reflects the applicant received nonjudicial punishment for, on or about 15 December 2017, derelict in the performance of duties in that they negligently failed to report to their chain of command that they were in police custody for Driving Under the Influence (DUI), as it was their duty to do so, in violation of Article 92 (Failure to Obey Order, Regulation). Their punishment consisted of extra duty for 14 days and an oral reprimand. The applicant elected not to appeal.

(2) A memorandum, Headquarters, I Corps, subject: General Officer Memorandum of Reprimand (GOMOR), dated 24 January 2018, reflects the applicant was reprimanded in writing for driving under the influence of alcohol. The commanding general states, on 10 December 2017, a Washington State Patrol Officer observed the applicant traveling at a high rate of speed and upon making contact with the applicant, the Officer observed a faint odor of intoxicants emitting from the applicant's vehicle. They submitted to standard field sobriety tests, which showed signs of impairment. They were then apprehended and transported to the State Patrol Office where they were submitted to a breath test that resulted in a BAC level of 0.180-percent.

(3) A DA Form 3822 (Report of Mental Status Evaluation) dated 27 February 2018, reflects the applicant has no duty limitations due to behavioral health reasons, currently meets medical retention standards, and is cleared for administrative action. Section IV (Diagnoses) reflects the applicant has no behavioral health diagnosis. The Behavioral Health Provider states from a behavioral health perspective, the applicant meets medical fitness standards for retention. There are no indication of a behavioral health disorder interfering with their ability to perform all assigned duties without limitations and no documented history of hospitalization or profile associated with any behavioral health condition.

(4) A memorandum, 571st Military Police Company, 504th Military Police Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 7 March 2018, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct, arrested for driving while intoxicated with a BAC of 0.18-percent. The company commander recommended the applicant's characterization of service as general (under honorable conditions). On the same day, the applicant acknowledged the basis for the separation and of the right available to them.

(5) On 7 March 2018, the applicant completed their Election of Rights Regarding Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, signing they have been advised by consulting counsel of the basis for the contemplated action to separate them Commission of a Serious Offense, and its effects; of the rights available to them; and of the effect of any action taken by them in waiving their rights. They understand they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them and further understand that as the result of issuance of a discharge that is less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They requested consulting counsel and elected not to submit statements in their own behalf.

(6) A memorandum, 571st Military Police Company, 504th Military Police Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 15 March 2020, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant has not demonstrated sufficient desire to overcome their shortcomings and become a contributing member of the unit or the Army.

(7) On 20 March 2018, the GOMOR issuing authority, after considering all matters available, directed the GOMOR be filed in the Army Military Human Resource Record of the applicant.

(8) A memorandum, 42nd Military Police Brigade, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated undated, the separation authority, having reviewed the separation packet of the applicant and after careful consideration of all matters, directed the applicant be separated from the Army prior to the expiration of their current term of service with characterization of service as General (Under Honorable Conditions). The separation authority states in according with Army Regulation 635-200, paragraph 1-16d (Waiver), the rehabilitative transfer is not required.

(9) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 12 April 2018, with 2 years, 1 month, and 6 days of net active service this period. The DD Form 214 shows in:

- item 18 (Remarks) – MEMBER HAS NOT 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): None

(1) Applicant provided: On 16 October 2022 the Army Review Boards Agency requested the applicant provide their medical documents to support their mental health issues (Depression), as of this date there has been no response.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 Application for the Review of Discharge from the Armed Forces of the United States)
- Two 3rd Party Character Letters

6. POST SERVICE ACCOMPLISHMENTS: none submitted with 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) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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) Paragraph 1-16 (Counseling and Rehabilitative Requirements) stated Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. The rehabilitative transfer requirements in chapter 14 (Separation for Misconduct) 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.

(5) Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence 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. 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.

(6) 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

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

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

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

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 (2019 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 Article 113 (Drunken or Reckless Operation of a Vehicle).

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 a GOMOR for driving under the influence of alcohol in violation of Article 113, UCMJ, received notification of separation for Commission of a Serious Offense, and was involuntarily separated. The DD Form 214, signed by the applicant, provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct (serious offense) rather than a discharge under other than honorable conditions, which is normally considered appropriate. They completed 2 years, 1 month, and 6 days of their 5-year contractual enlistment obligation. The applicant has not completed their first full term of service.
- 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 Army Military Human Resource Record does not reflect documentation of a behavioral health diagnosis, nor did the applicant provide such evidence.
- 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 which were void of a diagnosis or experience. However, the applicant asserts grief and depression which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.
 - (2)** Did the condition exist, or experience occur during military service? **Yes.** The applicant asserts grief and depression at the time of the misconduct.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no diagnosis for application. Even in considering the applicant's assertion, they were evaluated and in SUDCC treatment with no concern symptoms rose to a diagnostic level impacting conduct.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition or experience did not outweigh the basis of separation, driving under the influence.

b. Response to Contention(s):

(1) The applicant contends during the time of their incident they were going through a rough time mentally with dealing with deaths in their family that they were not able to fully process or grieve over. The Board considered this contention and determined that the applicant's inability to deal with family issues does not mitigate the applicant's DUI offense as the Army has many legitimate avenues available to service members requesting assistance with family issues, and there is no evidence in the official records nor provided by the applicant that such assistance was pursued. The Board concluded that the applicant's driving while intoxicated is not an acceptable response to dealing with family issues.

(2) The applicant contends they became depressed which led to a great mistake that they are truly sorry for. The Board considered this contention and applied liberal consideration to the self-asserted depression, however no diagnosis was provided to substantiate this contention. The board determined, given the applicant's length of service, a General (under honorable conditions) characterization of service was inequitable, thus voted to upgrade the characterization to Honorable.

c. The Board determined: The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length) and concurred that the current discharge was too severe for the misconduct. The applicant had no other misconduct and completed SUDDC. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable. Final Vote HD/JKN/NC

d. Rationale for Decision:

(1) The Board found sufficient evidence of in-service mitigating factors (Length) and concurred that the current discharge was too severe for the misconduct. The applicant had no other misconduct and completed SUDDC. Based on a preponderance of evidence, the Board determined the character of service was inequitable. The Board voted to change the applicant's characterization of service to Honorable

(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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210013460**

- 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:

6/23/ [REDACTED]

**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