

1. Applicant's Name: [REDACTED]**a. Application Date:** 25 March 2021**b. Date Received:** 31 March 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, a change of their separation code and reentry code.

(2) The applicant seeks relief stating at the time of their service they were suffering from an undiagnosed mental illness. They have been diagnosed with Bipolar, Schizophrenia, Anxiety, and Depression. Their current psychiatrist believes they have been suffering from this since 2007. They were also battling drug addiction during their time at Fort Drum, NY. They have been clean for many years and would like their record to not say "Serious Offense."

b. Board Type and Decision: In a records review conducted on 30 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable. 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: 18 February 2010**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 26 January 2010

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

- on 10 October 2009, with the intent to deceive, falsified and signed the DA Form 1594 (Daily Staff Journal or Duty Officer's Log, and on said date, wrongfully and without authority, wore the rank of private two
- involved in an underage drinking incident
- failed to maintain possession of their Military Identification on more than one occasion
- Failed to Report to their place of duty on numerous occasions

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

(4) Legal Consultation Date: 2 February 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 8 February 2010

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 April 2009

b. Age at Enlistment / Education / GT Score: 20 / HS Graduate / 94

c. Highest Grade Achieved / MOS / Total Service: E-1 / 88M1O, Motor Transportation Operator / 9 months, 20 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Five DA Forms 4856 (Developmental Counseling Form) dated 7 October 2009 through 19 October 2009 reflects the applicant received event oriented counseling for multiple acts of misconduct, to include, making disturbing comments to fellow Soldiers, underage drinking, lost Military Identification Card, failure to report, failure to comply with provisions of corrective training, and traveling outside of approved mileage radius without a mileage pass. The applicant agreed with the information and signed all the forms.

(2) A DA Form 4856 dated 19 October 2009 reflects the applicant reflects the applicant received counseling from their company commander with notice of command intent to charge the applicant with a Summary Court-Martial. The Key Points of Discussion states the applicant has failed to live up to the Army Values, although their chain of command has given them multiple opportunities through counseling sessions and corrective training. They failed to follow a direct order from a commissioned officer, in addition to multiple smaller disciplinary actions that include multiple failure to report, violations of General Order 1, and falsifying documents. Based on the multiple disciplinary infractions, the company commander is recommending the applicant be charged with a summary court-martial. The applicant agreed with the information and signed the form.

(3) A DA Form 4856 dated 2 November 2009 reflects the applicant received event oriented counseling for failure to report to company physical training formation.

(4) A DA Form 2329 (Record of Trial by Summary Court-Martial) dated 5 November 2009 reflects at the trial proceeding, the applicant, after being given a reasonable time to decide, did not object to trial by summary court-martial and was not represented by counsel. The applicant was found guilty on seven specifications of violations of Article 86 (Absence Without Leave), Uniform Code of Military Justice (UCMJ), one specification of violation of Article 91 (Insubordinate Conduct Toward Noncommissioned Officer), UCMJ, one specification of Article 107 (False Official Statements), UCMJ, and one specification of violation of Article 134

(Wearing Unauthorized Insignia). Their punishment consisted of confinement for 30 days. The applicant was informed of their rights to request deferment of confinement and of the right to submit written matters. The applicant choose to waive their rights and request that the convening authority take action in their case as soon as possible and no delay in their confinement be ordered.

(5) A DA Form 3822 (Report of Mental Status Evaluation) dated 17 December 2009 reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets the retention requirements (i.e. does not require a medical evaluation board. The applicant diagnosis is shown as Attention Deficit Disorder, by history. The behavioral health provided finds the applicant meets retention standards and does not have a psychiatric disorder which warrants disposition through medical channels.

(6) A memorandum, Alpha Company, 227th Aviation Support Battalion, subject: Notification Procedures – Separation under Army Regulation 635-200, Paragraph 14-12c (Commission of a Serious Offense), dated 26 January 2010, 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 the proposed action initiated against them and of the rights available to them.

(7) On 2 February 2010, the applicant completed their election of rights signing they have been advised by counsel of the basis for their separation and its effects and of the rights available to them. They declined the opportunity to consult with counsel and elected not to submit statements in their behalf. They understood they may expect to encounter substantial prejudice in civilian life if a discharge/character of service that is less than honorable is issued to them.

(8) A memorandum, Alpha Company, 227th Aviation Support Battalion, subject: Commander's Report – Separation under Army Regulation 635-200, Paragraph 14-12c (Commission of a Serious Offense), dated 2 February 2010, the applicant's company commander submitted a request to separate them prior to their expiration term of service to the separation authority. The company commander states they do not consider it feasible or appropriate to accomplish any disposition other than separation because the applicant represents a command liability and impairs good order and discipline in the unit. They have clearly failed to adopt the Army's Seven Values of Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage.

(9) A memorandum, Headquarters, 10th Combat Aviation Brigade, subject: Separation under Army Regulation 635-200, Paragraph 14-12c (Commission of a Serious Offense), [Applicant], dated 8 February 2010, the separation authority carefully considered the separation packet and the recommendations of the chain of command and directed the applicant be discharged with a characterization of service as general (under honorable conditions).

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 27 November 2007, with 9 months and 20 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)
- item 29 (Dates of Time Lost During This Period) – 20091105-20091126

i. Lost Time / Mode of Return: 22 days (5 November 2009 – 26 November 2009) / Release from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: two Penn Behavioral Health – After Visit Summaries dated 9 September 2020 and 20 January 2021 reflecting the applicants diagnoses as Bipolar Effective Disorder and Anxiety Disorder.

(2) AMHRR Listed: Report of Mental Status Evaluation as described in previous paragraph 4h(5).

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with letter
- Two Penn Behavioral Health – After Visit Summaries
- 3rd Party Statement

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 17 December 2009, 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.

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 multiple event oriented counseling for multiple disciplinary infractions, was found guilty through a summary

court-martial on four different charges consisting of their multiple disciplinary infractions; 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 20 days of net active service this period and did not complete their first full term of service of 3 years and 19 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 Attention Deficit Disorder, by history. The applicant did provide evidence of a behavioral health documents reflecting treatment for Bipolar Affective Disorder and Anxiety Disorder, 10 years after their military service.

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: In-service Adjustment Disorder with Disturbance of Conduct, but this is considered improper as the applicant was exhibiting more serious psychiatric symptoms presenting prior to substance use. Post-service diagnoses of Bipolar Disorder with secondary Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** In-service Adjustment Disorder with Disturbance of Conduct, but this is considered improper as the applicant was exhibiting more serious psychiatric symptoms presenting prior to substance use. Post-service diagnoses of Bipolar Disorder with secondary Anxiety Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that Bipolar Disorder, even in early stages, presents with a wide range of symptoms encompassing depression, hypomania, anxiety, and disordered thought processes. The related symptoms can impair sleep, concentration, energy levels, focus, time management, processing and understanding instructions, responding appropriately to others, disorganization, dishevelment, odd beliefs informing thoughts and actions, etc. Accordingly, the FTRs, AWOL, disobeying, and losing his ID card are mitigated. Although indirect, falsifying the CQ log is mitigated as misconduct

secondary to mitigated behavior; when more reality based, he became aware of his actions and attempted to remedy by falsifying the CQ log. Although a conscious act, it was related to actions while impaired. However, there is not enough evidence his thought processes or possible delusions/hallucinations contributed to wearing the wrong rank.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's conditions outweighed all the misconduct in the basis of separation, only partial mitigation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends at the time of their service they were suffering from an undiagnosed mental illness.

The Board acknowledged this contention during proceedings and determined it was valid as the applicant was exhibiting serious psychiatric symptoms presenting prior to substance use.

(2) The applicant contends they have been diagnosed with Bipolar, Schizophrenia, Anxiety, and Depression. Their current psychiatrist believes they have been suffering from this since 2007.

The Board acknowledged this contention during proceedings.

(3) The applicant contends they were also battling drug addiction during their time at Fort Drum, NY. They have been clean for many years and would like their record to not say "Serious Offense."

The Board acknowledged this contention during proceedings.

d. The Board determined 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 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) The Board voted to upgrade the applicant's characterization of service to Honorable based on the applicant's medical diagnosis which partially mitigates the applicant's basis for separation (FTRs, AWOL, disobeying, losing his ID card, and falsifying the CQ log) are medically mitigated. The remaining misconduct (wearing the wrong rank) is sufficiently covered by the narrative reason (Minor Infractions) and SPD Code (JKN).

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

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

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

11/6/2024

