

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 16 June 2021
- b. **Date Received:** 21 June 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable, and changes to the SPD and RE codes, and narrative reason.

b. The applicant seeks relief contending, in effect, the applicant began to struggle with severe anxiety and depression shortly after arriving to basic training which continued and became a debilitating illness while in service. The applicant's offenses and the reason for separation were limited to missing appointments, forgetting simple instructions, being late, and being unable to function like a regular soldier. The applicant is very embarrassed of their illness, specifically on how they gained almost 100 pounds in a year and struggled to even shower. Thankfully the VA and their support groups are helping the applicant to function normally and be the person they can be with treatment. The applicant was never disrespectful just ill and lacked treatment and if the applicant had received treatment while in service the applicant would have functioned normally. The applicant asked for help but was not provided with proper medication.

c. **Board Type and Decision:** In a records review conducted on 19 July 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Major Depressive Disorder outweighing a majority of the applicant's offenses. The Board found that the applicant's length and quality of service outweighed the remaining misconduct of making false official statements. Therefore, 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.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 22 October 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 11 March 2020

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

- 19 November 2019 - failed to throw away the applicant's trash as it was the applicant's duty to do so

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AR20210015050

- 20 November 2019 - made a false official statement to a noncommissioned officer (NCO)
- 20 November 2019 - made a false official statement to a NCO
- 30 January 2020 - failed to report to the applicant's appointed place of duty

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

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 15 April 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 July 2018 / 3 years and 16 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 94

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11C10, Indirect Fire Infantry / 2 years, 2 months, and 29 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 21 November and 11 December 2019, the applicant was counseled for failure to obey an order or regulation.

(2) CG Article 15, 10 December 2019, for failing to not throw away the applicant's trash away at the Bravo Troop Bay on or about 19 November 2019. Also, for giving a false official statement to an NCO to wit: "[Applicant] did not throw [applicant's] trash in the Bravo Troop Bay," which statement was false in that the applicant did throw the trash in the Bravo Troop Bay on or about 20 November 2019. The punishment consisted of extra duty for 7 days.

(3) On 30 January 2020, the applicant was counseled for failure to be at the appointed place of duty.

(4) FG Article 15, 30 January 2020, for giving a false official statement to an NCO to wit: "[Applicant] called and cancelled [applicant's] physical therapy appointment," or words to that effect, which statement was totally false on or about 11 December 2019. The punishment consisted of a reduction from E-3 to E-1; forfeiture of \$866.00 pay per month for 2 months; extra duty for 45 days; restriction for 45 days (suspended); and an oral reprimand.

(5) Report of Mental Status Evaluation (MSE), 30 January 2020, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference

between right and wrong; and met medical retention requirements. There was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided:

(a) Walgreens prescription, showing the applicant was prescribed Vyvanse on 30 November 2020.

(b) VA Disability Rating Decision, 24 March 2021, showing the applicant was rated 70 percent disabled for major depressive disorder with generalized anxiety disorder (also claimed as Attention-deficit/hyperactivity disorder, insomnia, and inability to focus).

(c) Walgreens prescription, showing the applicant was prescribed Vyvanse on 14 October 2021.

(2) AMHRR Listed: MSE as described in previous paragraph 4h.

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; medication, cognitive and skills evaluations completion; VA Rating Decision; proof of employment; and character letter.

6. POST SERVICE ACCOMPLISHMENTS: The applicant completed the cognitive and skills evaluations in accordance with the curriculum of the American Heart Association Heart Saver First Aid CPR AED Program in November 2020. The applicant works at AM Refrigeration.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing

the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) 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) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(4) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(5) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

(6) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (SPD Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

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

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

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

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable, and changes to the SPD and RE codes, and narrative reason. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 2 years, 2 months, and 29 days. The applicant received three counselings and two Record of Proceedings under Article 15, UCMJ, for failing to obey an order or regulation, failing to report, and making false statements. The applicant was discharged on 22 October 2020 under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with a characterization of service of general (under honorable conditions).

c. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant requests the SPD code to be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (SPD Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12b, is "JKA."

e. The applicant requests a RE code change. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of RE codes if appropriate.

f. The applicant contends, in effect, the applicant began to struggle with severe anxiety and depression shortly after arriving to basic training which continued and became a debilitating illness while in service. The applicant's offenses and the reason for separation were limited to missing appointments, forgetting simple instructions, being late, and being unable to function like a regular soldier. The applicant was never disrespectful just ill and lacked treatment and if the applicant had received treatment while in service the applicant would have functioned normally. The applicant asked for help but was not provided with proper medication.

(1) The applicant provided:

(a) Walgreens prescription, showing the applicant was prescribed Vyvanse on 30 November 2020.

(b) VA Disability Rating Decision, 24 March 2021, showing the applicant was rated 70 percent disabled for major depressive disorder with generalized anxiety disorder (also claimed as Attention-deficit/hyperactivity disorder, insomnia, and inability to focus).

(c) Walgreens prescription, showing the applicant was prescribed Vyvanse on 14 October 2021.

(2) The AMHRR shows the applicant underwent a MSE on 30 January 2020, which indicates the applicant was cleared for any administrative actions deemed appropriate by the command. There was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels and the MSE does not indicate any diagnosis.

g. The applicant completed the cognitive and skills evaluations in accordance with the curriculum of the American Heart Association Heart Saver First Aid CPR AED Program in November 2020. The applicant works at AM Refrigeration. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

h. The third party statement provided with the application states the applicant endured racism and harassment from unit members because the applicant is Latino. The applicant did not want to speak up because the applicant was afraid for their life. After being encouraged to speak up, the applicant was sent to another unit and labeled a problematic, undisciplined soldier for speaking up about the racism in the 82nd Airborne Division. Due to the abuse the applicant endured and the applicant's inability to cope with the situation, the applicant was not able to retain any information or function properly, this disability is still active. The applicant was summoned for a discharge because the applicant forgot a sandwich at the workplace and forgot an appointment. No one in the chain of command attempted to address the issues and the two incidents were enough to have the applicant discharged.

i. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Major Depressive DO (MDD-70%SC).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for MDD establishes it began during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a BH condition, MDD, which mitigates some of the misconduct. As there is an association between MDD, avoidant behavior and difficulty with authority figures, there is a nexus between the diagnosis of MDD and the failure to report and disobeying an order to throw trash away. MDD, however, does not mitigate the false statements made to an NCO as MDD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Major Depressive Disorder outweighed the applicant's medically unmitigated offenses of making false official statements to an NCO.

b. Response to Contention: The applicant contends the applicant began to struggle with severe anxiety and depression shortly after arriving to basic training which continued and became a debilitating illness while in service. The applicant's offenses and the reason for separation were limited to missing appointments, forgetting simple instructions, being late, and being unable to function like a regular soldier. The applicant was never disrespectful just ill and lacked treatment and if the applicant had received treatment while in service the applicant would have functioned normally. The applicant asked for help but was not provided with proper medication. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Major Depressive Disorder outweighed the applicant's medically unmitigated offenses of making false official statements to an NCO. However, the Board found that the applicant's length and quality of service outweighed this remaining misconduct. Therefore, a discharge upgrade is warranted.

c. The Board determined the discharge is inequitable based on the applicant's Major Depressive Disorder outweighing a majority of the applicant's offenses. The Board found that the applicant's length and quality of service outweighed the remaining misconduct of making false official statements. Therefore, 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.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Major Depressive Disorder outweighed a majority of the applicant's offenses. The Board found that the applicant's length and quality of service outweighed the remaining misconduct of making false official statements. 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 pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

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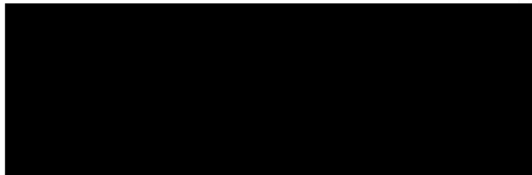
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

8/27/2024



Signed by: TRAYLOR.TRAVIS.ONEAL.1113215557

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