

1. Applicant's Name: [REDACTED]**a. Application Date:** 24 June 2021**b. Date Received:** 28 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 Under Other Than Honorable Conditions. The applicant requests a change in the character of service, separation code and the narrative reason for separation.

b. The applicant seeks relief contending, in effect, due to a Traumatic Brain Injury (TBI) they suffered in a bad parachutist landing in September 2017. Their behavior was altered due to a hit to the head and being unconscious for 30 minutes or more. They never had a negative remark on record and was promoted to the rank/grade sergeant/E-5 within 3 years of enlisting in the service.

c. Board Type and Decision: In a records review conducted on 20 November 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Traumatic Brain Injury outweighed the applicant's basis for separation (driving without license plates, engaging in a high speed chase, and crashing into a tree.) Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE Code was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / Army Regulation 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 30 July 2018**c. Separation Facts:****(1) Date of Notification of Intent to Separate:** NIF

(2) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

(3) Recommended Characterization: NIF**(4) Legal Consultation Date:** NIF**(5) Administrative Separation Board:** NIF

(6) Separation Decision Date / Characterization: 30 July 2018 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 February 2017 / 12 months extension of his original enlistment on 29 October 2013

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / 99

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92Y1P Unit Supply Specialist / 4 years, 9 months, 2 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: 4 years, 1 month, 28 days / None

f. Awards and Decorations: AAM, AGCM, NDSM, GWTSM, ASR. OSR, Parachutist Badge, Driver and Mechanic Badge with Driver – Wheeled Vehicle Clasp

g. Performance Ratings: 1 March 2017 – 15 September 2017 / Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 1695 (Oath of Extension of Enlistment), dated 8 February 2017, shows the applicant's voluntarily extension of the original enlistment on 29 October 2013, with an extension of 12 months.

(2) Promotion orders not found in the applicant's AMHRR. The Enlisted Record Brief provides the applicant was promoted to the rank of sergeant/E-5 on 1 March 2017.

(3) DA Form 2166-9-1 (NCO Evaluation Report), covering the period 1 March 2017 to 15 September 2017, provides that the applicant was rated "Qualified."

(4) The applicant's DD Form 458 (Charge Sheet) and their voluntary request for discharger in lieu of trial by court martial are not available in the AMHRR.

(5) The Enlisted Record Brief provides:

(a) The applicant received a suspension of favorable personnel actions for an adverse action on 27 October 2017. The DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) is not in evidence for review.

(b) The applicant was airborne qualified and serving in an authorized airborne position, was promoted to sergeant on 1 March 2017, completed basic leaders' course and combat life savers course, qualified Spanish foreign language, and aside from initial active duty training their permanent duty station was in Germany.

(c) The applicant did not deploy overseas in support of a contingency operation.

(6) Reduction orders not found in the applicant's AMHRR. The Enlisted Record Brief provides the applicant was reduced to the rank of private/E-1 on 15 February 2018.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210016217

(7) The 7th Army Training Command memorandum (Request for Discharge in Lieu of Trial by Court-Martial Pursuant to Army Regulation 635-200, Chapter 10), 25 July 2018, provides –

(a) The commanding general has carefully considered the request for discharge in lieu of trial by court-martial, pursuant to Army Regulation 635-200, chapter 10, submitted by the applicant, along with the preferred charges and their specifications, the supporting documentation, and the recommendations of the applicant's chain of command and the Staff Judge Advocate.

(b) The request for discharge ILO trial by court-martial is approved. The charges and their specifications forming the basis for this request is dismissed effective the date of separation. The commanding general directs the applicant be discharged from the U.S. Army with a service characterization of "Under Other Than Honorable Conditions."

(c) In accordance with Title 10, U.S. Code, Sections 1145 and 1177, and All Army Activity Message 262/2013, an examination of the applicant for factors related to Post Traumatic Stress Disorder and TBI is not required as the Soldier has not deployed in support contingency operations within the last 24 months nor has the Soldier alleged the influence of such a condition based on his service while deployed.

(8) DD Form 214 shows the applicant was discharged on 30 July 2018 and shows in –

- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- item 26 (Separation Code) – KFS (In Lieu of Trial by Court-Martial)
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge)
- Medical Document, 2 February 2018, with complaint of bilateral knee pain and lower back pain, history of present illness states, in part, applicant was on an airborne operation and suffered multiple injuries and was flown to Weeden and found out the applicant was concussed and suffered from a lower back injury

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of 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) 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) An Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) A Chapter 10, Discharge in Lieu of Trial by Court Martial is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. An under other than honorable conditions discharge was normally considered appropriate, however, the discharge authority may direct a general discharge if merited by the soldier's overall record during the current enlistment.

(a) After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will not have been coerced, have consulted with counsel to understand the nature of their request and available rights and have not less than 72 hours to make this personal decision before submitting a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions. A medical examination and mental status evaluation was not required but may be requested by the service member.

(b) The request for discharge in lieu of trial by court-martial and the separation authority's decision, and the following applicable documents were to be filed in the soldier's official records.

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel.
- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

(c) Figure 10-1 provides a sample template of the soldier's voluntary request, which includes acknowledgement of consulting with legal counsel, their rights and the impact an action of this nature could have in their civilian life.

(5) 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 (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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, chapter 10 (Discharge in Lieu of Trial by Court-Martial).

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 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 385-10 Chapter 3, provides policies and procedures for initial notification, investigating and reporting of incidents investigated. In pertinent part, it states:

(1) Accidents will be investigated, reported (to include immediate notification as specified in this regulation), and analyzed according to the requirements of this regulation, DA Pam 385-40, the USACR/Safety Center use and preparation guides, and other USACR/Safety Center-developed tools for accident investigation and reporting (see <https://safety.army.mil>). An Army accident is defined as an unplanned event, or series of events, which result in injury to Army military [personnel] on duty or off duty.

(2) Commanders and/or supervisors will investigate and report to the unit or local safety office any unplanned events to include injury or occupational illness (fatal or nonfatal) to on or off duty military personnel. At a minimum, notification will include the information on DA Form 7305 (Worksheet for Telephonic Notification of Aviation Accident/Incident). (b) At a minimum,

notification will include the information on DA Form 7306 (Worksheet for Telephonic Notification of Ground Accident). Using the initial notification tool meets this requirement. (c) Electronic copies of DA Form 7305 and DA Form 7306 may be sent to usarmy.rucker.hqda-secarmy.list.safeoperations-offi@mail.mil but sending the electronic form does not eliminate the requirement to make telephonic notification.

h. Title 10, U.S. Code, Sections 1177 (Members Diagnosed with or Reasonably Asserting Post-Traumatic Stress Disorder or Traumatic Brain Injury: Medical Examination Require Before Administrative Separation) states under regulations prescribed by the Secretary of Defense, the Secretary of a military department shall ensure that a member of the armed forces under the jurisdiction of the Secretary who has been deployed overseas in support of a contingency operations, or sexually assaulted, during the previous 24 months, and who is diagnosed by a physician, clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advance practice registered nurse as experiencing PTSD or TBI or who otherwise reasonably alleges, based on the service of the member while deployed, or based on such sexual assault, the influence of such a condition, receives a medical examination to evaluate a diagnosis of PTSD or TBI. A member shall not be administratively separated under conditions other than honorable, including an administrative separation in lieu of court-martial, until the results of the medical examination have been reviewed by appropriate authorities responsible for evaluating, reviewing, and approving the separation case, as determined by the Secretary concerned.

i. All Army Activity Message 262/2013 (Required Medical Examination for Soldiers Being Processed for Administrative Separation Under Conditions Other Than Honorable) required that PTSD and TBI screening are to be completed for any SM, officer or enlisted, pending administrative separation under conditions other than honorable who has deployed overseas in support of a contingency operation during the previous 24 months, and who is diagnosed with PTSD and TBI, or who otherwise reasonably alleges the influence of such a condition based on their service while deployed. The requirements apply to all administrative separations, including separations in lieu of trial by court-martial. No SM who meets the above requirements will be administratively separated until the results of the screening are reviewed by the separation authority.

8. SUMMARY OF FACT(S):.

a. Standard of Review. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of a charge sheet and the voluntary request for discharge, due to the lack of evidence the specific facts and circumstances surrounding the voluntary request to be discharged under the provision on Army Regulation 635-200, Chapter 10 are unknown. Notwithstanding the absence of records, the separation authority's approval provides the commanding general carefully considered the applicant's request. along with the preferred charges and their specifications, the supporting documentation, and the recommendations of the applicant's chain of command and the Staff Judge Advocate. The applicant received an under other than honorable conditions discharge, which is normally considered appropriate. unless merited by their overall record during the current enlistment period.

c. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court martial. A discharge under other than honorable conditions normally is appropriate, however, the separation authority may direct a general discharge if such is merited by the soldier's overall record during the current enlistment. A medical and mental examination was not

required but could have been requested by the service member. The applicant's AMHRR is void of evidence indicating whether the applicant requested either examination.

d. Neither the applicant nor the AMHRR provide documentation of a TBI diagnosis. They completed 4 years, 9 months, 2 days of total active service, with approximately four months remaining of their 12 month enlistment extension obligation.

e. 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 DoD and VA medical records, applicant's statement and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Mild TBI, Mild Neuro-Cognitive Disorder, PTSD, Schizophrenia, Schizoaffective DO.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the diagnoses of mTBI, Mild Neuro-Cognitive DO, PTSD were made during active service. VA medical records document that the applicant's diagnoses of PTSD, Schizophrenia and Schizoaffective DO are linked to active military 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, TBI and Schizophrenia. As there is an association between TBI, Schizophrenia, impaired impulse control, poor judgment, and inability to distinguish right from wrong due to the effects of both conditions on frontal lobe function, there is a nexus between these two conditions and his offenses of driving without license plates, engaging in a high speed chase and crashing into a tree.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition outweighed the basis for separation.

b. Response to Contention(s):

(1) Regarding the applicant's contention, in effect, at the time of their misconduct their behavior was altered due to a parachuting accident that rendered them unconscious for approximately 30 minutes causing TBI. The Board considered this contention and determined an upgrade was warranted based on the applicant's medical diagnosis.

(2) They never had a negative remark on record and was promoted to the rank/grade sergeant/E-5 within 3 years of enlisting in the service. The available records in their AMHRR provide the applicant was airborne qualified, foreign language qualified in Spanish, completed

combat life savers and basic leaders course, promoted to sergeant withing the first 4 years of their enlistment

The Board considered this contention during deliberations and determined an upgrade was warranted.

c. The Board determined the discharge is inequitable based on the circumstances surrounding the discharge (TBI and Schizophrenia). Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and no change to RE-Code.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. Based on a preponderance of evidence, the Board determined that the applicant's TBI and Schizophrenia mitigate the offenses of driving without license plates, engaging in a high speed chase and crashing into a tree.

(2) The Board voted to change the applicant's reason for discharge to Misconduct (Minor Infractions) under the same rationale, as the reason for discharge is inequitable. The SPD code associated with the new reason is JKN.

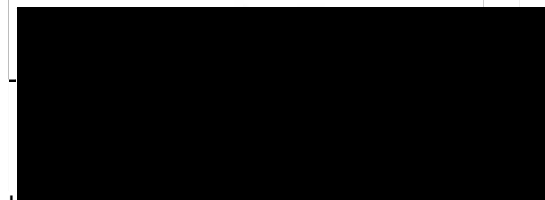
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / 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

Authenticating Official:

2/13/2025



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