

1. Applicant's Name: [REDACTED]

a. Application Date: 11 May 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 Bad Conduct. The applicant requests an upgrade to General (Under Honorable Conditions).

b. The applicant seeks relief contending, a lot of time has passed since they have been out of the military and it has given them the opportunity to reflect on the situation that occurred back in 2006.

(1) When they joined the Army back in 2003, they were so excited and did it for what seemed like the all the right reasons. They did not try to get a sign on bonus or a specific duty location, as they genuinely wanted to serve their country. They have multiple family members who have and are still serving, including three of their uncles. The applicant wanted to follow some of their family members and stand on the front line of history. They volunteered for everything they could. In Basic Training, the applicant was the squad leader, a guidon bearer, and they scored high on all of their PT tests. They as fully emersed in the Army life. Going into AIT, they had the same enthusiasm, however, was held back because they could not seem to grasp their MOS. They stood the course and doubled down on their studies and passed with flying colors the second time around.

(2) They were transferred to Fort Hood, TX where they stayed for a short while before being deployed. The applicant was placed with the 4th Infantry Division and they were on their way to Iraq. When they arrived, they immediately wanted to get to work, so again, the applicant volunteered to be a part of a team called the MITT (Military Intelligence Tactical Team). They were give the task of taking high ranking officials in and out of the city to meetings and to Iraqi training facilities. With this job, the applicant went on hundreds of missions as a bodyguard putting their life on the line, literally, to protect others. After doing this for about eight months it was time for them to go on leave, where they went home to their, then, spouse in Florida.

(3) While on this leave, their spouse fell ill, had to be hospitalized, and had surgery. As their spouse at the time, the applicant felt obligated to be there with [the spouse], accordingly, the applicant put in for a leave extension with their squad leader (SGT S.) and their extension was never filed. When they returned a coupe weeks later (on their own), they were court-martialed, locked up, and given a Bad Conduct Discharge, that now after years of thinking, they did not deserve. None of this seemed fair. So much has been taken away from the applicant and all they wanted to do was give all of themselves.

(4) It took the applicant so long to come forward because for a long time they did not think anyone would listen or care, however, they felt the need to speak up. The applicant provides their record speaks for itself, as they have never been in trouble while in the military, up until that point. They always served to the highest of their abilities and gave in to trouble, while in the military up until that point. They served to the highest of their abilities and gave it their all and even now out of the service, they still live with all of the Army Values that they were

given. The applicant only asks that this wrong to be made right and feel in their heart they are deserving of a General (Under Honorable Conditions).

c. Board Type and Decision: In a personal appearance conducted on 17 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable. 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, Combat, Quality) and concurred that the applicant also had severe matters surrounding his AWOL (wife hospitalized). 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 10 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: Court-Martial, Other / AR 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. Date of Discharge: 15 May 2008

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** NIF

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

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

(6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 October 2004 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / NIF

c. Highest Grade Achieved / MOS / Total Service: E-3 (PFC) / 96H10 Common Ground Station (CGS) Operator / 3 years, 3 months, 28 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (8 months according to the applicant)

f. Awards and Decorations: GWOTSM, ASR

g. Performance Ratings: NA**h. Disciplinary Action(s) / Evidentiary Record:**

(1) On 6 October 2004, the applicant enlisted in the Regular Army (RA) for 4 years as a PV2 (E-2). The Enlisted Record Briefs provides on 8 October 2005, they promoted to PFC (E-3). On 9 June 2006, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

(2) Special Court-Martial Order Number 10, dated 9 April 2007, provides the applicant did on or about 10 June 2006, with intent to shirk important service, naming returning to Iraq after R and R leave, quit their unit, to wit: D Company, Special Troops Battalion, 4th Infantry Division (M), APO, AE 09352, and did remain so absent in desertion until or on or about 26 July 2006.

(a) Plea: Guilty, except the words "with intent to shirk important service, namely returning to Iraq after R and R leave, quit" substituting therefore the words "without authority, absent [themselves] from," and except the words "in desertion." To the excepted words: Not Guilty. To the substituted words: Guilty. To the Charge: Not guilty, but guilty of a violation of Article 86. Finding: Guilty, except the words "with intent to shirk important service, namely returning to Iraq after R and R leave, quit" substituting therefore the words "without authority, absent [themselves] from," and except the words "in desertion." To the excepted words: Not guilty. To the substituted words. Guilty. To the Charge: Not guilty, but guilty of a violation of Article 86.

(b) Sentence was adjudged on 24 October 2006. To be reduced to the grade of Private (E-1), to be confined for 3 months, and to be discharged from the service with a Bad-Conduct Discharge. The sentence is approved as adjudged and, except for the part of the sentence extending to the Bad-Conduct, will be executed.

(c) On 24 October 2006, the applicant's duty status changed from "Present for Duty" to "Confined by Military Authorities."

(d) On 4 January 2007, their duty status changed from "Confined by Military Authorities" to "Present for Duty."

(3) Special Court-Martial Order Number 52, dated 13 March 2008, provides the applicant was sentenced to reduction to the grade of Private (E-1), confinement for three months, and a Bad-Conduct Discharge, adjudged on 24 October 2006, as promulgated in Special Court-Martial Order Number 10, dated 9 April 2007, has been finally affirmed. That portion of the sentence extending to confinement has been served. Article 71(c) having been complied with; the Bad-Conduct Discharge will be executed.

(4) On 6 May 2008, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects they were discharged accordingly on 15 May 2008,

- Authority: AR 635-200, Chapter 3
- Narrative Reason: Court-Martial, Other
- SPD Code: JJD
- Reentry Code: RE-4
- Service Characterization: Bad Conduct
- Total NET Active Service this Period: 3 years, 3 months, 28 days

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210016446**

- Remarks: Delayed Entry Program (9 July – 5 October 2004); excess leave (creditable for all purposes except pay and allowances) – 489 days: 13 January 2007 – 15 May 2008; the applicant has not completed their first full time of service.
- Lost Time: Under 10 USC 972: 26 June – 26 July 2006; 24 October 2006 – 4 January 2007
- Signature: Not available to sign.

i. Lost Time / Mode of Return: 3 months, 12 days

- 1 month, 1 day: AWOL (26 June – 26 July 2006) / NIF
- 2 months, 11 days: Confined by Military Authorities (24 October 2006 – 4 January 2007) / Returned to Military Control

j. Behavioral Health Condition(s):**(1) Applicant provided:** None**(2) AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Application for Correction of Military Record; Self-Authored Statement

6. POST SERVICE ACCOMPLISHMENTS: none submitted with this 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 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) Chapter 3, establishes policy and procedures for separating members with a dishonorable or bad conduct discharge; and provides that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial; and that the appellate review must be completed and the affirmed sentence ordered duly executed. Because relevant and material facts stated in a court-martial specification are presumed by the ADRB to be established facts, issues relating to the applicant's innocence of charges for which [they] were found guilty, cannot form a basis for relief.

(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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial, Other.

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.

g. Army Regulation 631-10 (Absence, Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings) provides policies and procedures for reporting unauthorized absentees and deserters, the administering of absent without leave (AWOL) personnel and deserters, returning absentees and deserters to military control and the surrendering of military personnel to civilian law enforcement authorities. When a soldier returns from an absence that is or appears to be unauthorized, the unit commander informally investigates whether disciplinary action should be taken and if the soldier be charge with time lost.

(1) Classification of an absence is dependent upon such factors as the following:

- Order and instructions, written/oral, the Soldier received before/during absence
- Age, military experience, and general intelligence of the Soldier
- Number and type of contact the Soldier had with the military absent
- Complete or incomplete results of a court-martial decision if any

(2) An absence immediately following authorized leave is classified as AWOL. Should the absence subsequently be reclassified, the soldier's leave is corrected to reflect the reclassified absence, except if the absence is caused by the following:

- Mental incapacity
- Detention by civilian authorities
- Early departure of a mobile unit due to operational commitments

h. Manual for Courts-Martial (2006 Edition), United States, states 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 laws is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 85 (desertion) states in subparagraph, the maximum punishment consists of dishonorable discharge, forfeiture of all pay and allowances and confinement for two years.

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 General (Under Honorable Conditions). The applicant's DD Form 214 provides the applicant received a Bad Conduct discharge, which is considered appropriate for a Soldier found guilty by a Special Court-Martial.

b. Based on the available evidence the applicant enlisted as a PV2, promoted to PFC, and according to the applicant, they served in Iraq for eight months, and took R and R leave and did not return to their deployment, due to their spouse being hospitalized and requiring surgery. The applicant was flagged for adverse action, charged with having been AWOL, and referred to Special Court-Martial. They were sentenced, reduced to PVT, confined for three months, and discharged under the provisions of AR 635-200, Chapter 3, Court-Martial, Other, with a Bad Conduct Discharge.

(1) They served 1 year, 8 months, and 4 days of their 4 year contractual obligation prior to the misconduct, which led to their discharge.

(2) The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency to moderate the severity of the punishment imposed.

c. Chapter 3, establishes policy and procedures for separating members with a dishonorable or bad conduct discharge; and provides that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial; and that the appellate review must be completed and the affirmed sentence ordered duly executed. Because relevant and material facts stated in a court-martial specification are presumed by the

ADRB to be established facts, issues relating to the applicant's innocence of charges for which [they] were found guilty, cannot form a basis for relief.

d. 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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. The applicant submitted the following additional document(s):

b. The applicant presented the following additional contention(s):

c. Counsel / Witness(es) / Observer(s):

10. 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s): The applicant seeks relief contending, a lot of time has passed since they have been out of the military and it has given them the opportunity to reflect on the situation that occurred back in 2006. The Board considered this contention and voted to grant relief.

(1) The applicant seeks relief contending, while on this leave, their spouse fell ill, had to be hospitalized, and had surgery. As their spouse at the time, the applicant felt obligated to be there with [the spouse], accordingly, the applicant put in for a leave extension with their squad leader (SGT S.) and their extension was never filed. When they returned a couple weeks later (on their own), they were court-martialed, locked up, and given a Bad Conduct Discharge, that now after years of thinking, they did not deserve. The Board considered this contention and voted to grant relief.

(2) The applicant contends, it took them so long to come forward because for a long time, they did not think anyone would listen or care, however, the applicant felt the need to speak up. The applicant provides their record speaks for itself, as they have never been in trouble while in the military, up until that point. They always served to the highest of their

abilities and gave in to trouble, while in the military up until that point. They served to the highest of their abilities and gave it their all and even now out of the service, they still live with all of the Army Values that they were given. The applicant only asks that this wrong to be made right and feel in their heart they are deserving of a General (Under Honorable Conditions). The Board considered this contention and voted to grant relief.

c. The Board determined the discharge is inequitable. 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, Combat, Quality) and concurred that the applicant also had severe matters surrounding his AWOL (wife hospitalized). 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 Board found sufficient evidence of in-service mitigating factors (Length, Combat, Quality) and concurred that the applicant also had severe matters surrounding his AWOL (wife hospitalized). 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.

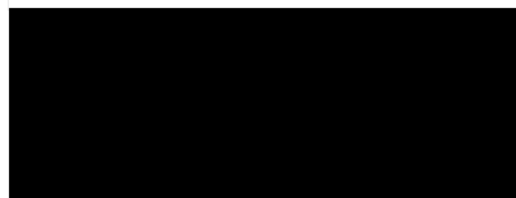
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. 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:

3/31/2025



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