

1. Applicant's Name: [REDACTED]**a. Application Date:** 22 April 2021**b. Date Received:** 28 April 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 the narrative reason for separation.

(2) The applicant seeks relief contending, they felt racially discriminated and punished without reason.

(3) A change is requested because their service-related disability led to their discharged and given a general (under honorable conditions) character of service. They were not diagnosed at the time of their discharge which is why they were acting out. They were not awarded a disability rating until July 2020.

b. Board Type and Decision: In a records review conducted on 04 December 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of the circumstances surrounding the discharge (OBHI diagnoses). 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, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. Please see Section 9 of this document for more detail regarding the Board's decision. The Board determined the reentry code is proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Minor Infractions) / Army Regulations 635-200, Paragraph 14-12A / JKN / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 19 March 2014

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 4 March 2014

(2) **Basis for Separation:** wrongfully failed to report to their appointed place of duty on numerous occasions between on or about 4 September 2013 and on or about 1 February 2014.

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

(4) **Legal Consultation Date:** 4 March 2014

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

(6) Separation Decision Date / Characterization: 6 March 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 17 July 2012 / 3 years, 23 weeks
- b. **Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 89
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 74D1O, Chemical Operations Specialist / 1 year, 8 months, 3 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 4856 (Developmental Counseling Form) dated 5 December 2013, reflects the applicant received event-oriented counseling from their squad leader to inform them of the recommendation for separation from the U.S. Army under the Uniform Code of Military Justice (UCMJ). The Key Points of Discussion states the squad leader informed the applicant that the Chain of Command has recommended them for separation under Army Regulation 635-200, chapter 14 for misconduct. This is based on numerous violations of Article 86 (Absence Without Leave), UCMJ, Article 91 (Insubordinate Conduct Toward a Noncommissioned Officer (NCO)), and Article 92 (Failure to Obey Order or Regulation). The applicant agreed with the information and signed the form.

(2) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 7 January 2014, reflects the applicant received nonjudicial punishment for six occurrences of failure to go to their place of duty, in violation of Article 86, UCMJ and one occurrence derelict in the performance of their duty in that they negligently failed to maintain accountability of their assigned weapon, in violation of Article 92, UCMJ. Their punishment consisted of a reduction in rank/grade from private first class/E3 to private two/E-2; forfeiture of \$396.00 of pay, and extra duty 14 days. The applicant elected to appeal and not to submit additional matters. On 13 January 2014, the reviewing judge advocate stated the proceedings were conducted in accordance with law and regulation and the punishments imposed were not unjust nor disproportionate to the offense committed. On 23 January 2014, the applicant's battalion commander considered all matters presented in the appeal and denied the applicant's appeal.

(3) A DA Form 3822 (Record of Mental Status Evaluation) dated 9 January 2014, reflects the applicant fit for full duty, including deployment. Section IV (Diagnoses) reflects diagnoses of depression and anxiety. The behavioral health provider stated no psychiatric issues were identified which would preclude a chapter 13 (Separation for Unsatisfactory Performance). Applicant is psychiatrically cleared for administrative action deemed appropriate by Command.

(4) A DD Form 2697 (Report of Medical Assessment) dated 27 January 2014, the applicant reported, compared to their last assessment/physical examination, their overall health is the same. The health care provider commented, "No Issues to address."

(5) A DD Form 2807-1 (Report of Medical History) dated 27 January 2014, the applicant checked "No" to all items to the question "Have you ever had or do you now have:" and the examiner commented "No issues to address."

(6) A DD Form 2808 (Report of Medical Examination) dated 27 January 2014, reflects the examiner marked "Normal" to all items examined, recorded the applicant has no physical profile restrictions, and in item 77 (Summary of Defects and Diagnoses) commented "Nothing significant."

(7) A memorandum, 172nd Chemical Company, 84th Explosive Ordnance Battalion, subject: Separation under Army Regulation 635-200, Chapter 14-12a, Minor Disciplinary Infractions, [Applicant], dated 4 March 2014, reflects the applicant's notification of initiating actions to separate them for Minor Disciplinary Infractions. The reason for the proposed actions is for, wrongfully failed to report to their appointed place of duty on numerous occasions between on or about 4 September 2013 and on or about 1 February 2014. The company commander recommended the applicant's service be characterized as general (under honorable conditions). On the same date, the applicant acknowledged receipt of separation notice and of the rights available to them.

(8) In the applicant's memorandum, subject: Election of Rights under Army Regulation 635-200, Paragraph 14-12a, Minor Disciplinary Infractions – [Applicant], dated 4 March 2014, the applicant states they have advised by their consulting counsel of the basis for the contemplated action to separate them for Minor Disciplinary Infractions; and its effect; of the rights available to them, and the effect of any action taken by them in waiving their rights. They understood they may expect to encounter prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them and they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected not to submit statements in their own behalf and requested consulting counsel.

(9) A memorandum, 172nd Chemical Company, 84th Explosive Ordnance Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12a, Minor Disciplinary Infractions, [Applicant], dated 13 March 2014, reflects the applicant's company commander recommended the applicant be separated from the Army prior to the expiration of their current term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant's actions are detrimental to unit cohesion and reflect poorly on the unit and the Armed Forces.

(10) A memorandum, Headquarters, 1st Sustainment Brigade, 1st Infantry Division subject: Separation under Army Regulation 635-200, Paragraph 14-12a, Minor Disciplinary Infractions, [Applicant], dated 6 March 2014, the separation authority reviewed the separation packet of the applicant and after careful consideration of all matters, directed the applicant be separated from the Army prior to the expiration of their current term of service. The separation authority directed their service be characterized as General (Under Honorable Conditions) and states after reviewing the rehabilitative transfer requirements, they determined the requirements are waived, as the transfer will serve no useful purpose or produce a quality Soldier.

(11) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 19 March 2014, with 1 year, 8 months, and 3 days of net active service this period. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private Two
- item 4b (Pay Grade) – E-2
- item 12i (Effective Date of Pay Grade) – 7 January 2014
- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKN
- item 27 (Reentry Code) - 3
- item 28 (Narrative Reason for Separation) – Misconduct (Minor Infractions)

i. Lost Time / Mode of Return: NA

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs (VA) Rating Decision reflects the applicant's service connection for schizoaffective disorder, bipolar type (claimed as schizophrenia and bipolar disorder) was granted with an evaluation of 100-percent, effective 13 July 2020.

(2) AMHRR Listed: MSE/BHE as described in previous paragraph 4h(3).

5. APPLICANT-PROVIDED EVIDENCE:

- DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Memorandum, subject: Records Review Request to Army Discharge Review Board with 11 exhibits

6. POST SERVICE ACCOMPLISHMENTS: Completed the Western Pacific Truck School for Entry Level Driver Training.

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

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

b. Multiple Department of Defense (DoD) Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy

Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

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

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

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

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 September 2011, 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 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

(5) 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. Paragraph 14-12a (Minor Disciplinary Infractions), stated, Soldiers are subject to action per this section for a pattern of misconduct consisting solely of minor military disciplinary infractions.

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

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

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DoD Instructions 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. Manual for Courts-Martial, United States (2012 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating Article 86 (Absence Without Leave).

h. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

8. SUMMARY OF FACT(S):

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

b. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment under the UCMJ for, multiple occurrences of failure to go at the time prescribed to their place of duty, in violation of Article 86 and derelict in the performance of duties, in violation of Article 92, and was involuntary discharged from the U.S. Army. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12a, by reason of Misconduct (Minor Infractions), with a characterization of service of general (under honorable conditions). The applicant completed 1 year, 8 months, and 3 days of net active service. The applicant did not complete their first full term of service of 3-years and 23-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 diagnoses of depression and anxiety; however, was psychiatrically cleared for administrative action. The applicant provided VA Rating Decision reflecting a diagnosis of schizoaffective disorder, bipolar type, granted with an evaluation of 100-percent, effective 13 July 2020, 10 years after their discharge from the U.S. Army.

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 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: Schizoaffective Disorder Bipolar Type, Depression, Anxiety Disorder NOS.

(2) Did the condition exist, or experience occur during military service? **Yes.** Depression, Anxiety Disorder NOS, and reported psychosis and other thought disorder symptoms.

(1) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that thought disordered symptoms, even in the prodromal stage, can lead to disorientation, time blindness, inappropriate reactions, behaviors driven by hallucinations, difficulty understanding/retaining/executing instructions, losing items, etc.

(2) 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 or experience outweighed the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends they felt racially discriminated and punished without reason. The applicant contends a change is requested because their service-related disability led to their discharged. The applicant contends they were not diagnosed at the time of their discharge which is why they were acting out. They were not awarded a disability rating until July 2020. The Board liberally considered this contention and determined that it was valid due to the applicant's Schizoaffective Disorder Bipolar outweighing the applicant's multiple FTR offenses. Therefore, a discharge upgrade is warranted.

d. The Board determined: The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length) and concurred with the conclusion of the medical advising official. Based on liberal consideration, symptoms presenting prior to and during the basis, and nexus between symptoms and outlined misconduct, the basis is mitigated. Specifically, thought disordered symptoms, even in the prodromal stage, can lead to disorientation, time blindness, inappropriate reactions, behaviors driven by hallucinations, difficulty understanding/retaining/executing instructions, losing items, etc. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warranted an upgraded.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Schizoaffective Disorder Bipolar outweighed the applicant's misconduct of FTRs. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(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: Secretarial Authority / JFF
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:



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