

1. Applicant's Name: [REDACTED]**a. Application Date:** 24 September 2021**b. Date Received:** 4 October 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.

b. The applicant seeks relief contending, their character of service does not reflect the entirety of their military service. During the years they were in, the applicant served the Nation with pride and honor and considered themselves to be an outstanding Soldier. They made a reckless and selfless mistake that has truly affected their life in a negative way, and the applicant can say from the bottom of their heart, they have learned from said mistake. They have attached supporting documents such as self-authored statements and character statements from previous leadership, reflecting the person they were while serving their beautiful Nation.

c. Board Type and Decision: In a records review conducted on 9 October 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and changed the reentry code to RE-3.

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: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12C / JKQ / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 31 March 2020

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 9 January 2020

(2) Basis for Separation: driving under the influence (DUI), with a blood alcohol content (BAC) of 0.172%

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

(4) Legal Consultation Date: 22 January 2020

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 18 March 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 17 February 2016 / 5 years

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 (SPC) / 31B10 Military Police / 4 years, 1 month, 15 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AGCM, GWOTSM, KDSM, NCO-PDR, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 17 February 2016, the applicant enlisted in the Regular Army (RA) for 5 years as a PVT. The Enlisted Record Brief provides the applicant promoted to PFC (E-3) within nine months; on 1 October 2017, they promoted to SPC (E-4). On 17 May and 25 June 2019, the applicant was flagged, Suspend Favorable Personne Actions (FLAG) for law enforcement investigation (MA) and field-initiated involuntary separation (BA).

(2) On 17 May 2019, Georgia State Patrol observed the applicant driving 76 mph in a 55 mph zone, conducted a traffic stop on the vehicle, made contact with them, and could smell a strong odor of an alcoholic beverage emitting from the vehicle. The officer observed several beers in a box in the floorboard behind them and asked the applicant to step the read of the vehicle for further investigation. The officer also observed bloodshot watery eyes, slow slurred speech, and was unsteady on their feet. The applicant consented to Standardized Field Sobriety Testing (SFST) and they replied "yes". After failing the evaluation, they were administered a preliminary breathalyzer, which resulted in a BAC of 0.172%. They were arrested and charged for DUI; speeding 75 mph in a 55 mph zone; and for a window tint violation. They were transported to the County Jail and had their blood drawn. They were transferred to Military Police and was placed under custody for the above charges (DUI, speeding, and a window tint violation). The applicant was released to their unit.

(3) On 11 and 27 November 2019, the applicant completed their separation examinations at Hawks Troop Medical Clinic, Fort Stewart, GA. Their assessment provides their health has worsen since their last physical; they fell on their knee during PRT and did not seek medical treatment; their dental problems were listed as "near gingivitis"; and they were uncertain about seeking disability from Veteran Affairs (VA).

(a) Their medical history, block 29 lists the following explanations of "yes" answers:

- 10f, i: during basic training they had bronchitis; during their time in South Korea, they would have chronic coughing

- 11f: they currently wear both contact lenses and glasses
- 12a, f, h, i: right wrist sometimes hurt; bunion on their right big toe
- 17d: needed melatonin to sleep sometimes
- 22: wisdom teeth surgery

(b) On the medical history, in block 30a, the examiner confirms the issues the applicant identified and noted their sinusitis was resolved upon the applicant returning to the U.S. from Korea; their right wrist pain has not been evaluated. Their medical examination qualified them for service and separation with no diagnoses listed or recommendations provided.

(4) On 9 January 2020, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12C, Misconduct (Serious Offense), for driving 75 mph in the 55 mph zone and DUI, with a BAC of 0.172%. The commander recommended a General (Under Honorable Conditions) characterization of service. The same day, the applicant acknowledged receipt of their separation notice.

(5) On 22 January 2020, the applicant elected to consult with legal and elected to submit a statement on their behalf. Defense counsel endorsed their election, acknowledging the applicant was counseled on the possible effects of their separation and the rights available to them. On 7 February 2020, the battalion commander recommended the applicant to be retained.

(6) On 18 March 2020, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service. The next day, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant was discharged accordingly on 31 March 2020, with 4 years, 2 months, and 27 days of total service. They provided their electronic signature and has not completed their first full term of service.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** On 27 November 2019, the applicant completed a mental status evaluation at Embedded Behavioral Health, Fort Stewart, GA, which provided the following BH diagnosis: Alcohol Abuse, Uncomplicated; however, they did not have a BH condition of sufficient severity to impair their judgement and reliability or prevent them from serving. They could understand and participate in administrative proceedings and could appreciate the difference between right and wrong. There were no recommendations provided.

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; Self-Authored Statement; Battalion Commander's Separation Recommendation; Self-Authored Separation Statement; Four Character Letters

a. A letter of support from SGT, dated 15 January 2020, provided they served with the applicant and deployed with them to Korea for nine months. They witnessed the applicant grow as a Soldier, earning their promotable status, mentored other Soldiers, and took many college courses, striving and encouraging others to do the same.

b. A letter of support from SFC, dated 15 January 2020, provides they were the applicant's platoon sergeant for over two years, contending they were a great Soldier who consistently performed in the top 10% of Soldiers SFC has served with. The applicant was fearless when it came to taking care of Soldiers...even provided guidance to a Soldier with suicidal ideations; the Soldier is still here because of the applicant's counsel. They were able to teach, guide, and instruct Soldiers on a breath of doctrine and their natural ability to express complicated and technical information clearly was well above the position in which the applicant served.

c. On 19 January 2020, the applicant's former squad leader (SSG), provides the applicant brought Soldiers together as a team, raising morale amongst their peers...they were affectionately nicknamed "Sergeant Major" for their ability to make consistent on the spot corrections. The applicant was extremely disappointed with themselves, was glad no one was harmed, and they wanted to change. They looked forward to getting help from Substance Use Disorder Clinical Care (SUDCC). Throughout the proceedings, the applicant has remained the same caliber of Soldier, has remained a great asset, and they were still continuing to make positive changes.

d. On 22 January 2020, the applicant's former platoon leader (1LT), provides the applicant was one of their top performers, possessed a level of tactical and technical expertise which is normally observed amongst squad leaders. They had a tremendous work ethic to accomplish every mission, from menial tasks to complicated ones, such as facilitating movement during wet-gap crossings, they consistently demonstrated the highest level of professionalism, military bearing, and was universally respected by both superiors and their peers. Moreover, on countless occasions, the applicant provided comfort and counsel to their fellow Soldiers who were struggling with personal stressors during their Korean rotation. With the allegations against the applicant, the platoon leader believed they had potential to remain and excel in the Army. It is their hope that the applicant's positive impact and performance, will permit continued service.

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 (Active Duty Enlisted Administrative Separations), 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) 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 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. 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. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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

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

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per 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. Manual for Courts-Martial (2019 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 law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 113 (drunken or reckless operation of a vehicle) states in the subparagraph, the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement for six months.

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. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

(1) The evidence provides the applicant enlisted in the RA, promoted to SPC, and served for 3 years and 3 months, prior to the misconduct which led to their separation. They were charged in violation of Article 112, UCMJ, for drunk driving (DUI), with a BAC 0.172%. Separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12C, Misconduct (Serious Offense), with a General (Under Honorable Conditions) characterization of service. The applicant elected, consulted with legal, and submitted a statement on their behalf. Defense counsel advised them of the effects of their separation, their rights available to them, and the right to waive those rights.

(2) A mental status evaluation diagnosed them with alcohol abuse, uncomplicated and was enrolled in SUDCC. They were medically cleared for service and separation without any recommendations. They served 4 years, 1 month, and 14 days of their 5 year contractual obligation.

b. 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.

c. 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? **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. Prior Decisions Cited: None

c. Response to Contentions: The applicant seeks relief contending, their character of service does not reflect the entirety of their military service. During the years they were in, the applicant served the Nation with pride and honor and considered themselves to be an outstanding Soldier. They made a reckless and selfless mistake that has truly affected their life in a negative way, and the applicant can say from the bottom of their heart, they have learned from said mistake. They have attached supporting documents such as self-authored statements and character statements from previous leadership, reflecting the person they were while serving their beautiful Nation.

The Board acknowledged this contention during proceedings.

(1) A letter of support from a NCO (SGT) provided they served with the applicant and deployed with them to Korea for nine months. They witnessed the applicant grow as a Soldier, earning their promotable status, mentored other Soldiers, and take many college courses, striving and encouraging others to do the same.

(2) A letter of support from an NCO (SFC) provides they were the applicant's platoon sergeant for over two years, contending they were a great Soldier who consistently performed in the top 10% of Soldiers the SFC has served with. The applicant was fearless when it came to taking care of Soldiers...even provided guidance to a Soldier with suicidal ideations; the Soldier is still here because of the applicant's counsel. They were able to teach, guide, and instruct Soldiers on a breadth of doctrine and their natural ability to express complicated and technical information clearly, was well above the position in which the applicant served.

(3) The applicant's former squad leader (SSG) provides the applicant brought Soldiers together as a team, raised morale amongst their peers...they were affectionately nicknamed "Sergeant Major" for their ability to make consistent on the spot corrections. The applicant was extremely disappointed with themselves, was glad no one was harmed, and they wanted to change. They looked forward to getting help from Substance Use Disorder Clinical Care (SUDCC). Throughout the proceedings, the applicant has remained the same caliber of Soldier, has remained a great asset, and they were still continuing to make positive changes.

(4) The applicant's former platoon leader (1LT) provides the applicant was one of their top performers, possessed a level of tactical and technical expertise which is normally observed amongst squad leaders. They had a tremendous work ethic to accomplish every mission, from menial tasks to complicated ones, such as facilitating movement during wet-gap crossings, they consistently demonstrated the highest level of professionalism, military bearing, and was universally respected by both superiors and their peers. Moreover, on countless occasions, the applicant provided comfort and counsel to their fellow Soldiers who were struggling with personal stressors during their Korean rotation. With the allegations against the applicant, the platoon leader believed they had potential to remain and excel in the Army. It is their hope that the applicant's positive impact and performance, will permit continued service.

d. The Board determined: that the characterization of service was inequitable based on the applicant's length and quality of service. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and changed the reentry code to RE-3.

e. Rationale for Decision:

(1) The Board voted to upgrade the characterization of service to Honorable based on the applicant's length and quality of service outweighing the offense of one-time DUI. The applicant had the support of their chain of command (the applicant's Battalion Commander recommended the applicant be retained), the applicant took full responsibility for the misconduct and furnished good letters of recommendation and support.

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

(3) The RE code will change to RE-3.

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:** RE-3
- e. **Change Authority to:** AR 635-200

Authenticating Official:

10/16/2024

