

1. Applicant's Name: [REDACTED]**a. Application Date:** 12 January 2023**b. Date Received:** 13 January 2023**c. Counsel:** None

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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 of their characterization of service to honorable.

(2) The applicant seeks relief stating while they were on active duty their depression worsened, it worsened to the point where they were drinking almost daily even though they were underage. That was 10 years ago, and they have matured since then. They are now in the process of a career change into law enforcement. Upgrading their character of service to honorable will not only benefit them, but also their family and community.

b. Board Type and Decision: In a records review conducted on 24 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's circumstances surrounding the discharge (OBH and PTSD diagnoses). 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. No change to the reentry code.

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 20 June 2013**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** on or before the applicant's acknowledgment of receipt of separation notice on 29 May 2013

(2) **Basis for Separation:** possessed alcohol for their own use while under 21 years of age on or about 25 June 2012 and 18 December 2012 and dishonorably failed to pay their debt on or about 22 October 2012, 31 October 2012 and 14 March 2013.

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

(4) **Legal Consultation Date:** 30 May 2013

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

(6) Separation Decision Date / Characterization: 10 June 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 22 June 2011 / 5 years

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 103

c. Highest Grade Achieved / MOS / Total Service: E-3 / 12T1O, Technical Engineer / 1 year, 11 months, 29 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Five DA Forms 4856 (Developmental Counseling Form), dated 26 June 2012 through 18 December 2012, reflects the applicant received event-oriented counseling for various acts of misconduct to include, possession of alcohol, lied to a senior noncommissioned officer (NCO), failed to pay their monthly Exchange Credit Program bill, disobeyed a lawful order, and for being under the influence of alcohol.

(2) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ), dated 3 January 2013, reflects the applicant received nonjudicial punishment for, on or about 18 December 2012, possess alcohol for their own use while under 21 years of age. Their punishment consisted of a reduction to the rank/grade of private two/E-2, forfeiture of \$396.00 pay, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(3) Six DA Forms 4856, dated 14 March 2013 through 3 April 2013, reflects the applicant received event-oriented counseling for an outstanding balance on their Government Travel Card, frequent indebtedness, lying, recommendation for separation, failing a room inspection, and a lack of discipline in their personal life.

(4) A DA Form 3822 (Report of Mental Status Evaluation), dated 3 April 2013, reflects the applicant as fit for duty, including deployment.

(a) Section IV (Impressions) reflects the applicant can understand and participate in administrative proceedings, can appreciate the difference between right and wrong, and meets medical retention requirements (i.e., does not qualify for a Medical Evaluation Board).

(b) Section V (Diagnoses) reflects an Axis I (Psychiatric Conditions) of Adjustment Disorder with anxiety and depression.

(c) Section VI (Proposed Treatments) reflects the applicant's follow-up appointment with behavioral health on 22 April 2013.

(d) Section VIII (Additional Comments) reflects the applicant has been screened for post-traumatic stress disorder (PTSD) and traumatic brain injury. These conditions are either not present or, of present, do not meet criteria for a medical evaluation board. Possible PTSD symptoms and history of a concussion predates military service and is not service related.

(5) A DD Form 2808 (Report of Medical Examination), dated 10 April 2013, reflects the applicant was qualified for service.

- item 74b (Physical Profile) reflects the applicant's ratings of a temporary "3" under the Lower Extremities category, which expired on 9 September 2012
- item 77 (Summary of Defects and Diagnoses) reflects multiple physical diagnoses and behavior health diagnoses of major depression, single episode

(6) A memorandum, Headquarters and Headquarters Company, 19th Engineer Battalion, subject: Separation under Army Regulation 635-200, Chapter 14-12b, A Pattern of Misconduct, [Applicant], undated, notified the applicant of initiating actions to separate them for a Pattern of Misconduct, for misconduct described in previous paragraph 3c(2). On 29 May 2013, the applicant acknowledged receipt of their separation notice.

(7) On 30 May 2013, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected not to submit statement in their behalf.

(8) A memorandum: Headquarters and Headquarters Company, 19th Engineer Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12b, A Pattern of Misconduct, [Applicant], undated, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The commander states they do not consider it feasible or appropriate to accomplish other disposition and the separation does not involve a medical condition that is related to a sexual assault, to include PTSD. Separation is in the best interest of both the Army and of the applicant.

(9) A memorandum, Headquarters, U.S. Army Garrison Command, Fort Knox, subject: Separation under Army Regulation 635-200, Chapter 14-12b, A Pattern of Misconduct, [Applicant], 10 June 2013, the separation authority directed the applicant be separated from the Army prior to the expiration of current term of service and recommended their service be characterized as General (Under Honorable Conditions).

(10) An Enlisted Record Brief, dated 11 June 2013, reflects the applicant was advanced to the rank/grade of private first class/E-3 on 22 June 2011 and reduced to the rank/grade of private two/E-2 on 3 January 2013.

(11) On 20 June 2013, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 1 year, 11 months, and 29 days of net active service this period and they did not complete their first full term of service of 5 years.

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

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

(1) **Applicant provided:** excerpts of VA Medical Record reflecting the applicant's 50 percent disability rating for major depression disorder

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

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- VA Medical Record excerpts, reflecting the applicant's diagnosis of Major Depression Disorder

6. POST SERVICE ACCOMPLISHMENTS: none submitted with application.

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 Instruction 1332.28.

d. Army Regulation 40-501 (Standards of Medical Fitness), dated 4 August 2011, governed medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Chapter 7 (Physical Profiling) prescribed a system for classifying individuals according to functional abilities.

(1) The functions have been considered under six factors designated "P-U-L-H-E-S":

- P – Physical Capacity or Stamina
- U – Upper Extremities
- L – Lower Extremities
- H – Hearing and Ears
- E – Eyes
- S – Psychiatric

(2) Four numerical designations are used to reflect different levels of functional capacity. The basic purpose of the physical profile serial is to provide an index to overall functional capacity. Therefore, the functional capacity of a particular organ or system of the body, rather than the defect per se, will be evaluated in determining the numerical designation 1, 2, 3, or 4.

- an individual having a numerical designation of "1" under all factors is considered to possess a high level of medical fitness
- a physical profile designator of "2" under any or all factors indicates that an individual possesses some medical condition or physical defect that may require some activity limitations

- a profile serial containing one or more numerical designators of "3" signifies that the individual has one or more medical conditions or physical defects that may require significant limitations – the individual should receive assignments commensurate with his or her physical capability for military duty
- a profile serial containing one or more numerical designators of "4" indicates that the individual has one or more medical conditions or physical defects of such severity that performance of military duty must be drastically limited

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 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 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(6) Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

(7) 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.

f. 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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, (Pattern of Misconduct).

g. 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.

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. A review of the available evidence provides the applicant received event-oriented counseling on multiple acts of misconduct and nonjudicial punishment for possession of alcohol for their own use while under 21 years of age. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of a pattern of misconduct, with a characterization of service of general (under honorable conditions). They only completed 1 year, 11 months, and 29 days of their 5-year service obligations.

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 Army Military Human Resource Record provides documentation of a diagnosis of adjustment disorder with anxiety and depression during the applicant's military service. Possible PTSD symptoms and history of a concussion predates military service and is not service related. The applicant's post-service VA medical records reflects their diagnosis of Major Depressive Disorder.

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: the applicant held in-service diagnoses of MDD and Adjustment Disorder. The applicant is 100% service connected for MDD; however, the VA has one C&P diagnosing service aggravated PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held in-service diagnoses of MDD and Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the service aggravated PTSD and nexus between trauma and substance use, underage drinking is mitigated. PTSD does not mitigate debt, but compassion could be applied as it related to MDD and depressive symptoms impact on motivation, planning, and concentration.

(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 PTSD diagnosis and nexus between trauma and substance use outweighs the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends while they were on active duty their depression worsened, it worsened to the point where they were drinking almost daily even though they were underage. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's the underage drinking is mitigated.

(2) The applicant contends they have matured since then. They are now in the process of a career change into law enforcement. Upgrading their character of service to honorable will not only benefit them, but also their family and community. The Board considered this contention non-persuasive during its deliberations.

d. The Board determined the discharge is inequitable based on the applicant's circumstances surrounding the discharge (OBH and PTSD diagnoses). 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. No change to the reentry code.

e. Rationale for Decision:

(1) Per the Medical Advisor, based on available medical records, the applicant held in-service diagnoses of MDD and Adjustment Disorder. He was assessed for PTSD and determined not to meet criteria as there were only minor symptoms, not impacting work and focus was chronic bereavement. The applicant is 100% service connected for MDD; however, the VA has one C&P diagnosing service aggravated PTSD. Based on liberal consideration and the PTSD diagnosis, irrespective of service connection, the underage drinking is mitigated. PTSD would not mitigate failure to pay debt, but compassion could link MDD given symptoms of motivation, planning, and concentration. 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 also considered the applicant's record of service, the frequency and nature of the misconduct and the reason for separation. The Board found per the medical advisor opine that due to the applicants PTSD diagnosis the underage drinking is mitigated. Although the failure to pay debts is not mitigated there is a link for loss of motivation for planning. The Board voted 5-0 to accept the B/I and upgrade the separation and reason code

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(2) The Board voted not to change the applicant's reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of 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:

11. Issue a New DD-214: Yes

12. Change Characterization to: Honorable

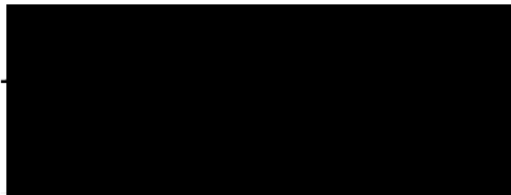
13. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN

14. Change RE Code to: No change

15. Change Authority to: AR 635-200

Authenticating Official:

2/4/2024



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