

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 23 October 2022
- b. **Date Received:** 16 November 2022
- 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 and a narrative reason change.

b. The applicant seeks relief contending, in effect, the determination of the prior Board's decision was not equitable.

c. **Board Type and Decision:** In a telephonic personal appearance hearing conducted on 8 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the applicant's discharge (Chronic Adjustment Disorder diagnosis mitigating the failure to obey lawful orders, failure to be in the right uniform, and failure to be at the appointed place of duty on numerous occasions misconduct) and the post-service accomplishments mitigating the making a false official statement misconduct. 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 RE code was 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 19 July 2018

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 29 May 2018

(2) **Basis for Separation:** The applicant was informed of the following reasons: By the applicant's pattern of behavior, it was evident that the applicant lacked the motivation to remain in the United States Army. The applicant failed to obey lawful orders; failed to be in the right uniform; made a false official statement and failed to be at the appointed place of duty on numerous occasions.

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

(4) **Legal Consultation Date:** 29 May 2018

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

**(6) Separation Decision Date / Characterization:** 17 June 2018 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 3 January 2017 / 4 years, 32 weeks

**b. Age at Enlistment / Education / GT Score:** 20 / High School Graduate / 104

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 14G1P, Air Defense Battle Management System Operator / 1 year, 6 months, and 17 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** NDSM, GWOTSM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** Six developmental counseling forms for dissatisfactory and sub-satisfactory performance; lateness, failure to bring issues to the chain of command, and failing to provide an appointment slip; disrespecting and lying to a commissioned officer; disrespecting a noncommissioned officer; and hurting unit readiness.

**(2)** The applicant was flagged for adverse action (AA) on 8 March 2018.

**(3)** FG Article 15, 23 March 2018, for dereliction in the performance of duties by willfully failing to be in the proper uniform after attending a medical appointment on or about 7 March 2018; and make a false official statement on or about 2 February 2018 to Second Lieutenant D\_\_ N\_\_, to wit: "Nothing happened at the aid station, everything was fine." The punishment consisted of a reduction from E-3 to E-2; forfeiture of \$428.00 pay; and extra duty and restriction for 14 days. On 29 March 2018, the applicant appealed and on 5 April 2018 the applicant's appeal was denied.

**(4)** On 3 April 2018, the applicant was counseled on being flagged due to pending involuntary separation from the Army and an elimination - field initiated (BA) was imposed.

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

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

**(1) Applicant provided:**

**(a)** Behavioral health medical documents, reflecting the applicant was under care for adjustment disorder with mixed anxiety and depressed mood while in the Army.

(b) VA disability rating decision, 21 August 2018, reflecting the applicant was rated 70 percent disability for adjustment disorder with mixed anxiety and depressed mood with insomnia disorder (also claimed as anxiety/depression/sleep disturbances).

**(2) AMHRR Listed:**

(a) Report of Medical History, 12 April 2018, the examining medical physician noted in the comments section: Currently under behavioral healthcare, undergoing chapter 5-17.

(b) Report of Mental Status Evaluation, 12 April 2018, reflects the applicant was psychologically cleared for any administrative actions deemed appropriate by the command. The applicant could understand the difference between right and wrong and could participate in the proceedings. There was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels and these diagnoses do not constitute matters in extenuation that relate to the basis for administrative separation (did not significantly contribute to the reason for separation). The applicant was diagnosed with: Adjustment Disorder with mixed disturbance of emotions and conduct.

**5. APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 293; DD Form 2870; active duty medical records; two character references; VA Rating Decision; VA Summary of Benefits letter; Associates Degree; Emergency Medical Technician License; American Heart Association Advanced Cardiovascular Life Support Program certification.

**6. POST SERVICE ACCOMPLISHMENTS:** Associate of Arts with honors, emergency medical technician, and certified in American Heart Association Advanced Cardiovascular Life Support.

**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), 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) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(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.

(5) Paragraph 14-3, prescribes 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.

(6) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian 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 Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "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.

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.

**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 and a narrative reason change. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 1 year, 6 months, 17 days. The applicant received seven counselings for various acts of misconduct or poor performance within 4 months and a FG Record of Proceedings under Article 15 for failing to be in the proper uniform and lying. The applicant was discharged with a general (under honorable conditions) characterization of service on 19 July 2018.

c. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1, SPD Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant contends, in effect, the determination of the prior Board's decision was not equitable. The applicant specified on the application case AR20210003208.

e. The character letters provided with the application express concern for the applicant's behavioral health while in the Army and recommended that the applicant receive an honorable discharge for honorable service. One of the letters spoke highly of the applicant's accomplishments while serving stating the applicant was promoted to E-3 in basic training, was the honor graduate in advanced individual training, and earned jump wings.

f. 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):** N/A

b. **The applicant presented the following additional contention(s):** The applicant provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.

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

**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? **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/experiences: Chronic Adjustment Disorder (CAD) (70%SC). [Note-Army diagnosis of Adjustment Disorder with mixed disturbance of emotions and conduct is subsumed under CAD diagnosis].

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that VA service connection for Chronic Adjustment Disorder establishes it occurred and/or began during active service.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a BH condition, Chronic Adjustment Disorder, which mitigates some of his misconduct. As there is an association between Chronic Adjustment Disorder, lack of motivation, oppositional behaviors and avoidant behaviors, there is a nexus between his diagnosis of Chronic Adjustment Disorder and his lack of motivation to remain in the Army, his failure to obey orders (including his failure to be in the correct uniform) and his failure to be at an appointed place of duty. Chronic Adjustment Disorder does not mitigate his offense of making false official statement because Chronic Adjustment Disorder does not affect one's ability to distinguish right from wrong and act in accordance with the right.

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

**b.** Response to Contention(s): The applicant contends, in effect, the determination of the prior Board's decision was not equitable. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Chronic Adjustment Disorder diagnosis fully outweighing the applicant's the failure to obey lawful orders, failure to be in the right uniform, and failure to be at the appointed place of duty on numerous occasions portion of the basis of separation and the applicant's post service accomplishments fully outweighing the making a false official statement portion of the basis for separation.

**c.** The Board determined the discharge is inequitable based on the circumstances surrounding the applicant's discharge (Chronic Adjustment Disorder diagnosis mitigating the failure to obey lawful orders, failure to be in the right uniform, and failure to be at the appointed place of duty on numerous occasions misconduct) and the post-service accomplishments mitigating the making a false official statement misconduct. 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 RE code was 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 the applicant's Chronic Adjustment Disorder mitigated the applicant's misconduct of failure to obey lawful orders, failure to be in the right uniform, and failure to be at the appointed place of duty on numerous occasions and the post-service accomplishments mitigated the making a false official statement misconduct. Thus, the prior characterization is no longer appropriate.

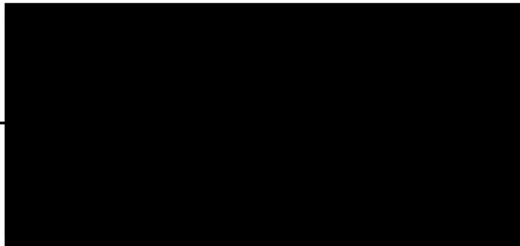
**(2)** The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

**(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 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

**Authenticating Official:**



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