

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 27 July 2023
- b. **Date Received:** 28 July 2023
- 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 under other than honorable conditions. The applicant requests an upgrade to honorable, and changes to the SPD code and narrative reason.

(2) The applicant seeks relief contending, in effect, the applicant was denied treatment for cancer after surgery, denied a visit to their dying sibling, and endured threats and harassment from the leadership. The applicant was held against their will and their life was threatened. The applicant was restricted to the barracks for 4 hours without punishment by an Article 15. After the Red Cross and the Inspector General got involved in reference to the applicant's sibling; the applicant received threats and harassment from the command. When the applicant reported that their life was in danger to a senior officer, the applicant received more threats. The applicant went AWOL and eventually surrendered to military authorities. The applicant was then threatened into signing a request for a Chapter 10. The applicant takes responsibility for going AWOL. The applicant was diagnosed with PTSD and other mental health.

b. Board Type and Decision: In a telephonic personal appearance hearing conducted on 5 March 2024, and by a 3-2 vote, the Board, based on the applicant's length of service, and the circumstances surrounding the discharge (Post-Traumatic Stress Disorder mitigating the absent without leave basis for separation), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

Please see Section 10 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 27 March 2009

c. Separation Facts:

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AR20230009603

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 22 January 2009, the applicant was charged with violating Article 86, Uniform Code of Military Justice (UCMJ), for being AWOL from on or about 8 October 2008 until on or about 19 January 2009.

(2) Legal Consultation Date: 26 January 2009

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 9 March 2009 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 11 January 2008 / 3 years and 26 weeks

b. Age at Enlistment / Education / GT Score: 34 / High School Graduate / 91

c. Highest Grade Achieved / MOS / Total Service: E-2 / None / 3 years, 8 months, and 20 days

d. Prior Service / Characterizations: RA, 11 October 1994 - 23 November 1994 / UNC
(Break in Service)
ARNG, 9 March 2001 - 18 January 2003 / UNC
(Break in Service)
ARNG, 13 July 2004 - 2 May 2005 / UNC

e. Overseas Service / Combat Service: None

f. Awards and Decorations: None

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 8 October 2008, the applicant's duty status changed from present for duty (PDY) to AWOL, effective 8 October 2008.

(2) On 7 November 2008, the applicant's duty status changed from AWOL to dropped from rolls (DFR), effective 7 November 2008 and was considered a deserter.

(3) On 19 January 2009, the applicant surrendered to military authorities and returned to military control.

(4) On 22 January 2009, the applicant's duty status changed from DFR to PDY, effective 19 January 2009. A Charge Sheet shows, charges were preferred against the applicant for being AWOL from on or about 8 October 2008 until on or about 19 January 2009.

(5) On 26 January 2009, the applicant received consultation with legal counsel, and voluntarily requested in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a

lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The applicant elected not to submit a statement in their own behalf.

(6) On 20 February 2009, the commander recommended the applicant be discharged with an other than honorable conditions character of service.

(7) The applicant's Enlisted Record Brief, dated 12 March 2009, shows the applicant was flagged for adverse action (AA), effective 8 July 2008. The applicant was reduced from E-2 to E-1 effective 9 March 2009.

i. **Lost Time / Mode of Return:** 3 months and 11 days (AWOL, 8 October 2008 - 18 January 2009) / Surrendered to Military Authorities

j. Behavioral Health Condition(s):

(1) **Applicant provided:** Highland Rivers Comprehensive Assessment shows on 29 June 2016, the applicant was diagnosed with PTSD unspecified, major depression disorder, recurrent severe without psychotic features, and anxiety disorder unspecified.

(2) **AMHRR Listed:** None

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; self-authored email statement; self-authored letter; Highland Rivers Comprehensive Assessment; and GA Peace Officer Standards and Training Council Letter.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the 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), 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), provides the basic authority for the separation of enlisted personnel.

(1) 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.

(2) 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.

(3) Paragraph 3-7c states 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 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(5) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(7) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

e. Army Regulation 635-5-1 (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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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 changes to the SPD code and narrative reason. 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 11 months and 6 days during this period. On 22 January 2009, charges were preferred against the applicant for being AWOL from on or about 8 October 2008 until on or about 19 January 2009. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

c. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions of Chapter 10, AR 635-200, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be 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 requests the SPD code to be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (SPD Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 10, is "KFS."

e. The applicant contends, in effect, the applicant was denied treatment for cancer after surgery, denied a visit to the applicant's dying sibling, and endured threats and harassment from the leadership. The applicant did not provide evidence but states the applicant reported the threats and harassment to a senior officer, however, was faced with more threats. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

f. The applicant selected PTSD and other mental health on their application. The applicant provided a Highland Rivers Comprehensive Assessment dated 29 June 2016, showing the applicant was diagnosed with PTSD unspecified, major depression disorder, recurrent severe without psychotic features, and anxiety disorder unspecified. The AMHRR is void of a mental status report.

g. 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. 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): N/A

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: The applicant submitted 2016 records reflecting diagnoses of service-related Post-Traumatic Stress Disorder, Major Depressive Disorder, and Unspecified Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** None known but based on narrative statements and supplied medical records it is likely the applicant was experiencing distressing symptoms related to trauma, disordered thinking, and/or developmental/cognitive deficits.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma and avoidance, the basis for separation is mitigated.

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

b. Response to Contention: The applicant contends, in effect, the applicant was denied treatment for cancer after surgery, denied a visit to their dying sibling, and endured threats and harassment from the leadership. 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 Post-Traumatic Stress Disorder fully outweighing the applicants absent without leave basis for separation.

c. The Board, based on the applicant's length of service, and the circumstances surrounding the discharge (Post-Traumatic Stress Disorder mitigating the absent without leave basis for separation), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

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(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post-Traumatic Stress Disorder mitigated the applicant's misconduct of absent without leave.

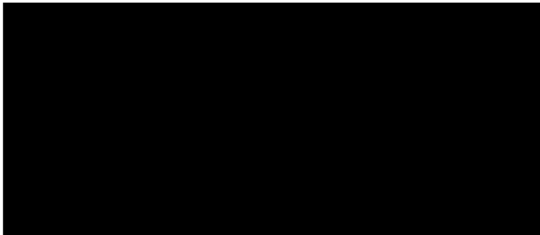
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(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