

1. Applicant's Name: [REDACTED]**a. Application Date:** 20 June 2023**b. Date Received:** 26 June 2023**c. Counsel:** [REDACTED]**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, through counsel, an upgrade to honorable along with a separation program designator (SPD) code and a narrative reason change.

The applicant's counsel seeks relief contending, in effect, the intermediate authority considered unfavorable information which was not provided to the applicant; the discharge was improper, and the applicant was denied due process; and the separation authority considered misconduct from a prior period of honorable service.

b. Board Type and Decision: In a personal appearance conducted on 4 November 2024, and by a 5-0 vote, the board determined the discharge is improper based on the applicant's validated contention that an episode of previous misconduct committed during a prior enlistment was improperly considered by the chain of command during the separation process. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable. The board determined the separation authority, narrative reason for separation and reentry code were proper and equitable, and voted not to change them.

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: Misconduct (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 4 March 2022**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 22 January 2022

(2) Basis for Separation: The applicant was informed of the following reasons: On or about 29 April 2021, the applicant drove under the influence of alcohol, and blew a 0.179 grams of alcohol per 210 liters of breath.

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

(4) Legal Consultation Date: 31 January 2022

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230010779

(5) Administrative Separation Board: The applicant waived consideration of the case by an administrative separation board.

(6) Separation Decision Date / Characterization: 3 February 2022 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 January 2020 / Indefinite

b. Age at Enlistment / Education / GT Score: 31 / HS Graduate / 113

c. Highest Grade Achieved / MOS / Total Service: E-6 / 19D3P, R7 Cavalry Scout / 14 years, 6 months, 19 days

d. Prior Service / Characterizations: RA, 7 August 2007 – 7 October 2020 / HD

e. Overseas Service / Combat Service: Germany, SWA / Afghanistan (20 April 2008 – 14 July 2008), (30 November 2009 – 10 January 2010)

f. Awards and Decorations: ARCOM-3, AAM-3, ASUA, AGCM-4, NDSM, GWOTSM, ACM-CS-2, NCOPDR-2, ASR, OSR-4, NATO MDL-2, CAB

g. Performance Ratings: 10 July 2019 - 9 July 2020 / Highly Qualified
10 July 2020 – 10 March 2021 / Highly Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) GOMOR, 21 May 2018, reflects, in part, the applicant was reprimanded for driving under the influence of alcohol.

(2) GOMOR, 13 May 2021, reflects, in part, the applicant was reprimanded for driving under the influence of alcohol.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Counsel's Brief

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), 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 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 14-12c, states 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.

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, paragraph 12c, misconduct (serious offense).

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable along with an SPD code and narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's counsel requests the applicant's narrative reason and SPD code be changed. The applicant was separated under the provisions of AR 635-200, Chapter 14-12c, with a general (under honorable conditions) discharge and a RE code of "3." The narrative reason specified by Army Regulations for a discharge under this chapter is "Misconduct (Serious Offense)" and the separation code is "JKQ." Army Regulation 635-8, Separation 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, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason or SPD code to be entered under this regulation.

The applicant's counsel contends the intermediate authority considered unfavorable information which was not provided to the applicant.

The applicant's counsel contends the discharge was improper and the applicant was denied due process.

The applicant's counsel contends the separation authority considered misconduct from a prior period of honorable service.

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):

b. The applicant presented the following additional contention(s):

c. Counsel / Witness(es) / Observer(s): [REDACTED]

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: Applicant marked TBI. Post-service connected for Anxiety Disorder, 30%, with 10% for TBI as there is no support for asserted symptoms.

(2) Did the condition exist, or experience occur during military service? **Yes.** Applicant asserting TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant did not have a TBI or other cognitive condition influencing the misconduct. Moreover, there is no further information or documentation supporting an anxiety disorder existed prior to the misconduct for consideration.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the board's application of liberal consideration, the board considered the opinion of the Board's Medical Advisor, a voting member, that the available evidence did not support a conclusion that the applicant's assertion of TBI outweighed the misconduct of driving under the influence of alcohol. However, the board voted to grant relief in the form of an upgrade to the characterization of service to honorable based on an improper discharge.

b. Response to Contention(s):

(1) The applicant's counsel contends the intermediate authority considered unfavorable information which was not provided to the applicant.

The board considered this contention and concurred that an episode of previous misconduct committed during a prior enlistment was improperly considered by the chain of command during the separation process. Therefore, the board voted to upgrade the characterization of service to Honorable.

(2) The applicant's counsel contends the discharge was improper and the applicant was denied due process.

The board considered this contention during deliberations and concurred that the applicant's discharge was improper.

(3) The applicant's counsel contends the separation authority considered misconduct from a prior period of honorable service.

The board considered this contention and concurred that an episode of previous misconduct committed during a prior enlistment was improperly considered by the chain of command during the separation process. Therefore, the board voted to upgrade the characterization of service to Honorable.

c. The board determined that the discharge is improper based on the applicant's validated contention that an episode of previous misconduct that was committed during a prior enlistment was improperly considered by the chain of command during the separation process. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable. The board voted not to change the separation authority, narrative reason for separation and reentry code. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The board determined that the characterization of service was improper based on the applicant's validated contention that an episode of previous misconduct committed during a prior enlistment was improperly considered by the chain of command during the separation process and causing an improper discharge. Therefore, the board voted the applicant's characterization of service be upgraded to honorable.

(2) The board voted not to change the narrative reason for discharge or accompanying SPD code, as the reason the applicant was discharged was both proper and equitable.

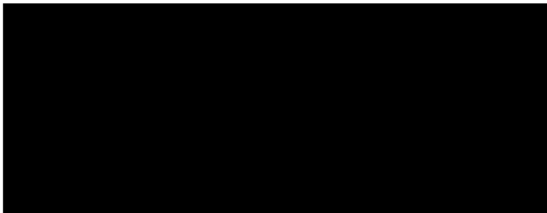
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

3/4/2025



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
 UOTHHC – Under Other Than
 Honorable Conditions
 VA – Department of Veterans
 Affairs