

1. Applicant's Name: [REDACTED]**a. Application Date:** 8 July 2023**b. Date Received:** 12 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 general (under honorable conditions). The applicant requests reconsideration for an upgrade to honorable, a change of their separation code, and an appearance before the Board.

(2) The applicant seeks relief stating Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and other mental health are issues/conditions related to their request.

b. Board Type and Decision: In a personal appearance conducted on 10 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable. The Board found sufficient evidence of in-service mitigating factors (Length, Quality, Combat) and concurred with the conclusion of the medical advising official that the applicant's (PTSD) does mitigate the applicant's misconduct (FTRs, Disobeying orders). Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable. 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 Board determined the narrative reason and reentry code were proper and equitable and voted not to change them.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Minor Infractions) / Army Regulation 635-200, Paragraph 14-12A / JKN / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 14 May 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 15 April 2010

(2) **Basis for Separation:** multiple instances of failing to report and failing to obey a noncommissioned officer (NCO).

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

(4) **Legal Consultation Date:** 13 June 2010

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

(6) **Separation Decision Date / Characterization:** 2 July 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 17 December 2007 / 6 years
- b. Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 117
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 25L10, Cable Systems Installer / Maintainer / 5 years, 8 months, 13 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** Korea SWA / Iraq (19 September 2007 – 20 November 2008)
- f. Awards and Decorations:** ARCOM, AAM, MUC, AGCM, NDSM, GWTSM, KDSM, ICM-CS, ASR, OSR-2
- g. Performance Ratings:** NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Five DA Forms 4856 (Developmental Counseling Form) dated 23 July 2007 through 5 May 2009, reflects the applicant received event-oriented counseling for various acts of misconduct to include failing to report, substandard performance, and failure keep their Class A uniform in accordance with regulation.

(2) A DA Form 2627-1 (Summarized Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ), dated 23 July 2009, reflects the applicant received nonjudicial punishment for, on or about 12 May 2009, failed to go at the time prescribed to their appointed place of duty, in violation of Article 86 (Absence Without Leave), UCMJ; and, having received a lawful order from an NCO to correct the deficiencies on their Class A uniform, willfully disobeyed, in violation of Article 91 (Insubordinate Conduct Toward an NCO), UCMJ.

(3) Three DA Forms 4856 dated 19 November 2009, 16 December 2009, and 7 January 2010, reflects the applicant received event-oriented counseling for failure to a valid Family Care Plan and informing them of that reason separation proceedings has begun.

(4) A Medical Command Form 4038 (Report of Behavioral Health Evaluation), dated 7 April 2010, reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets retention requirements. An Axis I diagnosis was deferred. Treatment at this time is not deemed to be necessary. The applicant is psychiatrically cleared for any administrative action deemed appropriate by command. The applicant was screened for PTSD and mild TBI and the results were negative.

(5) A DD Form 2808 (Report of Medical Examination), dated 8 April 2010, reflects the examining physician states the applicant was qualified for service with no physical profile restrictions. In item 77 (Summary of Defects and Diagnoses), reflects back pain – lumbago and right should, post-surgical.

(6) A memorandum, Charlie Company, 1st Special Troops Battalion, 1st Brigade Combat Team, subject: Separation under Army Regulation 635-200, Chapter 14-12a, Minor Disciplinary Infractions, [Applicant], dated 15 April 2010, notified the applicant of initiating actions to separate them for Minor Disciplinary Infractions with the recommended

characterization of service as General (Under Honorable Conditions). On the same day the applicant acknowledged the basis for the separation and of the right available to them.

(7) A memorandum, Charlie Company, 1st Special Troops Battalion, 1st Brigade Combat Team, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12a, Minor Disciplinary Infractions [Applicant], dated 15 April 2010, the applicant's company commander submitted the request to separate the applicant from the Army prior to the expiration of their current term of service. The company commander states it is not feasible or appropriate to accomplish other disposition as the applicant's multiple instances of failing to report and failing to obey an NCO.

(8) On 26 April 2010, the applicant completed their election of rights signing they had been advised by their attorney of the basis for the contemplated action to separate them for minor disciplinary infractions, and its effects; of the rights available to them; and the effect of any action taken by them in waiving their rights. They understood that they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them. They elected to submit a statement on their behalf, requesting their separation be denied so they may be able to further their career and allow them the opportunity to prove they deserve to be in the military. Since the received nonjudicial punishment and previously, they have requested to be transferred to a different unit for a fresh start and they have been denied the fair chance to prove they are a good Soldier. There have been no attempts to rehabilitate them.

(9) A memorandum, Headquarters, 1st Brigade Combat Team, 101st Airborne Division (Air Assault), subject: Separation under Army Regulation 635-200, Chapter 14-12a, dated 29 April 2010, the separation authority, reviewed the separation packet of the applicant and directed they be discharged from the Army and receive a General (Under Honorable Conditions) Discharge.

(10) On 14 May 2010, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 5 years, 8 months, and 13 days of net active service this period. The DD Form 214 shows in:

- item 18 (Remarks) – in part, Member Has Completed First Full Term of Service
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12A
- item 26 (Separation Code) – JKN [Misconduct (Minor Infractions)]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct (Minor Infractions)

(11) On 31 August 2016, the Army Discharge Review Board denied the applicant's request for an upgrade of their general (under honorable conditions) discharge to honorable, finding the separation was proper and equitable. The Board determined –

(a) The record confirms the applicant's discharge was appropriate because the quality of their service was not consistent with the Army's standards for acceptable personal conduct and performance of duty by military personnel. It brought discredit on the Army and was prejudicial to good order and discipline.

(b) The applicant provided no independent corroborating evidence demonstrating either the command's action was erroneous or that the applicant's service mitigated the misconduct or poor duty performance. All requirements of law and regulation were met, and the

rights of the applicant were fully protected throughout the separation process. The character of the applicant's discharge is commensurate with their overall service record.

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

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

(1) **Applicant provided:** Department of Veterans Affairs (VA) Letter verifying the applicant's service connected disability of PTSD with a 70-percent rating.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Diploma – Medical Assistance
- Official Institutional Training Record and Summary Report
- George Peace Officer Training documents
- Civilian Promotion Letter
- 3rd Party Statement
- VA Letter
- Telephonic Hearing Notification Form

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the 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 635-200 (Active Duty Enlisted Administrative Separations), dated 17 December 2009, 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 14-12a (Minor Disciplinary Infractions), stated, Soldiers are subject to action per this section for a pattern of misconduct consisting solely of minor military disciplinary infractions.

(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.

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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12a, (Misconduct (Minor Disciplinary Infractions)).

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 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.

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. The applicant's AMHRR reflects the received developmental counseling for multiple occurrences of minor disciplinary infractions, recommended to receive punishment under the UCMJ and separation from the service. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12a, by reason of Misconduct (Minor Infractions), with a characterization of service of general (under honorable conditions). The applicant completed 5 years, 8 months, and 13 days of net active service this period and completed their first full term of service; however, they did not complete their 6-year reenlistment service obligation.

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 AMHRR does not reflect documentation of a diagnosis of PTSD, nor did the applicant provide evidence of a diagnosis of PTSD, during their military service.

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. 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): None

b. The applicant presented the following additional contention(s): None

c. Counsel / Witness(es) / Observer(s): None

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 diagnosis: PTSD

(2) Did the condition exist, or experience occur during military service? **Yes.** Asserting PTSD in-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 given the nexus between trauma, avoidance, and difficulty with authority the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD outweighed the multiple instances of failing to report and failing to obey a noncommissioned officer (NCO) basis for separation.

b. Response to Contention(s): the applicant contents PTSD, TBI, and other mental health are issues/conditions related to their request. The Board considered this contention and determined relief was warranted.

c. The Board determined the discharge is inequitable. The Board found sufficient evidence of in-service mitigating factors (Length, Quality, Combat) and concurred with the conclusion of the medical advising official that the applicant's (PTSD) does mitigate the applicant's misconduct (FTRS, Disobeying orders). Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable. 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 Board determined the narrative reason and reentry code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the Board found sufficient evidence of in-service mitigating factors (Length, Quality, Combat) and concurred with the conclusion of the medical advising official that the applicant's (PTSD) does mitigate the applicant's misconduct (FTRS, Disobeying orders). Thus, the prior characterization is no longer appropriate.

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

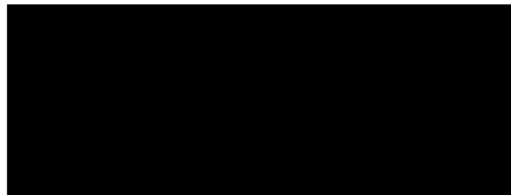
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: 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: AR 635-200

Change Authority to:

10/29/2024



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