

1. Applicant's Name: [REDACTED]**a. Application Date:** 7 August 2023**b. Date Received:** 7 August 2023**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 change to the narrative reason.

b. The applicant seeks relief contending, in effect, they was discharged without any due process. The applicant was given an administrative discharge for being arrested by the Washington State Patrol for driving under the influence (DUI). The charges were reduced by the Thurston County prosecutor to negligent driving misdemeanor and was given an \$103 fine and 1 year probation. The U.S. Army did not give the applicant an opportunity to receive an Article 15 or Court Martial. The applicant was discharged for DUI; however, the applicant was never convicted for this offense in civilian or a military court. The applicant was rated 70 percent for service connected disability by the VA. This discharge has caused the applicant serious financial trouble due to having to pay back the enlistment bonus. In the time since this incident, the applicant has been an exemplary citizen and member of their community with a perfect record.

c. Board Type and Decision: In a personal appearance conducted on 20 May 2024 and by a 5-0 vote, the Board determined the discharge is inequitable. The Board determined that the misconduct was a onetime DUI incident, the applicant made a mistake as a junior Soldier that has served its purpose. The applicant's DUI was reduced to negligent driving misdemeanor. The applicant has post service accomplishments of working in corrections, private security and he is a member of a charity organization that helps citizens in his city. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warranted an upgrade to the character of service and reason. 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 reentry 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: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 1 September 2021

c. Separation Facts: The applicant's AMHRR contains the case separation file, however, the applicant provided the case separation file.

(1) Date of Notification of Intent to Separate: 4 May 2021

(2) Basis for Separation: The applicant was informed of the following reasons: On 8 November 2020, the applicant drove while under the influence of alcohol.

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

(4) Legal Consultation Date: 12 July 2021

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 13 July 2021 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 14 January 2020 / 6 years and 24 weeks

b. Age at Enlistment / Education / GT Score: 17 / High School Graduate / 123

c. Highest Grade Achieved / MOS / Total Service: E-2 / 11B10, Infantryman / 1 year, 7 months, and 18 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM and ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) The applicant provided:

(a) Washington State DUI Arrest Report, that shows the applicant was arrested by the Washington State Patrol for DUI on 8 November 2020.

(b) Two development counseling forms, 8 November 2020, for DUI and for being flagged "V," Alcohol Abuse Adverse Action.

(c) Two development counseling forms, 29 and 31 March 2021, for initiation of separation and for being flagged "B - involuntary separation."

(d) District Court of Washington for the County of Thurston Final Court Decision, 6 June 2021, shows the applicant was found guilty and charged with negligent driving in the first degree, with jail time of 90 days (suspended), monitored probation, \$60 probation fee, and a \$43 conviction fee. The sentence was effective until 16 June 2022.

(e) Memorandum, Separation Under AR 635-200, Chapter 14-12c, Commission of a Serious Offense, (Applicant), 4 May 2021, showing the commander initiated action to separate the applicant for DUI.

(f) Memorandum, Election of Rights Regarding Separation Under AR 635-200, Chapter 14-12c, Commission of a Serious Offense, (Applicant), 11 July 2021, states the applicant elected to submit statements in their own behalf, however, it is not available in the AMHRR for review.

(g) Memorandum, Telephonic Advisement of (Applicant), 12 July 2021, shows the applicant received legal consultation.

(2) The applicant's Enlisted Record Brief, 2 September 2021, shows the applicant was flagged for involuntary separation/field initiated (BA), effective 31 March 2021, and weight control program (KA) effective 21 February 2021; and was ineligible for reenlistment due to pending separation (9V).

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:**

(a) Report of Mental Status Evaluation, 7 January 2021, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met behavioral health medical retention requirements. The applicant had been screened for PTSD and TBI which did not relate to the basis for separation. The applicant's medical record did not contain substantial evidence that the applicant met criteria for a condition requiring referral to the Integrated Disability Evaluation System. The command was advised to consider the influence of these conditions. The applicant was diagnosed with moderate alcohol dependence. The applicant had follow up appointments with the Addictions Medicine Intensive Outpatient Program.

(b) Report of Medical History, 13 March 2021, the examining medical physician noted the applicant's medical conditions in the comments section: Diagnosed with adjustment disorder with mixed anxiety and depressed mood, and moderate alcohol dependence. The applicant was treated with Embedded Behavioral Health (EBH) counseling since November 2020 and completed the Addictions Medicine Intensive Outpatient Program in February 2021 and continued with EBH follow up.

(c) Report of Medical Examination, 19 March 2021, the examining medical physician noted the applicant's medical conditions in the comments section: Adjustment disorder with mixed anxiety and depressed mood, and history of moderate alcohol dependence.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(2) above.

5. APPLICANT-PROVIDED EVIDENCE: Online DD Form 293; separation case file (includes District Court of Washington for the County of Thurston Final Court Decision; and VA Benefits Verification 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) 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) 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.

(4) 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.

(5) Paragraph 14-12c prescribes 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.

(6) Chapter 15 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 (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).

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 change to the 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 1 year, 7 months, and 18 days. On 20 November 2020, the applicant committed the offense of DUI. On 1 September 2021, the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions).

c. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." 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 contends, in effect, they was discharged without any due process. The applicant was given an administrative discharge for being arrested by the Washington State Patrol for DUI, however, the Thurston County prosecutor reduced the charges to a negligent driving misdemeanor and was given an \$103 fine and 1 year probation. The U.S. Army did not give the applicant an opportunity to receive an Article 15 or Court Martial. The applicant was never convicted for this offense in civilian or a military court.

(1) The applicant provided:

(a) District Court of Washington for the County of Thurston Final Court Decision, 6 June 2021, shows the applicant was found guilty and charged with negligent driving in the first degree, with jail time of 90 days (suspended), monitored probation, \$60 probation fee, and \$43 conviction fee.

(b) Memorandum, Telephonic Advisement of (Applicant), 12 July 2021, shows the applicant received legal consultation.

(2) The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

e. The applicant contends, in effect, they was rated 70 percent for service connected disability by the VA. The applicant provided a VA Benefits Verification Letter, 11 Jul 2023, showing they was rated 70 percent for service connected disability compensation.

f. The applicant contends, in effect, they have been an exemplary citizen and member of their community with a perfect record. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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):** 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 diagnoses: The applicant held an in-service diagnosis of Adjustment Disorder secondary to separation stress. The applicant has developed mood symptoms secondary to the alcohol dependence resulting in a service connection for Mood Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Adjustment Disorder secondary to separation stress. The applicant has developed mood symptoms secondary to the alcohol dependence resulting in a service connection for Mood Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that documentation and initial service connection support the applicant's in-service drinking was not in reaction to a mental illness. Rather, a continuation of a long-standing pattern of alcohol abuse which has since resulted in mood symptoms typical of individuals with Alcohol Dependence. Additionally, the in-service Adjustment Disorder was secondary to the disciplinary issues rather than present prior to.

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

b. Response to Contention(s):

(1) The applicant contends, in effect, they were discharged without any due process. The applicant was given an administrative discharge for being arrested by the Washington State Patrol for DUI, however, the Thurston County prosecutor reduced the charges to a negligent driving misdemeanor and was given an \$103 fine and 1 year probation. The U.S. Army did not give the applicant an opportunity to receive an Article 15 or Court Martial. The applicant was never convicted for this offense in civilian or a military court. The Board considered this contention and found no evidence of impropriety or capricious acts by the chain of command. 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.

(2) The applicant contends they was rated 70 percent for service connected disability by the VA. The applicant provided a VA Benefits Verification Letter, 11 Jul 2023, showing they was rated 70 percent for service connected disability compensation. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. After liberally considering all the evidence, including the VA determination, the Board found that the applicant had an unmitigated basis for separation.

(3) The applicant contends they have been an exemplary citizen and member of their community with a perfect record. The Board recognizes and appreciates the applicant's post service accomplishments and considered this contention during board proceedings along with the totality of the applicant's service record.

c. The Board determined the discharge is inequitable. The Board determined that the misconduct was a onetime DUI incident, the applicant made a mistake as a junior Soldier that has served its purpose. The applicant's DUI was reduced to negligent driving misdemeanor. The applicant has post service accomplishments of working in corrections, private security and he is a member of a charity organization that helps citizens in his city. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warranted an upgrade to the character of service and reason. 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 reentry code was proper and equitable and voted not to change it.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20230011547****d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable based on the one time DUI incident that was reduced to a negligent driving misdemeanor, no other misconduct in the applicant's file and post service accomplishments. 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: 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:

10/21/2024

**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