

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 2 October 2023
- b. **Date Received:** 2 October 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 a change to honorable and their narrative reason for separation.

(2) The applicant seeks relief stating their time in the military was one of the best experiences in their life. They joined the Army at first because their now ex-spouse was pregnant, and they wanted to provide for them. They separated from their spouse while they were still in the military and they made bad decisions; however, they were still a great Soldier.

(3) They were struggling with depression from not seeing their child and going through a separation with their spouse. They got in trouble, and they owned up to their mistakes. They would like another chance to be able to provide for their children. They want to use the GI Bill and continue going to school. They are about to graduate with their Bachelor's Degree in Computer Science, and they want to pursue their Master's in Software Engineering. They did go to mental health while they were station at Joint Base Elmendorf, and they spoke to a counselor about their issues.

b. Board Type and Decision: In a records review conducted on 3 May 2024, and by a 5-0 vote, the Board based on the applicant's length of service and the punishment having served its purpose, 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 to 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 characterization of service was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct, (Serious Offense) / Army Regulation 635-200, Paragraph 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 16 August 2018

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 25 June 2018

(2) **Basis for Separation:** between on or about 1 October 2017 and on or about 30 March 2018, wrongfully appropriated \$257.35 worth of meals from the Golden Rush Inn Dining Facility.

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

(4) Legal Consultation Date: 5 July 2018

(5) Administrative Elimination Board: NA

(6) Separation Decision Date / Characterization: 16 July 2018 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 January 2015 / 3 years, 22 weeks

b. Age at Enlistment / Education / GT Score: 24 / HS Graduate / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 / 74D10, Chemical Operations Specialist / 2 years, 6 months, 22 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, 17th Combat Sustainment Support Battalion, subject: Findings and Recommendations, dated 30 March 2018, reflects the findings and recommendation of an Investigating Officer (IO) appointed to determine the pertinent facts surrounding the allegation that the applicant lied about having a meal card to receive free meals from the dining facility. The IO found that the applicant has lied, committed, and perpetuated deception upon the dining facility by claiming to have a Meal Card while they did, in fact, receive Basic Allowance for Subsistence. They received at least \$257.35 in benefits from their deception. The applicant failed to follow the Army Values of Integrity and violated Article 121 (Larceny and Wrongful Appropriations), Uniform Code of Military Justice (UCMJ) and/or Article 107 (False Statements), UCMJ. The IO recommends the applicant be held fully accountable for criminal actions and face a Summary Court Martial or Field Grade Article 15, concurrent with Administrative and/or Judicial punishment, the applicant should be processed and considered for separation.

(2) A memorandum, subject: Legal Review – Army Regulation 15-6 Preliminary Inquiry Investigation – [Applicant], dated 11 April 2018, the Chief, Administrative Law, states they have reviewed the subject investigation into whether the applicant ate at the dining facility without use of a meal card or paying for their meals and they find the IO's findings and recommendations are legally sufficient.

(3) A DD Form 2808 (Report of Medical Examination), 4 April 2018, reflects the applicant is qualified for service with no physical profile limitations.

(4) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 23 April 2018, reflects the applicant received nonjudicial punishment for wrongfully appropriate meals from the Dining Facility, of a value of about \$257.35, the property of the U.S. Army, between on

or about 1 October 2017 and on or about 30 March 2018. This is in violation of Article 121, UCMJ. The applicant elected not to appeal. Their punishment consisted of a reduction in rank/grade from specialist/E-4 to private /E-1, forfeiture of \$514.00 pay, and extra duty and restriction for 45 days.

(5) A memorandum, 95th Chemical Company, 17th Combat Sustainment Support Battalion, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12c, Commission of a Serious Offense, [Applicant], dated 25 June 2018, notified the applicant of initiating actions to separate them for Commission of a Serious Offense, for wrongfully appropriated \$257.35 worth of meals from the Dining Facility, between on or about 1 October 2017 and on or about 30 March 2018,. On the same day the applicant acknowledged receipt of notification for separation.

(6) In the applicant's memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 5 July 2018, the applicant states they have been advised by their consulting counsel of the basis of the contemplated action to separate them for Commission of a Serious Offense and its effects; of the rights available to them, and of the effect of any action taken by them in waiving their rights.

(a) They understood they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them. They further understand that as the result of issuance of a discharge that is less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(b) They elected to submit statements in their behalf, stating they understand that they are guilty of this offense, and they take responsibility for their actions. During the time of this incident they were going through some serious financial issues, they were going through a divorce. Their spouse had run up their credit cards before they left and they were trying to pay off the credit cards, pay their bills, and provide separation support to their spouse and child. They found themselves without money to provide for day-to-day meals and expenses. They were having trouble with behavioral health issues and substance abuse. The were drinking excessively to self-medicate for anxiety, stress, depression, and loneliness after their family left. They are now in a better period of their life; they were able to pay off several debts and graduated from the Army Substance Abuse Program (ASAP).

(7) A memorandum, 95th Chemical Company, 17th Combat Sustainment Support Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14, Paragraph 12c, Commission of a Serious Offense, [Applicant], dated 6 July 2018, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service.

(8) A memorandum, Headquarters, Arctic Support Command (Provisional) subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 16 July 2018, the separation authority, after careful consideration of all matters, directed the applicant be separated from the Army prior to their expiration of current term of service and their service be characterized as General (Under Honorable Conditions). After reviewing the rehabilitative transfer requirement the commander determined the requirements do not apply to this action.

(9) On 16 August 2018, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 2 year, 6 months, and 22 days of net active service this period and did not complete their first full term of service obligation of 3 years and 22 weeks.

(10) An Enlisted Record Brief dated 17 August 2018, reflects the applicant was promoted to the rank/grade of specialist/E-4 on 25 January 2018 and was reduced to private/E-1 on 26 April 2018.

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

j. **Behavioral Health Condition(s):** None

5. **APPLICANT-PROVIDED EVIDENCE:** None

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 DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, 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 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. 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. Paragraph 14-12c (Commission of a Service Offense), stated 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 14-12c, 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 DoD Instruction 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

g. Manual for Courts-Martial, United States, (2016 Edition) states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the Article 121 (Larceny).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DoD Instruction 1332.28.

b. A review of the applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment for violation of Article 121 (Larceny) and was involuntarily separated from the Army. The DD Form 214 provides the applicant was discharged with a character of service of General (Under Honorable Conditions), for misconduct, (serious offense). They completed 2 years, 6 months, and 22 days of net active service this period; however, they did not complete their 3 year, 22-week contractual enlistment 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. Neither the applicant nor their AMHRR provide documentation of a mental health diagnoses prior to the applicant's discharge from the U.S. Army.

e. Published DoD 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. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Major Depressive Disorder. [Note-diagnosis of Adjustment Disorder is subsumed under Major Depressive Disorder diagnosis].

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating Behavioral Health conditions. While the applicant has been diagnosed and service connected for Major Depressive Disorder by the VA, this condition does not mitigate the offense of lying about having a meal card and stealing \$257.35 worth of food given that Major Depressive Disorder does not affect one's ability to tell right from wrong and act in accordance with the right.

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

b. Response to Contention(s):

(1) The applicant contends they joined the Army at first because their now ex-spouse was pregnant, and they wanted to provide for them. They separated from their spouse while they were still in the military and they made bad decisions; however, they were still a great Soldier. 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 length of service and the punishment having served its purpose fully outweighing the applicant's misuse of a government meal card basis for separation.

(2) The applicant contends they were struggling with depression from not seeing their child and going through a separation with their spouse. They would like another chance to be able to provide for their children. 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 length of service and the punishment having served its purpose fully outweighing the applicant's misuse of a government meal card basis for separation.

(3) The applicant contends they want to use the GI Bill and continue going to school to pursue their Master's degree in Software Engineering. 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 length of service and the punishment having served its purpose fully outweighing the applicant's misuse of a government meal card basis for separation.

(4) The applicant contends they did go to mental health while they were station at Joint Base Elmendorf, and they spoke to a counselor about their issues. 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 length of service and the punishment having served its purpose fully outweighing the applicant's misuse of a government meal card basis for separation.

c. The Board determined based on the applicant's length of service and the punishment having served its purpose, concurred the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to 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.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length of service and the punishment having served its purpose mitigated the applicant's misconduct of misuse of a government meal card. 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.

10. 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230013985

Authenticating Official:

7/30/2024



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