

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 14 November 2023**b. Date Received:** 14 November 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.

The applicant did not present any issues of propriety or equity for the Board's consideration, but states the applicant took the time to educate others on the proper disposal of expired medication and the effects and repercussions it could have on a career. The applicant is certified in digital cinematography.

**b. Board Type and Decision:** In a records review conducted on 9 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the circumstances surrounding the discharge (Panic Disorder and PTSD diagnoses), and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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, and retain the reentry code to RE-3.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 9 July 2014

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 28 May 2014

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant received a Field Grade (FG) Article 15 on 4 March 2013m for wrongfully using oxymorphone; on 13 February 2014, the applicant received an FG Article 15; and on 13 March 2014, the applicant received a GOMOR for driving after consuming alcohol and violating NCOA policy letter 7 by consuming alcohol while enrolled in the academy as a student. Furthermore, the applicant had received negative counseling statements for failure to report on multiple occasions, failing to obey an order from a noncommissioned officer on multiple occasions, and violating barracks policy by having a visitor past visitation hours.

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

**(4) Legal Consultation Date:** 29 May 2014

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

**(6) Separation Decision Date / Characterization:** 10 July 2014 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 1 February 2010 / 4 years 21 weeks (The applicant extended the enlistment for 3 months on 31 August 2011)

**b. Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 95

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 42A10, Human Resources Specialist / 4 years, 5 months, 9 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** Germany, SWA / Iraq (16 February 2011 – 28 November 2011)

**f. Awards and Decorations:** ARCOM, AAM-2, NDSM, ICM-CS, GWOTSM, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:**

(1) FG Article 15, 4 March 2013, reflects the applicant wrongfully used oxymorphone on or about 30 October 2012. The punishment consisted of reduction to private first class/E-3, suspended, to be automatically remitted if not vacated before 2 July 2013; forfeiture of \$1,007 pay, suspended, to be automatically remitted if not vacated before 2 July 2013; and extra duty and restriction for 30 days.

(2) FG Article 15, 13 February 2014, reflects the applicant disobeyed a lawful order by consuming alcohol while assigned to the Seventh U.S. Army NCOA as a student. The punishment consisted of reduction to private/E-1; forfeiture of \$765 pay per month for 2 months, suspended, to be automatically remitted if not vacated before 13 August 2014; extra duty for 45 days; restriction for 45 days, suspended, to be automatically remitted if not vacated before 13 August 2014.

(3) GOMOR, 13 March 2014, the applicant was reprimanded for driving while consuming alcohol while enrolled in the Warrior Leader's Course. At 0714 on 26 January 2014, German Police conducted a routine traffic stop and pulled over the red truck the applicant was driving. Upon contact with the applicant, they detected a strong odor of alcohol which caused them to administer a preliminary breath alcohol test. The test revealed the applicant's blood alcohol content exceeded the German legal standard for driving in their roads.

(5) Report of Mental Status Evaluation, 28 April 2014, reflects the applicant could understand and participate in administrative proceedings.

(6) The applicant was counseled on multiple occasions for various forms of misconduct.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** On-Line Application

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is certified in digital cinematography.

**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 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

(7) 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.

**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. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant did not present any issues of propriety or equity for the Board's consideration, but states the applicant took the time to educate others on the proper disposal of expired medication and the effects and repercussions it could have on a career.

The applicant is certified in digital cinematography. 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.

#### **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: Panic DO (70%SC) with PTSD due to combat.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection establishes a nexus between Panic DO/PTSD and active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has two BH conditions, Panic DO and PTSD, which mitigate most of his misconduct. As there is an association between Panic DO, PTSD, self-medication with alcohol or illicit drugs and difficulty with authority figures, there is a nexus between these conditions, the applicant's wrongful use of oxycodone, his DUI and his failure to obey an order on multiple occasions. Additionally, as there is an association between Panic DO, PTSD and avoidant behaviors, there is a nexus between these BH conditions and his multiple FTRs. However, violating barracks policy by having a visitor stay past visitation hours is not mitigated given that neither one of his BH conditions affects one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's condition or experience partially outweighed the listed basis for separation. The remaining misconduct of violating barracks policy by having a visitor stay past visitation hours was mitigated by the applicant's in-service factors of length, quality and combat service and post-service accomplishments.

b. Prior Decisions Cited: None

c. Response to Contentions: The applicant did not present any issues of propriety or equity for the Board's consideration, but states the applicant took the time to educate others on the proper disposal of expired medication and the effects and repercussions it could have on a career.

The Board considered this contention during proceedings.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the circumstances surrounding the discharge (Panic Disorder and PTSD diagnoses), and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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, and retain the reentry code to RE-3.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. The Board voted to upgrade the discharge based on partial medical mitigation, the applicant's two BH conditions (Panic DO and PTSD) mitigate self-medication with alcohol or illicit drugs and difficulty with authority figures. The Board determined the applicant's in-service factors (length, quality, combat) and post-service accomplishments outweighed the applicant's remaining misconduct of violating barracks policy by having a visitor stay past visitation hours.

(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.

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20240000079

## 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

## Authenticating Official:

10/16/2024



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