

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 September 2023**b. Date Received:** 3 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 general (under honorable conditions). The applicant requests an upgrade to honorable.

(2) The applicant seeks relief stating it is their understanding their punishment should have ended after they received a general officer memorandum of reprimand for their misconduct. They were not convicted of the charges, and they fulfilled their civilian responsibilities. After their administrative separation was initiated, they reached out to the Judge Advocate General at Fort Stewart, and they suggested they refuse counsel since their company commander recommended their characterization be honorable. They refused counsel only to later be blindsided by a general (under honorable conditions) characterization and swiftly thereafter, removed from the Army. They believe their service in the infantry was deserving of an honorable characterization. They are proud of their time in the Army and of what they have managed to accomplish since.

b. Board Type and Decision: In a records review conducted on 25 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's quality of service. 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. The Board determined the reentry code is proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 28 June 2022

c. Separation Facts: The applicant's case separation file is void from the Army Military Human Resource Record (AMHRR); however, the applicant provided their case separation files. The information in 3c(1) through (6) were derived from those documents.

(1) Date of Notification of Intent to Separate: 9 December 2021

(2) Basis for Separation: on or about 31 July 2021, physically controlled a vehicle, while impaired by alcohol and were charged with driving under the influence less safe by the state of Georgia.

(3) Recommended Characterization: Honorable

(4) Legal Consultation Date: 17 December 2021

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 5 April 2022 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 February 2020 / 6 years, 24 weeks

b. Age at Enlistment / Education / GT Score: 24 / Bachelor's Degree / 139

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1P, Infantryman / 2 years, 4 months, 19 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, GWTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, Headquarters, 3rd Infantry Division and Fort Stewart, subject: General Officer Memorandum of Reprimand (GOMOR), dated 30 August 2021, the commanding general reprimanded the applicant in writing for operating a motor vehicle while under the influence of alcohol and for failing to obey a police officer's lawful request to conduct a test to measure the alcohol content of their breath. The commanding general states, at around 0237 hours on 31 July 2021, at or near Savannah, GA, a law enforcement officer pulled over the applicant for speeding 65 miles per hour in a 35 miles per hour zone. The officer observed their eyes were watery and detected an odor of alcohol emitting from the applicant. The applicant failed a series of field sobriety tests and was asked to provide a breath sample for the portable breathalyzer test, to which they refused. The applicant was taken to their battalion and they provided a sworn statement in which they admitted to consuming four alcoholic drinks, a shot of Tequila, and three beers at the Tailgate Bar. The applicant acknowledged receipt of the GOMOR on 1 September 2021 and elected to submit written matters. [Note: written matters are not in evidence for review.]

(2) On 22 September 2021, the commanding general, after carefully consideration of the GOMOR, the circumstances of the misconduct, and all matters submitted by the Soldier in defense, extenuation or mitigation, along with recommendation of subordinate commanders, directed the GOMOR be placed permanently in the applicant's AMHRR.

(3) Court of Georgia, Sentence, dated 23 September 2021, the Offense reflects all reduced to reckless driving, too fast for conditions. The applicant's sentence consisted of, in part, pay the full amount of fines, probation supervision fee; perform 40 hours of community service work; attend the Risk Reduction Program; and attend the Clinical Drug/Alcohol Evaluation and Treatment and the Victim Impact Panel.

(4) A DA Form 3822 (Report of Mental Status Evaluation) dated 5 October 2021, reflects the applicant has no duty limitations due to behavioral health issues and currently meets behavioral health medical retention standards. The applicant's Behavioral Health Diagnosis is shown as Phase of Life Problem and no follow-up is recommended. The behavioral health provider commented, there is no psychiatric disease or defect that warrants disposition through medical channels and the applicant is cleared for any administrative action deemed appropriate by Command.

(5) A memorandum, Bravo Company, 1st Battalion, 75th Ranger Regiment, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 9 December 2021, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, paragraph 14-12c, for on or about 31 July 2021, physically controlled a vehicle, while impaired by alcohol and were charged with driving under the influence less safe by the state of Georgia. The company commander recommended the applicant's characterization of service as honorable, their recommendation will be submitted to the separation authority, who will make the final decision. The company commander states the intermediate commander(s) and the separation authority are not bound by their recommendation as to characterization of service. The separation authority may direct the applicant's service be characterized as Honorable or General (Under Honorable Conditions). On the same day, the applicant acknowledged the basis for the separation and of the right available to them.

(6) The applicant's memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Paragraph 14-12c, dated 17 December 2021, the applicant completed their election of rights signing they have been advised by consulting counsel of the basis for the contemplated action to separate them 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. They understand they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them. They elected to waive consulting counsel. The applicant elected to submit statements in their behalf. In their personal statement they expressed what they have learned from this experience. Two character statements attest to the applicant's character and support the applicant's continued service.

(7) A memorandum, Bravo Company, 1st Battalion, 75th Ranger Regiment subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12b, dated 17 December 2021, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as to retain the applicant would bring adverse impacts to the unit and the U.S. Army.

(8) A memorandum, 1st Battalion, 75th Ranger Regiment, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], undated, reflects that the applicant's battalion commander recommends the applicant's service be characterized as General (Under Honorable Conditions).

(9) A memorandum, Headquarters, 75th Ranger Regiment, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, dated 5 April 2022, the separation authority, having reviewed the separation packet of the applicant and after careful consideration of all matters, directed the applicant be separated from the Army prior to the expiration of their current term of service with characterization of service as General (Under Honorable Conditions). The separation authority states after reviewing the rehabilitative transfer requirements determined the requirement are waived, as the transfer will serve no useful purpose or produce a quality Soldier.

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 28 June 2022, with 2 years, 4 months, and 19 days of net active service this period. The DD Form 214 shows in:

- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200
- item 26 (Separation Code) – JKQ
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

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

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

(1) **Applicant provided:** as described above in paragraph 3h(4).

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552), with statement
- Court of Georgia, Sentence
- Case Files for Approved Separation
- Enlisted Record Brief
- Probation Officer Letter

6. POST SERVICE ACCOMPLISHMENTS: none submitted with 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) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence 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. 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.

(5) 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 "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 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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

h. Manual for Courts-Martial, United States (2019 Edition) stated, 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 Article 113 (Drunken or Reckless Operation of a Vehicle).

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 available evidence provides the applicant received a GOMOR for driving under the influence of alcohol and was involuntarily separated. The DD Form 214, signed by the applicant, provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct (serious offense) rather than a discharge under other than honorable conditions, which is normally considered appropriate. They completed 2 years, 4 months, and 19 days of their 6-year, 24-week contractual enlistment obligation. The applicant has not completed their first full term of service.

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. 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

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

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends it is their understanding their punishment should have ended after the received a general officer memorandum of reprimand for their misconduct. The Board acknowledged this contention.

(2) The applicant contend they were not convicted of the charges and they fulfilled their civilian responsibilities. The Board considered this contention non-persuasive during its deliberations.

(3) The applicant contends after their administrative separation was initiated, they reached out to the Judge Advocate General at Fort Stewart and they suggested they refuse counsel since their company commander recommended their characterization be honorable. They refused counsel only to later be blindsided by a general (under honorable conditions) characterization and swiftly thereafter, removed from the Army. The Board acknowledged this contention.

(4) The applicant contends they are proud of their time in the Army and of what they have managed to accomplish since discharge. The Board acknowledged this contention.

d. The Board determined that the discharge is inequitable based on the applicant's quality of service. 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. The Board determined the reentry code is proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length, Quality) and concurred

that this was a one-time offense and voted the applicant warranted an upgrade. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable.

(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

Authenticating Official:

1/30/2025

