

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 19 December 2023
- b. **Date Received:** 19 December 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 their discharge should be changed based on their clean record prior to the incident for which they were discharged and their overall good conduct during their period of service. They believe they deserve a second chance. They took full accountability for their actions and completed the Alcohol Drug Information School Victim Panel and Driving Under the Influence (DUI) Victim Impact Panel courses.

(3) They were not charged with a gross misdemeanor, but only a traffic offense of reckless driving. They believe it was unfair to be discharged for a crime that had not been viewed by civil court judge. The judge gave them a second chance, in reducing their charge.

(4) Since that incident, they have not been involved in any criminal activity. They have retained full-time employment. They believe they are deserving of an honorable characterization of service to be eligible for the GI Bill, and they can continue to show to others that one mistake does not shape a person and they can continue to serve their community.

b. Board Type and Decision: In a records review conducted on 22 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's in service mitigating factors (length, quality), one time offense, and completion of alcohol and drug information school outweighing the misconduct (DUI). 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.

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: 8 July 2023

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 11 May 2023

(2) **Basis for Separation:** on or about 18 September 2022, arrested for driving under the influence of alcohol with a Blood Alcohol Content (BAC) of 0.151-percent.

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

(4) Legal Consultation Date: 16 May 2023

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 7 June 2023 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 5 August 2019 / 5 years

b. Age at Enlistment / Education / GT Score: 20 / HS Graduate / 114

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1O, Infantryman / 3 years, 11 months, 4 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AGCM, NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 4856 (Developmental Counseling Form) dated 19 September 2022, reflects the applicant received event oriented counseling for driving and crashing their motorcycle while under the influence of alcohol. The Key Points of Discussion stated the applicant their crashed motorcycle because they were impaired and driving under the influence of alcohol. They were picked up by civilian police and received a DUI and then refused care from the hospital. The applicant agreed with the information and signed the form.

(2) A memorandum, Headquarters, 7th Infantry Division, subject: General Officer Memorandum of Reprimand (GOMOR), dated 16 February 2023, the commanding general reprimanded the applicant in writing for driving under the influence of alcohol. The commanding general states, on 18 September 2022, the applicant drove their motorcycle into a barrier on the interstate. They admitted to responding police officers that they had been drinking. They voluntarily performed Standardized Field Sobriety Testing, which indicated impairment. They were arrested on suspicion of DUI, and they subsequently provided a breath sample, revealing they had a BAC of 0.151-percent. Their decision to drink and drive caused injury to themselves and put others at risk. The applicant acknowledge receipt of the GOMOR on 23 February 2023 and elected not to submit any matters.

(3) On 13 March 2023, 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 Army Military Human Resource Record (AMHRR).

(4) A DA Form 3822 (Report of Mental Status Evaluation) dated 20 March 2023, 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 Alcohol, Problem Drinking and has a follow-up appointment scheduled with Behavioral Health.

(5) A memorandum, 4th Battalion, 23rd Infantry Regiment Rear Provisional, subject: Notification of Administrative Separation under Army Regulation 635-200, Chapter 14-12c, dated 11 May 2022, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, for on or about 18 September 2022 was arrested for driving under the influence of alcohol with a BAC of 0.151-percent. The company commander recommended the applicant's characterization of service as general (under honorable conditions). On the same day, the applicant acknowledged the basis for the separation and of the right available to them.

(6) The applicant's memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Chapter 14-12c, dated 16 May 2023, 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 do not believe that they suffer from post-traumatic stress disorder or traumatic brain injury as a result of deployment overseas in support of a contingency operation during the previous 24 months. They elected to submit statements in their behalf attesting to the accomplishments of their service and their desire to continue to serve.

(7) A memorandum, 4th Battalion, 23rd Infantry Regiment Rear Provisional, subject: Commander's Report for Separation under Army Regulation 635-200, Chapter 14-12b, dated 25 May 2023, the applicant's company commander submitted a request to separate them prior to their expiration term of service, but that the separation be suspended for a period of 12 months. The company commander recommends the applicant's service be characterized as general (under honorable conditions).

(8) A memorandum, 2nd Stryker Brigade Combat Team Rear Provisional, subject: Commander's Report for Separation under Army Regulation 635-200, dated 30 May 2023, the applicant's brigade commander submitted a request to separate them prior to their expiration term of service, but that the separation be suspended for a period of 12 months. The brigade commander recommends the applicant's service be characterized as general (under honorable conditions) and states the separation is in the best interest of both the Army and the applicant.

(9) A memorandum, Headquarters, 16th Combat Aviation Brigade, subject: Administrative Separation under Army Regulation 635-200, Chapter 14-12c, dated 7 June 2023, the commanding general, 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 commanding general states the rehabilitative transfer requirement, do not apply to this separation action.

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 8 July 2023, with 3 years, 11 months, and 4 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 [Misconduct, Commission of a Serious Offense]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** as described above in paragraph 3h (6).

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- two 3rd Party Character Statement
- DD Form 214
- Assessment & Treatment Associates Letter

6. POST SERVICE ACCOMPLISHMENTS: completed 8 hours of Alcohol and Drug Information School.

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.

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 3 year, 11 months, and 4 days of their 5-year 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? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnosis: Anxiety Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** By nature of service connection, VA believes some anxiety symptoms existed at some point in-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 without clarity on the service connected condition, specifically when symptoms began in-service, mitigation cannot be determined.

(4) Does the condition or experience outweigh the discharge? **No**. After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder outweighed the medically unmitigated DUI.

b. Response to Contention(s):

(1) The applicant contends their discharge should be changed based on their clean record prior to the incident for which they were discharged and their overall good conduct during their period of service. They believe they deserve a second chance. The board considered this contention and determined that relief was warranted based on the mitigating factors (length, quality) one time offense, and post-service accomplishments (completion of alcohol and drug information school). Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN.

(2) The applicant contend they believe they deserve a second chance. They took full accountability for their actions and completed the Alcohol Drug Information School Victims Panel and DUI Victim Impact Panel courses. The board determined that this contention was valid and voted to upgrade the characterization of service to honorable and the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN.

(3) The applicant contends they were not charged with only a traffic offense of reckless driving. They believe it was unfair to be discharged for a crime that had not been viewed by civil court judge. The judge gave them a second chance, in reducing their charge. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based off the applicant's mitigating factors (length, quality) one time offense, and post-service accomplishments (completion of alcohol and drug information school) as outlined above in 9b (1).

(4) The applicant contends since that incident, they have not been involved in any criminal activity. They have retained full-time employment. The applicant contends receiving treatment from VA for PTSD. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based off the applicant's mitigating factors (length, quality) one time offense, post-service accomplishments (and completion of alcohol and drug information school) as outlined above in 9b (1).

(5) The applicant contends they believe they are deserving of an honorable characterization of service to be eligible for the GI Bill, they can continue to show to others that one mistake does not shape a person, and they can continue to serve their community. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare, or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

c. The board determined the discharge is inequitable based on the applicant's in service mitigating factors (length, quality), one time offense, and post accomplishment (completion of alcohol and drug information school) out weighting the misconduct (DUI). 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR2024000821

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable base on the in-service mitigating factors (length, quality), the onetime offense, and post-service accomplishments (completion of alcohol and drug information school) out weighting the misconduct - DUI the basis for separation. 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.

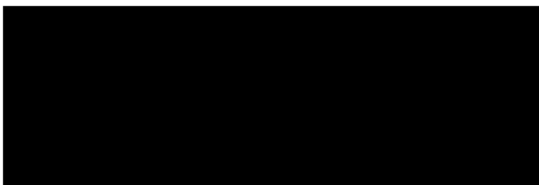
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: 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, paragraph 14-12a**

Authenticating Official:

7/29/2024



Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral Health (Issues)
OMPF – Official Military Personnel File
PTSD – Post-Traumatic Stress Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized Discharge
UOTHC – Under Other Than Honorable Conditions
VA – Department of Veterans Affairs