

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 22 December 2023
- b. **Date Received:** 22 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 conditions). The applicant requests a change to honorable.

(2) The applicant states they were a young and dumb kid, they make no excuses for the Driving Under the Influence (DUI) or the things they did, they loved the Army. They have changed as a man since leaving the military and they have a steady job, refrain from drinking any alcohol, and they take care of their mother. They would love to put this incident behind them and get an honorable discharge rather than a general (under honorable conditions) and to be proud to tell people they served in the Army, instead of the disappointment they feel because of one night of drinking.

b. Board Type and Decision: In a records review conducted on 14 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Chronic Adjustment Disorder (CAD) partially mitigate the applicant's misconduct (DUI, underage drinking, transporting an open container in a motor vehicle, and failing to maintain lane). However, CAD does not mitigate the offenses of speeding or assaulting a military police officer as CAD does not affect one's ability to distinguish right from wrong and act in accordance with the right. Given that the applicant was drunk (mitigated by CAD); it appears that the unmitigated actions occurred due to the intoxication (assault and speeding), and the unit chose not to initiate separation until a second event four months later. Based-on this it appears that the applicant served honorably (in service considerations) and the unit sought to retain the Soldier. 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 no change to the reentry code.

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: 9 December 2019

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR), case files for approved separation is void of all documents except for their separation orders. On 31 January 2024 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files). The applicant provided several separation documents and the information in 3c (1) through (6) were derived from those documents.

(1) **Date of Notification of Intent to Separate:** NIF

(2) Basis for Separation: on or about 27 April 2018, arrested by Fort Bragg Military Police for DUI, assaulting a Military Police Officer, transporting an open container in a motor vehicle, failing to maintain lane, and speeding 65 miles per hour (MPH) in a 35 MPH zone. On or about 4 July 2018, found drunk and disoriented while under the age of 21 years old.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 4 February 2019

(5) Administrative Separation Board: On 4 February 2019, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon the separation authority directing that they be Retained in the U.S. Army. On 13 June 2019, the separation authority disapproved the applicant's conditional waiver and referred the case to the Administrative Separation Board.

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 2 August 2016 / 3 years, 21 weeks

b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 109

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92Y1O, Unit Supply Specialist / 3 years, 4 months, 8 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 DA Form 4856 (Developmental Counseling Form) dated 3 August 2018, reflects the applicant received notification of the initiating of their involuntary separation.

(2) A memorandum, Directorate of Emergency Services, Fort Bragg, NC, subject: Law Enforcement Report – Final, dated 27 September 2018, reflects the applicant as the named subject in violation of Assaulting a Federal Officer; Resisting, Delay or Obstruct; Impaired Driving; Transporting an Open Container of Alcohol; Failure to Maintain Lane; Provisional Licensee; and Speeding (65 mph/35 mph zone); occurring on 27 April 2018.

(3) The applicant's memorandum, subject: Conditional Waiver of Rights under Army Regulation 635-200 Administrative Board Procedures [Applicant], dated 4 February 2019, reflects the applicant has been advised by their consulting counsel of the basis for the contemplated action to separate them for Commission of a Serious Offense, and its effect; of the rights available to them, and the effect of any action taken by them in waiving their rights. They understand they are entitled to have their case considered by an administrative separation board because they are being recommended for a separation under other than honorable conditions.

(a) They voluntarily waived consideration of their case by an administrative separation board contingent upon the separation authority directing that they be Retained in the U.S. Army. They understand that if the separation authority refuses to accept this conditional waiver of a hearing before an administrative separation board, their case will be referred to an administrative separation board. In that case, they request a personal appearance and appointment of military counsel.

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

(4) A memorandum, 8th Ordnance Company, 254th Combat Sustainment Support Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 13 February 2019, reflects the applicant's company commander's recommendation to separation them from the Army prior to the expiration of their current term of service. The specific factual reasons are described above in paragraph 3c. The company commander states it is not feasible or appropriate to accomplish other disposition as the applicant's actions are not conducive to good order and discipline.

(5) A memorandum, Headquarters, Fort Bragg, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 13 June 2019, the separation authority, having carefully reviewed the entire case file and all matters submitted regarding the applicant, disapproved the conditional waiver. The case is referred to the Administrative Separation Board to determine whether the applicant should be separated from the U.S. Army prior to the expiration of their current term of service. On 20 August 2019, the applicant acknowledged receipt of the notification of the Administrative Separation Board, with a hearing scheduled for 9 September 2019.

(6) The U.S. Army Garrison, Fort Bragg, Orders 329-0259, dated 25 November 2019, reflects the applicant's discharge date of 9 December 2019.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant was discharged from the Army on 9 November 2019 and shows in:

- item 12c (Net Active Service This Period) – 3 years 4 months, 8 days
- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

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

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

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- excerpts of their case files for approved separation
- DD Forms 214
- 3rd Party Statement

- Resume

6. POST SERVICE ACCOMPLISHMENTS: employment experience as shown on their resume.

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. 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.

c. Office, Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder), 3 September 2014, directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

d. Office, Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017 issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

e. Office, Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice,

or Clemency Determinations), 25 July 2018 issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

(1) This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, DRBs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

(2) Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

f. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) dated 19 December 2016, prescribed 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.

(6) Chapter 15 (Secretarial Plenary Authority) 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.

g. 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).

h. 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.

i. 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 an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation.

The applicant's separation documents reflects their acts of misconduct, consisting of being arrested by Fort Bragg Military Police for DUI, assaulting a Military Police Officer, transporting an open container in a motor vehicle, failing to maintain lane, and speeding 65 MPH in a 35 MPH zone and on or about 4 July 2018, found drunk and disoriented while under the age of 21 years old. Their DD Form 214 shows they were discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of General (Under Honorable Conditions) with 3 years 4 months, and 8 days of net active service this period. The applicant did not complete their 3-year, 21-week contractual enlistment service 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. 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: Chronic Adjustment DO (CAD)-30%SC.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection of CAD documents it began and/or occurred during 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 a BH condition, Chronic Adjustment Disorder (CAD), which mitigates some of his misconduct. As there is an association between CAD and self-medication with alcohol and/or illicit drugs, there is a nexus between his diagnosis of CAD and his arrest for DUI, having an open container in the car and failing to maintain a lane. CAD does not mitigate the offenses of speeding or assaulting a military police officer as CAD does not affect 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 opine, the Board determined that the applicant's Chronic Adjustment DO (CAD) outweighed the applicant's medically mitigated offenses of DUI, underage drinking, transporting an open container in a motor vehicle,

and failing to maintain lane. However, the applicant's CAD does not outweigh the applicant's remaining unmitigated offenses of speeding or assaulting a military police officer.

b. Response to Contention(s):

(1) The applicant contends they were a young and dumb kid, they make no excuses for the Driving Under the Influence (DUI) or the things they did, they loved the Army. 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 Chronic Adjustment DO (CAD) partially mitigating some of the applicant's misconduct (DUI, underage drinking, transporting an open container in a motor vehicle, and failing to maintain lane). The remaining offense of speeding and assaulting military police officer is not medically mitigated by CAD however, given in service factors (length and quality), and the fact the unit did not pursue separation until a second event four months later – the Board found the current discharge inequitable. It appears that the unit felt the Soldier was worth retaining despite the unmitigated conduct.

(2) The applicant contends they have changed as a man since leaving the military and they have a steady job, refrain from drinking any alcohol, and they take care of their mother. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the information outlined above in paragraph 9a (3-4) and 9b (1).

(3) The applicant contends they would love to put this incident behind them and to get an honorable discharge rather than a general (under honorable conditions) and to be proud to tell people they served, instead of the disappointment they feel because of one night of drinking. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the information outlined above in paragraph 9a (3-4) and 9b (1).

c. The Board determined the discharge is inequitable based on the applicant's CAD, partially mitigating some of the applicant's misconduct (DUI, underage drinking, transporting an open container in a motor vehicle, and failing to maintain lane). The remaining misconduct (speeding or assaulting military police officer) is not medically mitigated, however it is somewhat minor in nature given the in service factors (length and quality of service). Also the unit chose not to initiate separation until a second event four months later, therefore, it appears that the applicant was a quality Soldier worth retaining at that time. However, the applicant may request a personal appearance hearing to address further issues before the board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's CAD partially mitigated some of the applicant's misconduct (DUI, underage drinking, transporting an open container in a motor vehicle, and failing to maintain lane). The remaining misconduct is not mitigated, however somewhat minor in character given the applicant's in service factors (length and quality). Additionally, the unit chose not to pursue separation following the unmitigated conduct. Thus, the prior characterization is no longer appropriate.

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(2) The Board voted to change the applicant's 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:

- e. Issue a New DD-214 / Separation Order: Yes**
- f. Change Characterization to: Honorable**
- g. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN**
- h. Change RE Code to: No Change**
- i. Change Authority to:**

Authenticating Official:

9/13/2024



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