

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 7 December 2023
- b. **Date Received:** 12 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, a change of their separation code, reentry code, and the narrative reason for separation.

(2) The applicant seeks relief stating they were diagnosed with Post-Traumatic Stress Disorder (PTSD) after they were discharge from the military. Their symptoms became worse immediately after getting medically evacuated from Afghanistan. Upon their return to the states they had to continuously leave rear detachment for therapy, heavy alcoholism treatment, and mental unrest. They had many difficulties reintegrating back into their unit after deployment. They were seen at the U.S. Army Hospital in Fort Benning, GA, where they received inpatient care for 2 weeks. They were simply mentally unwell or just mentally unfit for duty, which contributed to the nature of their discharge.

(3) This condition is the reason for their discharge, if they didn't have this affliction, they would have completed their service commitment with honor and more. They had every intention of staying in the military long-term but admittedly, this condition was ever so present and subsequently became problematic even for a proper medical evaluation.

(4) Having an affliction that affects and diagnosis sometimes can only be seen over periods of time; however, today their understanding grows as does their knowledge of treatment living with PTSD. They continue to have issues even after their service; experiencing many hurdles and obstacles, even with having support, some issues, described in their medical records as snap aggression and trauma responses. Please review their medical records.

**b. Board Type and Decision:** In a records review conducted on 7 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Depressive Disorder, Personality Disorder, Adjustment Disorder, and Anxiety Disorder Not Otherwise Specified). Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE Code was proper and equitable and voted not to change it. *Please see Section 10 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

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

b. **Date of Discharge:** 7 January 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** on or before 2 July 2013, the date the applicant acknowledged receipt of Notification of Separation.

(2) **Basis for Separation:**

- on 29 November 2012 and 16 January 2013, failed to go to their appointed place of duty
- on 31 January 2013, willfully disobeyed a noncommissioned officer by not attending their follow up appointment with the Army Substance Abuse Program (ASAP)
- on 6 February 2013, willfully disobeyed First Sergeant M\_\_\_'s order not to drink or possess alcohol
- on 8 April 2013, broke restriction

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

(4) **Legal Consultation Date:** 23 July 2013

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

(6) **Separation Decision Date / Characterization:** 17 December 2013 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 17 August 2010 / 4 years

b. **Age at Enlistment / Education / GT Score:** 22 / HS Graduate / 99

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 12N1O, Horizontal Construction Engineer / 3 years, 4 months, 21 days

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

e. **Overseas Service / Combat Service:** SWA / Afghanistan (1 May 2012 – 25 November 2012)

f. **Awards and Decorations:** ACM-2CS, NDSM, GWTSM, ASR, OSR

g. **Performance Ratings:** NA

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

(1) Five DA Forms 4856 (Developmental Counseling Form) dated 29 November 2012 through 7 February 2013, reflects the applicant received event-oriented counseling for multiple acts of misconduct to include; failure to report, failure to obey a lawful order, and insubordinate conduct toward a noncommissioned officer (NCO).

(2) A DA Form 8003 (ASAP Enrollment) dated 4 March 2013, reflects the applicant being command referred to the ASAP for a comprehensive assessment to determine whether or not they meet the criteria for enrollment. The applicant's company commander states the applicant has had several alcohol related incidents in the barracks, is pending nonjudicial punishment for disrespect and disobeying a lawful order. The applicant's performance and behavior has been unsatisfactory, and they have a combative attitude toward superior and subordinates.

(3) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 12 March 2013, reflects the applicant received nonjudicial punishment for, two occurrences of failure to go at the time prescribed to their appointed place of duty, in violation of Article 86 (Absence Without Leave), Uniform Code of Military Justice (UCMJ) and for, two occurrences of willfully disobeying a lawful order, in violation of Article 91 (Insubordinate Conduct Toward NCO), UCMJ. The applicant's punishment consisted of reduction in rank/grade from specialist/E-4 to private/E-1, forfeiture of \$758.00 pay, restriction for 60 days and an oral reprimand. The applicant elected not to appeal.

(4) Four DA Forms 4856 (Developmental Counseling Form) dated 12 March 2013 through 14 March 2013, reflects the applicant received event-oriented counseling for multiple acts of misconduct to include failure to report, failure to obey a lawful order, breaking restriction, disorderly conduct, drunkenness, insubordinate conduct toward an NCO, and assaulting or willfully disobeying superior commissioned officer.

(5) A DA Form 3822 (Report of Mental Status Evaluation) dated 15 March 2013; reflects the reason for the evaluation as hospital discharge. The applicant was deemed unfit for duty due to a personality disorder or other mental condition that does not amount to a medical disability. The applicant can understand and participate in administrative proceedings, can appreciate the difference between right and wrong and meets medical retention requirements.

(a) Section IV (Diagnoses) – reflects an Axis I (Psychiatric Condition) diagnoses of Anxiety Disorder and Alcohol Abuse; and an Axis III (Medical Conditions) a diagnosis of Chronic Back Pain.

(b) Section VIII (Additional Comments) – the behavior health provider states the applicant has drunk while on a no-alcohol profile. This is the applicant's second inpatient psychiatric hospitalization. They have also had two attempts at intensive outpatient therapy. Despite the applicant's claim of dysfunction, they have not been consistent with their medications, nor did they follow up on making an appointment with Behavioral Health for further medication management. Their history shows that they only come to Behavioral Health in the context of a stressor with command.

(c) In the Remarks section, the behavioral health provider states the applicant currently does not meet the criteria for PTSD or a traumatic brain injury. Although not presently a danger to self, their condition will worsen if they remain in the military. They represent a command liability and impairs overall unit readiness and functioning. Intensive treatment (with therapy and medication) and unit rehabilitative efforts may result in transient improvement in mood and behavior; however, it is likely that such efforts will be short-lived and are unlikely to improve this Soldier's retention potential. At this time, in accordance with Army Regulation 635-200, they recommend a chapter 5-17 (Other Designated Physical or Mental Conditions) separation for Anxiety Disorder.

(6) Three DA Form 4856 (Developmental Counseling Form) dated 27 March 2013 through 15 April 2013, reflects the applicant received event-oriented counseling for acts of misconduct to include failure to report and failure to obey a lawful order.

(7) A memorandum, 63rd Engineer Company, 11th Engineer Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], undated, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12b, a pattern of misconduct, with a recommended characterization of service general (under honorable conditions) for adverse action described in previous paragraph 3c(2). On 2 July 2013, the applicant acknowledged the basis for the separation and of the rights available to them.

(8) On 23 July 2013, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected not to submit statements in their behalf and elected to waive consulting counsel. They understood they may expect to encounter substantial prejudicial in civilian life if a general (under honorable conditions) discharge is issued to them.

(9) A memorandum, 63rd Engineer Company, 11th Engineer Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], undated, the applicant's company commander submitted a request to separate them from the Army prior to their expiration of current term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant has been given the opportunity to correct their deficiencies but instead continues to violate orders given to them. The separation does not involve a medical condition that is related to the sexual assault, to include PTSD. The separation is in the best interest of the Army and the applicant.

(10) A memorandum to the separation authority, subject: Legal Review of Separation under Army Regulation 635-200, Paragraph 14-12b, Commission of a Serious Offense, [Applicant], dated 30 July 2013, the Attorney-Advisor states they have reviewed the chapter action regarding the applicant and find that it is legally sufficient to support the separation. There is sufficient evidence in the packet to support the fact the applicant's infractions constitute a pattern of misconduct. The applicant was properly informed of their rights and given adequate opportunity to consult with counsel. Furthermore, there is evidence the applicant was adequately counseled about their pattern of misconduct and given reasonable time and opportunity to come into compliance.

(11) A DA Form 3349 (Physical Profile) dated 1 October 2013, reflects the applicant's medical conditions; Anxiety Disorder, Depressive Disorder, Lumbar Spine Degenerative Disc Disease, Lumbago, and Radicular Symptoms. The applicant has a permanent profile with a rating of "3" for their Lower Extremities and Psychiatric, signifies that the individual has one or more medical conditions or physical defects that may require significant limitations – the individual should receive assignments commensurate with their physical capability for military duty.

(12) A DA Form 3947 (Medical Evaluation Board Proceedings) dated 2 October 2013, reflects the applicant's medically unacceptable conditions, Anxiety Disorder, Depressive Disorder, Lumbar Spine Degenerative Disc Disease, Lumbago, and Radicular Symptoms. The board recommends the applicant be referred to a Physical Evaluation Board.

(13) A memorandum, Headquarters, U.S. Army Maneuver Center of Excellence, subject: Separation under Provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-

12b, Pattern of Misconduct, [Applicant], dated 9 December 2013, the commanding general states in considering whether to process the applicant through the physical disability system in lieu of separation under the provisions of Army Regulation 635-200, finds that the applicant's medical condition was not a direct or substantial cause of their misconduct. Their separation is returned to the U.S. Army Garrison, Fort Benning, GA for further action.

(14) A memorandum, U.S. Army Garrison, Fort Benning, GA, subject: Separation under Provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12b, Pattern of Misconduct, [Applicant], dated 17 December 2013, reflects the separation authority having reviewed the separation packet of the applicant directed they be separated from the Army prior to the expiration of their current term of service. The separation authority directed the applicant's service be characterized as General (Under Honorable Conditions).

(15) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 7 January 2014, with 3 years, 4 months, and 21 days of net active service this period. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 12 March 2013
- item 18 (Remarks) – in part, Member has not completed first full term of service
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKA
- item 27 (Reentry Code) - 3

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

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

(1) **Applicant provided:** Department of Veterans Affairs (VA) Rating Decision reflecting the applicant's PTSD with Major Depressive Disorder associated with Intervertebral Disc Syndrome, with a 50-percent disability rating a day after their discharge from the Army and increased to 100-percent disability rating from 15 February 2018.

(2) **AMHRR Listed:** MSE/BHE as described in previous paragraph 4h (5).

#### 5. **APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- VA Rating Decision

6. **POST SERVICE ACCOMPLISHMENTS:** None provided 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 Instruction 1332.28.

d. Army Regulation 40-501 (Standards of Medical Fitness), dated 4 August 2011, governed medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Chapter 7 (Physical Profiling) prescribed a system for classifying individuals according to functional abilities. Four numerical designations are used to reflect different levels of functional capacity. The basic purpose of the physical profile serial is to provide an index to overall functional capacity. Therefore, the functional capacity of a particular organ or system of the body, rather than the defect per se, will be evaluated in determining the numerical designation 1, 2, 3, or 4.

- an individual having a numerical designation of "1" under all factors is considered to possess a high level of medical fitness
- a physical profile designator of "2" under any or all factors indicates that an individual possesses some medical condition or physical defect that may require some activity limitations
- a profile serial containing one or more numerical designators of "3" signifies that the individual has one or more medical conditions or physical defects that may require significant limitations – the individual should receive assignments commensurate with his or her physical capability for military duty
- a profile serial containing one or more numerical designators of "4" indicates that the individual has one or more medical conditions or physical defects of such severity that performance of military duty must be drastically limited

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation

before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

**(5)** Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil 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 UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

**(6)** Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

**f.** 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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, (Pattern of Misconduct).

**g.** Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating.

**(1)** Paragraph 4-1 (Scope of the DES) states the IDDES features consists of a single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit and a single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

**(2)** Paragraph 4-3 (Soldiers Absent Without Leave, Undergoing or Pending Adverse Actions or Involuntary Administrative Separation, or Prognosis of Imminent Death) provides Soldiers under processing for an administrative separation for misconduct remain eligible to be referred to the MEB. The Soldier's commander must notify the Soldier's physical evaluation board liaison officer in writing that administrative separation action has been initiated. The Soldier's complete MEB must be referred to the Soldier's General Court-Martial Convening Authority (GCMCA) to determine whether the Soldier will be referred to the Physical Evaluation Board. Approval and suspension of an administrative separation action is not authorized when the Soldier is pending both an administrative separation or disability evaluation for separation action. The GCMCA must decide which action to pursue. Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by U.S. Army Physical Disability Agency for the Secretary of the Army. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the GCMCA.



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 Instructions 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.

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.

j. Manual for Courts-Martial, United States (2012 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 the following Article 91 (Insubordinate Conduct Toward Warrant, Noncommissioned, Petty Officer) and Article 92 (Failure to Obey Order, Regulation).

k. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

**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 multiple event-oriented counseling for acts of misconduct, and nonjudicial punishment for multiple acts of misconduct. The applicant's General Court-Martial Convening Authority determined the applicant's medical condition was not a direct or substantial cause of their misconduct and the applicant was involuntarily separation. A DD Form 214 provides the applicant was discharged with a character of service of general (under honorable conditions) for a pattern of misconduct. They completed 3 years, 4 months, and 21 days of net active service; however, they did not complete their first full term of service of their 4-year contractual 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. The applicant's AMHRR does not reflect documentation of a diagnosis of PTSD during their military service; however, a Medical Evaluation Board found their Anxiety Disorder, Depressive Disorder, Lumbar Spine Degenerative Disc Disease, Lumbago and Radicular Symptoms as medically unacceptable. The applicant provided VA evidence of a diagnosis of PTSD, after their military service.

e. Published DoD guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

**9. BOARD DISCUSSION AND DETERMINATION:**

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses: Depressive Disorder, Personality Disorder, Adjustment Disorder, Anxiety Disorder Not Otherwise Specified (NOS) and Post Traumatic Stress Disorder (PTSD).

(2) Did the condition exist, or experience occur during military service? **Yes.** Depressive Disorder, Personality Disorder, Adjustment Disorder, and Anxiety Disorder Not Otherwise Specified (NOS).

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is a nexus between trauma and difficulty with authority and substances, the basis is mitigated.

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

**b. Response to Contention(s):**

(1) The applicant contends stating they were diagnosed with PTSD after they were discharged from the military. Their symptoms became worse immediately after getting medically evacuated from Afghanistan. They were simply mentally unwell or just mentally unfit for duty, which contributed to the nature of their discharge. The Board acknowledged this contention and voted to grant relief in the form of an upgrade to Honorable.

(2) The applicant contends stating this condition is the reason for their discharge, if they didn't have this affliction, they would have completed their service commitment with honor and more. They had every intention of staying in the military long-term but admittedly, this condition was ever so present and subsequently became problematic even for a proper medical evaluation. The Board considered this contention during proceedings and voted to grant relief in the form of an upgrade to Honorable.

(3) The applicant contends stating they continue to have issues, as described in their medical records, with snap aggression and trauma responses. They experience many hurdles and obstacles, even with having support. Please review their medical records. The Board considered this contention during proceedings and voted to grant relief in the form of an upgrade to Honorable.

**c.** The Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Depressive Disorder, Personality Disorder, Adjustment Disorder, and Anxiety Disorder Not Otherwise Specified). Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE Code was proper and equitable and voted not to change it.

**d. Rationale for Decision:**

(1) Based on a preponderance of evidence, the Board determined the reason for the applicant's separation and the character of service received were inequitable. The Board determined the applicant's Depressive Disorder, Personality Disorder, Adjustment Disorder, and Anxiety Disorder Not Otherwise Specified mitigated the applicant's misconduct. Therefore, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same reasons, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

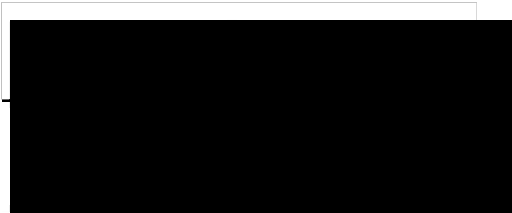
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**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:**

8/22/2024



**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