

1. Applicant's Name: [REDACTED]**a. Application Date:** 14 December 2023**b. Date Received:** 28 March 2024**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is under honorable conditions (general). The applicant requests an upgrade to honorable, separation code change, reentry code change and a narrative reason change.

The applicant through counsel states in effect, they served honorably for three years and one month before they were discharged. They were an outstanding member and a valuable asset of the United States Army. Their discharge stemmed from recurring instances of misconduct, including habitual tardiness, and failure to report in a critical situation which led to their termination. The petitioner encountered harsh treatment from their superiors which led to feelings of being singled out, the petitioner and their parents filed a formal complaint with the Inspector General. The formal complaint exacerbated the situation, culminating in an Article 15 hearing and separation from the Army. The petitioner contends that their mistreatment by commanding officers significantly influenced their actions and perception within the unit, they urge accountability for the alleged abuse from those in authority and appeal for a reconsideration of their discharge, due to the adverse circumstances they faced.

b. Board Type and Decision: In a telephonic personal appearance hearing conducted on 13 January 2025, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, the circumstances surrounding the discharge (Behavioral Health diagnoses), and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is 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 / AR 635-200 / JKA / RE-3 / Under Honorable Conditions (General).

b. Date of Discharge: 8 November 2019

c. Separation Facts:

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

(2) Basis for Separation: NIF

- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** N/A
- (6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 27 Septemeber 2016 / 4 years, 24 weeks.
- b. **Age at Enlistment / Education / GT Score:** 19 / HS Diploma / 119
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 (Specialist) / 42A1P Human Resources Specialist / 3 years, 1 month, 12 days.
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** AAM, NDSM, GWTSM, ASR
- g. **Performance Ratings:** N/A
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A Developmental Counseling Form indicates that the applicant failed to report to morning formation, and they were drunk on duty on 1 March 2019. A Portable Breath Test was administered to determine their alcohol content, two tests were conducted five minute apart and both resulted in a 0.09 AC.

(2) Record of Proceedings UCMJ document dated 14 May 2019 indicates that the applicant received a NJP for violating Article 86 of the UCMJ. They failed to go at the time prescribed to their appointed place of duty on 1 March 2019. Punishment consisted of reduction to E-1, forfeiture of \$840 pay, 45 days extra duty and restriction.

(3) An Enlisted Record Brief (ERB) indicates that the applicant received a rank demotion on to E-3 on 14 May 2019 and they were demoted to E-1 on 3 June 2019.

(4) A Certificate of Release or Discharge from Active Duty (DD Form 214) indicates that the applicant was discharged on 8 November 2019.

- Authority: 635-200, Chapter 14-12b
- Narrative Reason: Pattern Of Misconduct
- Service Characterization: Under Honorable Conditions (General)
- Remarks: Member has not completed first full term of service
- Net Service: 3 years, 1 month, and 12 days

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):** Other mental health

(1) Applicant provided: A Department of Veteran Affairs letter that shows they are being treated for a DSM-5 diagnoses.

(2) AMHRR Listed: None.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Record Review) application, DD Form 214, credit report, driver's license, resume, Drug Testing Report, Department of Veteran Affairs letter, COA-3, Department of Veteran Affairs summary of benefits letter, FBI Summary Sheet, Intensive Inpatient Program certificate, letter from their landlord, Article 15 Record of Proceedings packet, a Narrative statement, a letter submitted by the applicant during their separation proceedings, 21 pictures and two letters of recommendation in support of their petition.

6. POST SERVICE ACCOMPLISHMENTS: The applicant ventured into a new career domain where they have thrived for years. They now work as a Graphic Designer.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health

condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel provides the authorized types of characterization of service or description of separation.

(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) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though

he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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 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 "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.

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 DODI 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:

- 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.
- 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.
- 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.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable, separation code change, reentry code change and a narrative reason change. The applicant's DD Form 214 indicates that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTHC) discharge, which is normally considered appropriate for a soldier discharged for misconduct.

b. Based on the available evidence the applicant enlisted in the army at the age of 19, they advanced to the rank of Specialist in 2018. The applicant received two rank reductions in 2019

after they received a non-judicial punishment for their failure to report at their appointment place of duty. The applicant self-enrolled in SUDCC and successfully completed a thirty day program and at some point, they were processed for administrative separation.

c. A Review of the record provides administrative irregularity occurred in the proper retention of official records, specifically, the AMHRR is void of the applicant's entire separation packet, due to the lack of evidence, we are unable to provide all the specific facts and circumstances surrounding the applicant's involuntary separation. Notwithstanding the lack of evidence, the applicant's AMHRR does contain a properly constituted DD Form 214, which was authenticated by the applicant's signature. The DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, CH 14-12b, by reason of pattern of misconduct with a general, under honorable conditions characterization of service.

d. Chapter 14 establishes policy and prescribes procedures for members being separated 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.

e. Published Department of Defense 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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

10. 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: ADHD, Adjustment Disorder, Alcohol Dependence, Generalized Anxiety Disorder, and asserting in-service mistreatment.

(2) Did the condition exist, or experience occur during military service? **Yes.** ADHD, Adjustment Disorder, Alcohol Dependence, and asserting in-service mistreatment.

(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's testimony outlines increased anxiety and paranoia after they returned from substance treatment in April due to not understanding why leadership's relationship with them had turned from positive to bullying. As a means of anxiety/paranoia avoidance, they incurred multiple Failures to report (FTR). Given they're now service connected for those symptoms originating after the

residential stay and anxiety/paranoia can lead to avoidance, e.g. FTRs, the non-March FTRs are mitigated.

(4) Does the condition or experience outweigh the discharge? **Partial.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition or experience partially outweighed the applicant's basis of separation (tardiness and multiple FTRs). The applicant's length and quality of service mitigated the applicant's remaining misconduct of Failure to Report (FTR) and drunk on duty.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant through counsel states in effect, they served honorably for three years and one month before they were discharged. They were an outstanding member and a valuable asset of the United States Army.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to Adjustment Disorder, Alcohol Dependence, Generalized Anxiety Disorder, and asserted mistreatment partially mitigated the applicant's FTRs and tardiness charges. The applicant's length and quality outweighed the remaining charges of FTR and Drunk on duty.

(2) The petitioner contends that their mistreatment by commanding officers significantly influenced their actions and perception within the unit, they urge accountability for the alleged abuse from those in authority and appeal for a reconsideration of their discharge, due to the adverse circumstances they faced.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to Adjustment Disorder, Alcohol Dependence, Generalized Anxiety Disorder, and asserted mistreatment partially mitigated the applicant's FTRs and tardiness charges. The applicant's length and quality outweighed the remaining charges of FTR and Drunk on duty.

d. The Board determined, based on liberally considering all the evidence, that the condition or experience partially outweighed the applicant's basis of separation (tardiness and multiple FTRs). The applicant's length and quality of service mitigated the applicant's remaining misconduct of Failure to Report (FTR) and drunk on duty.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service. Upon liberally considering all the evidence, the Board found the condition or experience partially outweighed the applicant's basis of separation (tardiness and multiple FTRs). The applicant's length and quality of service mitigated the applicant's remaining misconduct of Failure to Report (FTR) and drunk on duty. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable.

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

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20240007502

11. 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:

1/31/2025



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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs