

1. **Applicant's Name:** [REDACTED]
- a. **Application Date:** 15 September 2020
- b. **Date Received:** 15 September 2020
- 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.

(1) The applicant states, in effect through counsel, their service-related mental health issues, TBI and PTSD prompted their single incident of misconduct, they had a pristine and exceptional service record.

(2) Although the applicant has overcome the issues that led to their discharge, the stigma of a discharge less than Honorable continues to weigh on them and may potentially affect their future education and employment opportunities. Their mental conditions, TBI and PTSD should be seen as mitigating factors in the isolated incident that led to their discharge. Their time in the army was honest and faithful, and for those reasons they respectfully request an upgrade to honorable with a narrative reason change to secretarial authority or miscellaneous/general reasons.

b. **Board Type and Decision:** In a records review conducted on 28 February 2024, and by a 5-0 vote, the board determined that the discharge was inequitable based on the applicant's quality, length, combat service, PTSD, TBI and OBH disorder outweigh the applicant's basis of separation - wrongfully used Ecstasy a Schedule I controlled substance. 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), and the separation code to JKN. Although the applicant's misconduct is mitigated, the behavioral health conditions are service limiting and thus, the reentry eligibility (RE) code will remain RE-4.

*Please see Section 9 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:** Misconduct (Drug Abuse) / AR 635-200, CH 14-12c / JKK / RE-4 / General (under honorable conditions).

b. **Date of Discharge:** 15 April 2016

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 30 September 2015

(2) **Basis for Separation:** The applicant wrongfully used Ecstasy a Schedule I controlled substance between 19 December – 22 December 2014.

(3) **Recommended Characterization:** General, under honorable conditions.

(4) **Legal Consultation Date:** NIF

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

(6) **Separation Decision Date / Characterization:** 22 February 2016 / General, under honorable conditions.

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 1 April 2011 / 4 years, 6 months

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 121

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 68W10 Health Care Specialist / 7 years, 8 months, 11 days.

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

e. **Overseas Service / Combat Service:** Germany / Afghanistan 20110408 - 20120408

f. **Awards and Decorations:** ARCOM, AAM, MUC, AGCM, NDSM, ACM-CS-2, GWTSM, NOPDR, ASR, OSR, NATOMDL

g. **Performance Ratings:** 1 May 2014 – 2 March 2015; Successful

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

(1) An Oath of Extension of Enlistment document provides the applicant extended their 1 April 2011 contractual obligation by 6 months on 25 June 2012 to meet the requirements for a tour in Germany.

(2) A CID investigation report provides on 15 January 2015 the Army Substance Abuse Program (ASAP) clinic at Landstuhl Regional Medical Center notified CID regarding the applicant testing positive for methylenedioxymethamphetamine (MDMA) and methylenedioxyamphetamine (MDA) (the active ingredients in Ecstasy) from a unit urinalysis inspection conducted on 22 December 2014.

(3) A memorandum, subject: Confirmation of a positive urinalysis results dated 5 March 2015 provides the applicant's immediate commander was notified by the ASAP Drug Test Coordinator regarding the applicant testing positive for MDMA from a urinalysis collected on 22 December 2014.

(4) On 6 March 2015 the applicant provided a verbal statement, denying the use of ecstasy. They provided they never knowingly consumed any illegal narcotics; they did recall being at a pub and drinking once they arrived. The applicant could not recall how many drinks they had, they remembered waking up in their bed the following morning with a bad hangover accompanied by vomiting.

(5) A Developmental Counseling Form dated 25 March 2015 provides the applicant was counseled to inform them they were flagged due to their pending article 15; they tested positive for ecstasy.

(6) Record of Proceedings UCMJ signed 28 April 2015 provides the applicant received a NJP for violating Article 112a of the UCMJ; wrongfully use ecstasy between 19 December –22 December 2014. Punishment consisted of reduction in rank to E-4 (specialist), forfeiture of \$1225 pay for two months and extra duty for 15 days. Report of Mental Status Evaluation document dated 12 August 2015, provides the applicant received a separation mental health evaluation. The applicant was diagnosed with anxiety disorder, depressive disorder, and PTSD with history of TBI.

(7) A memorandum, 92nd Military Police Company, APO AE subject: Separation under the provisions of AR 635-200, Chapter 14-12c, misconduct-abuse of illegal drugs dated 30 September 2015 provides the applicant's immediate commander notified them of their intent to separate them for using ecstasy. The commander recommended a general, under honorable conditions characterization of service. The applicant acknowledged receipt of the separation intent and was advised of their right to consult with counsel prior to submitting their Election of Rights.

(8) On 22 February 2016 the appropriate authority approved the applicant's administrative separation and directed a general, under honorable conditions characterization of service.

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

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

(1) **Applicant provided:** Anxiety disorder, Attention deficit disorder, TBI, alcohol dependence, PTSD, adjustment disorder, depression.

(2) **AMHRR Listed:** TBI, PTSD, anxiety disorder, depressive disorder.

**5. APPLICANT-PROVIDED EVIDENCE:** A DD Form 149 (Application for Correction of Military Record), 2- DD Form 214, ERB, separation packet, report of Mental Status Evaluation document, PCS orders, NJP, 77 pages of behavioral health medical records, Department of Veteran Affairs rating decision letter that shows behavioral health conditions disability ratings and two additional enclosures in support of their application.

- A letter of recommendation from the applicant's coworker dated 30 September 2018 describes the applicant has an exemplary worker that kept their professionalism intact, the applicant was having trouble processing some of the trauma they experienced at war.
- A letter of recommendation from a Major who served as the commander in the unit the applicant was discharged from. They provide the were aware of the applicants struggles from their deployment in Afghanistan and being a medic in combat added an additional variable of trauma. Despite their PTSD diagnosis the applicant remained stalwart and professional and served honorably.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is currently enrolled at Napa Valley College where they are pursuing a degree in mathematics and physics while maintaining a 4.0 GPA. They were inducted into the Phi Beta Kappa honor society, earned a place on the Dean's List for the past two academic years, accepted to Stanford University's Summer Session's 2019 Veteran Accelerator program on a full scholarship and accepted into the 2020 Warrior-Scholar Project Class at the University of California, Irvine. After being a recipient of a Certificate of Special Congressional Recognition for being a 2020 Mathematics, Engineering, Science Achievement & HSI STEM Program transferring participant, the applicant has subsequently been admitted to Stanford University, where they plan to pursue a degree in Environmental Engineering. In addition to balancing their academic workload, they are involved on campus as a co-founder, and current Vice President, of the Earth and Sciences Club and Vice President of the Veterans Club at Napa Valley College. While attending the summer session at Stanford University, they took part in The Mission Continues organization where, among other activities, the applicant and other veterans re-built a community garden for senior citizens. Outside of school-sanctioned activities, the applicant regularly volunteers with an organization whose mission is to help rehabilitate veterans.

**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 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. It provides 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 missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

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 "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (drug abuse).

g. 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.
- 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.

**h.** 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 that agency.

**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. The applicant's DD-214 provides 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 drug abuse.

**b.** Based on the available evidence the applicant enlisted in the army at the age 19 and advanced to the rank of E-5. The applicant deployed to Afghanistan for 1 year and after they returned from deployment, they extended their contractual obligation by 6 months to meet the requirements to PCS to Germany. After 2 years of being at their new duty location, the applicant participated a company urinalysis at which they tested positive for ecstasy. The received a NJP and was subsequently processed for administrative separation.

**c.** The applicant was notified of the intent to separate them for misconduct (abuse of illegal drugs), the initiating commander recommended a general discharge; the applicant acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. The appropriate authority approved their administrative separation, and a DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 15 April 2016.

**d.** The applicants AMHRR has administrative irregularities in the proper retention of official records. The applicants AMHRR is void of documentation to support if the applicant waived or consulted with counsel and documentation to support if the applicant waived the administrative separation board. Additionally, the AMHRR is void of chain of command endorsement(s) regarding the characterization of service.

**e.** 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.

**f.** 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. 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: Anxiety DO NOS; Depressive DO NOS; Episodic Mood Disorders; mild TBI; PTSD.

**(2)** Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found Anxiety DO NOS, Depressive DO NOS, Episodic Mood Disorders and mild TBI were diagnosed while in service. VA service connection for PTSD and TBI establishes that they occurred or began during military service.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has two mitigating BH conditions, PTSD and TBI. [Note: diagnoses of Anxiety DO NOS, Episodic Mood Disorders and Depressive DO NOS are subsumed under PTSD diagnosis.] As there is an association between these conditions and self-medication with alcohol and/or illicit drugs, there is a nexus between the applicant's diagnoses of PTSD and TBI and wrongful use of MDMA.

**(4)** Does the condition or experience outweigh the discharge? **Yes.** The board concurred with the opinion of the Board's Medical Advisor, a voting member and as a result, the ADRB applied liberal consideration and found that the applicant's PTSD, TBI and OBH condition outweighed the misconduct - wrongfully used Ecstasy a Schedule I controlled substance for the aforementioned reason(s).

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

**(1)** The applicant requests an upgrade to honorable, separation code change, reentry code change and a narrative reason change. The board considered this contention and voted to upgrade the characterization of service to honorable and change the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN because there is a nexus between the diagnosis of PTSD that mitigated the applicant's misconduct - wrongfully used Ecstasy a Schedule I controlled substance. The board voted to maintain the current RE-code as the current code is consistent with the procedural and substantive requirements of the regulation.

**(2)** The applicant contents through counsel their mental health conditions, TBI and PTSD mitigated the applicant's misconduct. The board found validity in this contention and voted to upgrade the applicant's discharge based on the applicant's PTSD mitigated the applicant's basis for separation as outlined above in 9a (3-4) and 9b (1).

**c.** The board determined that the discharge is inequitable base on the applicant's length, quality, and combat service, PTSD, TBI, and OBH diagnosis outweigh the applicant's misconduct - wrongfully used Ecstasy a Schedule I controlled substance. Thus, relief is warranted.



**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20200008931**

**d. Rationale for Decision:**

(1) The board voted to change the applicant's characterization of service to honorable because the applicant's length, quality, and combat service, PTSD, TBI and OBH mitigated the applicant's misconduct - wrongfully used Ecstasy a Schedule I controlled substance. 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.

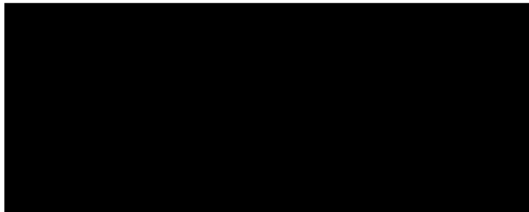
(3) The RE code will not change, as the mitigating conditions are also service limiting.

**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:**

3/12/2024



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