

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** None**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 other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, serving two years and eight months of a three-year contract in the Army. The applicant believes it was an injustice because they had no legal/administrative protocol or due process of the UCMJ. The applicant requests to challenge the chain of custody for the urinalysis which they believe was broken. The applicant was AWOL and involved in an altercation with an officer. There were extenuating circumstances in the applicant's life, and no one asked them about it. While deployed the applicant was shot with a M203 round and had severe family problems.

b. Board Type and Decision: In a records review conducted on 17 December 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD mitigating the applicant's multiple AWOLs, wrongful use of marijuana and wrongful use of cocaine basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnoses warranting consideration prior to reentry of military service.

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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 12 January 2005**c. Separation Facts:**

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 1 December 2004, the applicant was charged with:

Charge I: Violating Article 86, UCMJ:

Specification 1: On or about 0630 hours, 8 September 2004, without authority, absent oneself from the unit and did remain so absent until on or about 0800 hours, 7 October 2004.

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Specification 2: On or about 1700 hours, 18 November 2004, without authority, absent oneself from the unit and did remain so absent until on or about 1330 hours, 30 November 2004.

Charge II: Violating Article 112a, UCMJ:

Specification 1: Between on or about 9 July and 9 August 2004, wrongfully use marijuana, controlled substance.

Specification 2: Between on or about 12 October and 15 October 2004, wrongfully use cocaine, a controlled substance.

(2) Legal Consultation Date: 2 December 2004

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 13 December 2004 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 July 2002 / 3 years

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 91

c. Highest Grade Achieved / MOS / Total Service: E-4 / 13B10, Cannon Crewmember / 2 years, 4 months, 2 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (NIF)

f. Awards and Decorations: PUC, NDSM, GWOTSM, ASR / The applicant's AMHRR reflects award of the ARCOM, however, the award is not reflected in the DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 9 August 2004, reflects the applicant tested positive for THC 147 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 9 August 2004.

Four Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 8 September 2004;

From AWOL to PDY, effective 7 October 2004;

From PDY to AWOL, effective 18 November 2004; and,

From AWOL to PDY, effective 30 November 2004.

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Military Police Report Number 03324-2004-MPC093, 18 October 2004, reflects on 07800 October 2004, the applicant surrendered to military authorities at the unit as an AWOL Soldier.

Electronic Copy of DD Form 2624, 28 October 2004, reflects the applicant tested positive for COC 12910 (cocaine) and THC 84 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 15 October 2004.

Developmental Counseling Form, for wrongful use/possession of a controlled substance and positive urinalysis.

Charge Sheet as previously described in paragraph 3c(1).

i. Lost Time / Mode of Return: 39 days:

AWOL, 8 September 2004 – 6 October 2004 / Returned to Military Control
AWOL, 18 November 2004 – 29 November 2004 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: HMHS Tricare Service Center letter, 4 May 2005, reflects the applicant was referred to a mental health counselor.

Solace Counseling, Psychiatric Evaluation, 31 March 2011, reflects the applicant was diagnosed with Axis I: 309.81 PTSD and 296.20 Major depressive disorder.

Conrad Hamric, LCSW, LMFT, Progress Notes, March to 8 August 2011, reflect PTSD and depression conditions.

(2) AMHRR Listed: HMHS Tricare Service Center Letter, 4 May 2005, reflects the applicant was referred to a mental health counselor.

Solace Counseling, Psychiatric Evaluation, 31 March 2011, reflects the applicant was diagnosed with Axis I: 309.81 PTSD and 296.20 Major depressive disorder.

Conrad Hamric, LCSW, LMFT, Progress Notes, March to 8 August 2011, reflect PTSD and depression.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Application for Correction of Military Record; Certificate of Release or Discharge from Active Duty; Birth Certificate; medical records.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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), 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 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(4) Paragraph 3-7c states 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.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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-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.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends their spouse was pregnant and the applicant wanted to go on leave to assist the spouse; however, was denied leave by the chain of command for no apparent reason. The applicant went AWOL for four months and then returned to the unit. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends never having due process; however, the AMHRR reflects on 2 December 2004, the applicant consulted with counsel, and was advised of their rights. Based on the advice, the applicant voluntarily requested discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. In the request the applicant acknowledged the elements of the offense they were being charged with, was guilty of at least one of the charges or a lesser-included offense; and could receive a bad conduct or dishonorable discharge.

The applicant requests to challenge the chain of custody for the urinalysis which they believe was broken. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization. The AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

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: PTSD and Major Depressive Disorder (MDD).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found applicant has been diagnosed with PTSD and MDD by civilian providers.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has BH conditions that mitigates the misconduct. The applicant has diagnoses of PTSD and MDD, related to military service, as determined by civilian providers. Given the nexus between PTSD and avoidant behavior and PTSD and the use of substances to self-medicate, the misconduct characterized by multiple AWOLs, wrongful use of marijuana, and wrongful use cocaine is mitigated by the applicant's PTSD.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board

determined that the applicant's PTSD outweighed the multiple AWOLs, wrongful use of marijuana, and wrongful use cocaine basis for separation.

b. Response to Contention(s):

(1) The applicant contends good service, including a combat tour. 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 PTSD fully outweighing the applicant's multiple AWOLs, wrongful use of marijuana, and wrongful use cocaine basis for separation.

(2) The applicant contends the spouse was pregnant and the applicant wanted to go on leave to assist the spouse; however, was denied leave by the chain of command for no apparent reason. The applicant went AWOL for four months and then returned to the unit. never had due process. 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 PTSD fully outweighing the applicant's multiple AWOLs, wrongful use of marijuana, and wrongful use cocaine basis for separation.

(3) The applicant requests to challenge the chain of custody for the urinalysis which they believe was broken. The Board considered this contention and determined the chain of custody for the urinalysis shows no indication of being broken. Ultimately, an upgrade is being granted based on the applicant's PTSD mitigating the multiple AWOLs, wrongful use of marijuana, and wrongful use cocaine basis for separation.

c. the Board determined the discharge is inequitable based on the applicant's PTSD mitigating the applicant's multiple AWOLs, wrongful use of marijuana and wrongful use of cocaine basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnoses warranting consideration prior to reentry of military service. 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 PTSD mitigated the applicant's misconduct of multiple AWOLs, wrongful use of marijuana and wrongful use of cocaine. 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 due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

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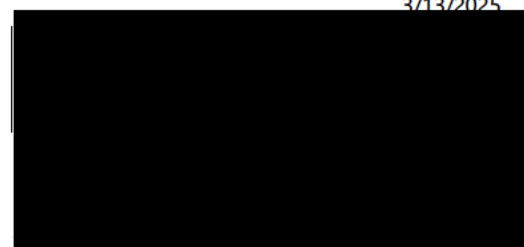
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10. BOARD ACTION DIRECTED:

- 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, paragraph 14-12a

Authenticating Official:

3/13/2025



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