

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** N/A**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (other than honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, receiving a 100 percent service-connected disability rating by the VA for Post Traumatic Stress Disorder (PTSD). The applicant believes the problems they had while serving in the U.S. Army were largely because of PTSD and Traumatic Brain Injury (TBI)

b. Board Type and Decision: In a records review conducted on 5 December 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and partial medical mitigation of the applicant's illegal substance abuse combining to outweigh the discharge. 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

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, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 8 May 2009

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 23 April 2009

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully used marijuana and cocaine.

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

(4) Legal Consultation Date: On 23 April 2009, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 30 April 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 July 2008 / 4 years

b. Age at Enlistment / Education / GT Score: 26 / High School Graduate / 96

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 2 years, 9 months, 29 days

d. Prior Service / Characterizations: RA, 7 July 2006 – 15 July 2008 / HD

e. Overseas Service / Combat Service: SWA / Iraq (20 September 2007 – 22 November 2008)

f. Awards and Decorations: ARCOM-2, NDSM, GWOTSM, ICM-CS, ASR, OSR, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Memorandum for Commander, Unit Drug Testing Results, 2 February 2009, reflect the applicant tested positive for marijuana and COC (cocaine), during an Inspection Other (IO) urinalysis testing, conducted on 15 January 2009.

FG Article 15, 9 March 2009, for on or about 12 January 2009, without authority, absent oneself from their unit, and did remain so absent until on or about 13 January 2009. Between on or about 16 December 2008, and on or about 15 January 2009, wrongfully use Marijuana, a Schedule I controlled substance. Between on or about 7 January 2009 and on or about 14 January 2009, wrongfully use Cocaine, a Schedule II controlled substance. The punishment consisted of a reduction to E-1; forfeiture of \$699 pay per month for two months; and extra duty and restriction for 45 days.

FG Article 15, 15 August 2007, for wrongfully using marijuana on or about 12 May 2007; on or about 22 April 2007, because of wrongful previous overindulgence in intoxicating liquor or drugs incapacitated for the proper performance of their duties. The punishment consisted of a reduction to E-1; forfeiture of \$636 pay per month for two months; and extra duty and restriction for 45 days.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 12 January 2009; and

From AWOL to PDY, effective 13 January 2009.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: 3 days:

AWOL, 12 January 2009 – 12 January 2009 / NIF

AWOL, 7 May 2009 – 8 May 2009 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: Certificate of Completion for the Veterans Health Care System of the Ozarks Addiction Recovery Intensive Outpatient Treatment Program. The applicant's reason for treatment was not available for review.

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), 1 April 2009, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The applicant was diagnosed with, Cannabis use; fainting and hand tremor. The applicant was not reporting suicidal or homicidal ideation and did not appear to be a threat to oneself or others.

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: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; four letters of support; Addiction Recovery Certificate of Completion Certificate.

6. POST SERVICE ACCOMPLISHMENTS: The applicant provided a Certificate of Completion for the Veterans Health Care System of the Ozarks Addiction Recovery Intensive Outpatient Treatment Program.

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) 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.

(5) Paragraph 14-3 prescribes 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.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

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

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 contends the VA has rated the applicant 100 percent service-connected disabled for Post Traumatic Stress Disorder (PTSD). The applicant believes the problems they had while serving in the U.S. Army were largely because of PTSD and Traumatic Brain Injury (TBI). The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a Report of Behavioral Health Evaluation (BHE), 1 April 2009, reflecting the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. The applicant was diagnosed with Cannabis use; fainting and hand tremor. The applicant was not reporting suicidal or homicidal ideation and did not appear to be a threat to oneself or others. The mental status evaluation was considered by the separation authority.

The third-party statements provided with the application reflect the applicant has attended many relapse prevention groups and is a positive influence on the other veterans in the group. The applicant is an extremely hard worker and dedicated to becoming a better person.

The applicant contends completing the Veterans Health Care System of the Ozarks Addiction Recovery Intensive Outpatient Treatment Program. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of

time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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, TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is service connected by the VA for PTSD and TBI. Service connection establishes that the conditions existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. Given the nexus between PTSD, TBI, and self-medicating with substances, the wrongful use of marijuana and cocaine after the applicant's deployment is mitigated. The applicant's marijuana use from May 2007 is not mitigated due to it taking place prior to the applicant's TBI and PTSD onset.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighed the applicant's medically unmitigated offense of illegal substance abuse prior to deployment.

b. Response to Contention(s):

(1) The applicant contends the VA has rated the applicant 100 percent service-connected disabled by for PTSD. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighed the applicant's medically unmitigated offense of illegal substance abuse prior to deployment. However, the Board found that the applicant's service record outweighed the medically unmitigated offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends completing the Veterans Health Care System of the Ozarks Addiction Recovery Intensive Outpatient Treatment Program. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the reasons discussed above in 9b(1).

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and partial medical mitigation of the applicant's illegal substance abuse combining to outweigh the discharge. 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, the narrative reason for

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separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury mitigated the applicant's post-deployment illegal substance abuse offenses. The Board found that the applicant's record of service outweighed the applicant's pre-deployment illegal substance abuse offense. 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.

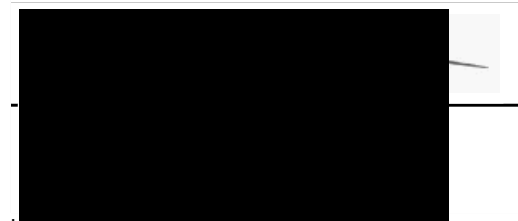
(3) The RE code will change to RE-3.

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:** RE-3
- e. Change Authority to:** AR 635-200

Authenticating Official:

12/30/2024



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