

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, it was not the applicant's choice to get out of the military. The applicant states, yes, they had misconduct; however, so did many other Soldiers and they are still in the Army. The team leader failed two urinalyses and was not discharged. The applicant received an Article 15 punishment causing them not to receive pay for two months and is now being charged for it. The applicant is just starting to live their life, being able to find a job and renting a cheap trailer with just enough money left over to eat. The applicant cannot afford this garnishment of their wages. The applicant thought the US Government would have been more supportive of a combat veteran who suffers from PTSD, who joined at 17 years old and was deployed to Afghanistan at 18 years old. The applicant continuously works, pays their bills, and stays out of trouble. The applicant will be working with the Congressional representative and others to get this issue fixed.

- b. **Board Type and Decision:** In a records review conducted on 19 November 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offense. 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:** 17 February 2011

- c. **Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** 11 January 2011

- (2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive as a result of a command directed urinalysis for tetrahydrocannabinol (marijuana) on or about 30 August 2010, which indicates wrongful use between on or about 1 August 2010 and on or about 30 August 2010.

- (3) Recommended Characterization:** General (Under Honorable Conditions)
- (4) Legal Consultation Date:** 11 January 2011
- (5) Administrative Separation Board:** NA
- (6) Separation Decision Date / Characterization:** 24 January 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 10 June 2008 / 6 years, 16 weeks
- b. Age at Enlistment / Education / GT Score:** 17 / GED / 103
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 2 years, 8 months, 8 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** SWA / Afghanistan (13 May 2009 – 4 June 2010)
- f. Awards and Decorations:** ACM-CS, AAM, NDSM, GWOTSM, ASR, OSR, NATOMDL, CIB
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 6 October 2010, reflects the applicant tested positive for THC 86 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 30 August 2010.

Army Substance Abuse Program (ASAP) Enrollment form, 11 October 2010, reflects the applicant was command referred in the ASAP.

FG Article 15, 26 October 2010, between on or about 1 August 2010 and on or about 30 August 2010, wrongfully used Tetrahydrocannabinol (Marijuana). The punishment consisted of a reduction to E-2; forfeiture of \$811 pay per month for two months; and extra duty and restriction for 45 days.

Developmental Counseling Form, for testing positive for substance abuse.

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

- (1) Applicant provided:** None

(2) AMHRR Listed: Report of Medical Examination, 15 October 2010, the examining medical physician noted Anxiety in the comments section.

Report of Medical History, 15 October 2010, the examining medical physician noted: Known anxiety; sleep issues; in counseling for anxiety; and smokes weed in the comments section.

Report of Behavioral Health Evaluation (BHE), 26 October 2010, reflects the applicant met the retention requirements of chapter 3, AR 40-50 and did not meet the criteria for PTSD or any other major mental illness. The applicant was psychiatrically cleared for any administrative action deemed appropriate by command. The applicant was diagnosed with Axis I: Adjustment Disorder with Disturbance of Emotions and Conduct.

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; self-authored statement; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: The applicant continuously works, pays their bills, and stays out of trouble.

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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes: 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.

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 good service, including a combat tour.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant contends other Soldiers with similar offenses were allowed to stay in the Army. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

The applicant contends being a combat veteran suffering from PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR contains no documentation of PTSD diagnosis. The AMHRR shows the applicant underwent a Behavioral Health Evaluation (BHE), on 26 October 2010, which indicates the applicant met the retention requirements of chapter 3, AR 40-50 and did not meet criteria for PTSD or any other major mental illness. The applicant was psychiatrically cleared for any administrative action deemed appropriate by command. The applicant was diagnosed with Axis I: Adjustment Disorder with Disturbance of Emotions and Conduct. A Report of Medical Examination, 15 October 2010, the examining medical physician noted Anxiety in the comments section. A Report of Medical History, 15 October 2010, the examining medical physician noted: Known anxiety; sleep issues;

in counseling for anxiety; and smokes weed in the comments section. All of the medical documentation included in the AMHRR was considered by the separation authority.

The applicant contends receiving an Article 15 punishment causing them not to receive pay for two months and is now being charged for it. The applicant is just starting to live their life, being able to find a job and renting a cheap trailer with just enough money left over to eat. The applicant cannot afford this garnishment of their wages. 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 applicant continuously works, pays their bills, and stays out of trouble. 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 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, GAD, Various Adjustment Disorders.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found the applicant is 100 percent SC for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the discharge. Given the nexus between PTSD and the use of substances to self-medicate, the applicant's misconduct is mitigated.

(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 Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse offense.

b. Response to Contention(s):

(1) The applicant contends being a combat veteran suffering from PTSD. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse offense.

(2) 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 Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offense.

(3) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. 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 Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offense.

(4) The applicant contends other Soldiers with similar offenses were allowed to stay in the Army. 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 Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offense.

(5) The applicant contends receiving Article 15 punishment causing them not to receive pay for two months and is now being charged for it. The applicant is just starting to live their life, being able to find a job and renting a cheap trailer with just enough money left over to eat. The applicant cannot afford this garnishment of their wages. The Board determined that the applicant's request regarding garnishment of wages does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(6) The applicant continuously works, pays their bills, and stays out of trouble. 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 Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offense.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offense. 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.

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 outweighed the applicant's illegal substance abuse. 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE
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- 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:

12/5/2024



Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral Health (Issues)
OMPF – Official Military Personnel File
PTSD – Post-Traumatic Stress Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized Discharge
UOTHC – Under Other Than Honorable Conditions
VA – Department of Veterans Affairs