

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, the discharge was the result of untreated post-traumatic stress disorder (PTSD). The applicant contends after their second deployment they suffered from untreated PTSD; depression and anxiety which led to their self-medicating and discharge.

b. Board Type and Decision: In a records review conducted on 14 November 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Anxiety Disorder, Major Depressive Disorder, Bipolar Disorder, and Post Traumatic Stress Disorder outweighing the illegal substance abuse, DUI, and FTR offenses. 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 changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

Please see Section 9 of this document for more details 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: 16 November 2011**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 26 October 2011

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant on or about 10 June 2011, wrongfully used cocaine.

The applicant on or about 25 June 2011 to on or about 25 July 2011, wrongfully used marijuana.

The applicant was charged with driving under the influence of alcohol on or about 22 July 2011.

On or about 18, 20 and 22 July 2011, the applicant failed to go at the time prescribed to their appointed place of duty.

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

(4) Legal Consultation Date: 27 October 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 2 November 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 17 September 2007 / 5 years, 21 weeks

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 120

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M1P, Motor Transport Operator / 4 years, 2 months,

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Italy, SWA / Afghanistan (9 May 2008 – 10 July 2008; 3 December 2009 – 27 November 2010)

f. Awards and Decorations: AAM-2, AGCM, NDSM, ACM-2CS, GWOTSM, ASR, OSR, NATOMDL, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 15 August 2011, reflects the applicant tested positive for THC 59 (marijuana), during a Probable Cause (PO) urinalysis testing, conducted on 25 July 2011.

FG Article 15, 24 August 2011, for wrongfully using cocaine on or about 10 June 2011. Between 25 June and 25 July 2011, wrongfully use marijuana. Between 18 and 22 July 2011, on three occasions fail to go at the time prescribed to their appointed place of duty. Punishment consisted of a reduction to E-1; forfeiture of \$733 pay per month for two months and extra duty for 45 days.

Four Developmental Counseling Forms, for notification of intent to recommend separation from the Army; failure to be at appointed place and time and poor performance.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 27 September 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the

influence of these conditions. A careful review of medical records indicated no history of psychiatric treatment or diagnosis which would have caused the applicant to fall below retention standards. The applicant had deployed and denied any difficulties performing the duties associated with their job. The applicant was cleared by behavioral health to be administratively separated.

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; Pre-Discharge Compensation Claim Department of Veterans Affairs Form; Claim Department of Veterans Affairs letter.

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) 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the discharge was the result of untreated post-traumatic stress disorder (PTSD). The applicant contends after their second deployment they suffered from untreated PTSD; depression and anxiety which led to their self-medicating and discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a Report of Mental Status Evaluation, 27 September 2011, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. A careful review of medical records indicated no history of psychiatric treatment or diagnosis which would have caused the applicant to fall below retention standards. The applicant had deployed and denied any difficulties performing the duties associated with their job. The applicant was cleared by behavioral health to be administratively separated. 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 mental status evaluation was considered by the separation authority.

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

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Anxiety Disorder NOS, Major Depressive Disorder, Bipolar Disorder, and PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with an Adjustment Disorder, Anxiety Disorder NOS, Major Depressive Disorder, and Bipolar Disorder. The VA has also diagnosed the applicant with combat-related PTSD and service connected the Bipolar Disorder.

(3) Does the condition or experience 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 Anxiety Disorder NOS, Major Depressive Disorder, Bipolar Disorder, PTSD, self-medicating with substances, and avoidance, the wrongful use of cocaine and marijuana, DUI, and FTRs are mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's Anxiety Disorder, Major Depressive Disorder, Bipolar Disorder, and Post Traumatic Stress Disorder outweighed the illegal substance abuse, DUI, and FTR offenses.

b. Response to Contention(s):

(1) The applicant contends discharge was the result of untreated post-traumatic stress disorder (PTSD). The applicant contends after their second deployment they suffered from untreated PTSD; depression and anxiety which led to their self-medicating and discharge. The Board liberally considered this contention and determined that the applicant's Anxiety Disorder, Major Depressive Disorder, Bipolar Disorder, and Post Traumatic Stress Disorder outweighed the illegal substance abuse, DUI, and FTR offenses.

(2) The applicant contends good service, including two combat tours. 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 Anxiety Disorder, Major Depressive Disorder, Bipolar Disorder, and Post Traumatic Stress Disorder outweighing the illegal substance abuse, DUI, and FTR offenses.

c. The Board determined the discharge is inequitable based on the applicant's Anxiety Disorder, Major Depressive Disorder, Bipolar Disorder, and Post Traumatic Stress Disorder outweighing the illegal substance abuse, DUI, and FTR offenses. 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 changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Anxiety Disorder, Major Depressive Disorder, Bipolar Disorder, and

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Post Traumatic Stress Disorder outweighed the illegal substance abuse, DUI, and FTR offenses. 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.

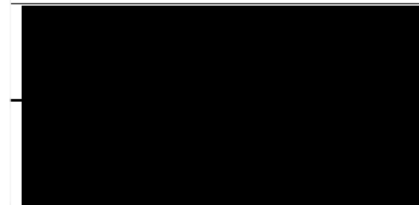
(3) The RE code will not change due to the BH diagnoses. The current code is consistent with the procedural and substantive requirements of the regulation.

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

Authenticating Official:

11/20/2024

**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