

**1. Applicant's Name:**

- 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 period under review is honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, not given the chance to change their discharge or afforded counseling for their mental health for the time spent in a combat zone. The applicant acknowledges they failed a urinalysis after traveling to Iraq, Kuwait, and Turkey. The applicant was young and facing many of unanswered questions because of their experiences in war-torn countries. Due to their youth and inexperience, the applicant realized they made a mistake and required guidance. The applicant desires access to veterans benefits to work on improving their quality of life. The applicant has had a successful life since their discharge, working, attending school, and contributing to society.

b. **Board Type and Decision:** In a records review conducted on 14 November 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*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 (Minor Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-3 / Honorable

b. **Date of Discharge:** 18 August 2004

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 14 July 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 9 June 2004, court-martial charges were preferred against the applicant for two violations of Article 112a, UCMJ, wrongful use marijuana. On 23 June 2004, the applicant submitted an Offer to Plead Guilty. The applicant agreed to plead guilty to all charges and their specifications to a Summary Court-Martial.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 23 June 2004

(5) **Administrative Separation Board:** On 23 June 2004, the applicant unconditionally waived consideration of the case before an administrative separation board as part of an Offer to Plead Guilty in a Summary Court-Martial proceedings.

**(6) Separation Decision Date / Characterization: NIF****4. SERVICE DETAILS:**

- a. Date / Period of Enlistment:** 15 August 2002 / 4 years
- b. Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 105
- c. Highest Grade Achieved / MOS / Total Service:** E-3 / 92A10, Automated Logistical Specialist / 2 years, 4 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** SWA / Kuwait, Iraq (21 March 2003 – 25 February 2004)
- f. Awards and Decorations:** NDSM, ASR, GWOTSM
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** CG Article 15, 14 August 2003, for disobeying a lawful order on or about 15 July 2003. The punishment consisted of a reduction to E-1; forfeiture of \$268; and extra duty and restriction for 14 days.

Electronic Copy of DD Form 2624, 17 March 2004, reflects the applicant tested positive for THC 45 (marijuana), during an Inspection Probable Cause (PO) urinalysis testing, conducted on 12 March 2004.

Electronic Copy of DD Form 2624, 1 June 2004, reflects the applicant tested positive for THC 15 (marijuana), during a urinalysis testing, conducted on 25 May 2004.

Charge Sheet, 9 June 2004, reflects the applicant was charged with: Violation of the UCMJ, Article 112:

Specification 1: on or about 15 March and on or about 14 April 2004, wrongfully use marijuana.

Specification 2: on or about 16 April and on or about 25 May 2004, wrongfully use marijuana.

Numerous Developmental Counseling Forms, for various acts of misconduct.

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

**(1) Applicant provided:** Patient inquiry, printed on 18 January 2017, reflects a service connection of 50 percent for general anxiety disorder and an overall rating of 70 percent.

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 27 April 2004, 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 was psychiatrically cleared for any administrative (or judicial) action deemed appropriate by command.

*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.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is attending school and working.

**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)** 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.

**(4)** 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.

**(5)** Paragraph 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

**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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (minor infractions).

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-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

**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 they were never afforded counseling for their mental health for the time spent in a combat zone. The applicant provided a Patient inquiry, printed on 18 January 2017, reflecting a service connection of 50 percent for general anxiety disorder and an overall rating of 70 percent. The third party statement provided with the application reflects applicant mood swings and outburst towards others. The AMHRR includes a Report of Mental Status Evaluation, 27 April 2004, 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 is psychiatrically cleared for any administrative (or judicial) action deemed appropriate by command. The mental status evaluation was considered by the separation authority.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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 obtaining employment and going to school. 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.

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

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. The applicant is diagnosed and service-connected by the VA for PTSD which is a mitigating BH condition and likely contributed to the discharge given the nexus with self-medicating with substances. However, the applicant was already holds an honorable discharge with a Misconduct (Minor Infractions) narrative reason for separation. Therefore, the applicant's PTSD provides no further mitigation.

(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 outweighed the applicant's honorable characterization of service and Misconduct (Minor Infractions) narrative reason for separation.

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

(1) The applicant contends they were never afforded counseling for their mental health for the time spent in a combat zone. 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 outweighed the applicant's honorable characterization of service and Misconduct (Minor Infractions) narrative reason for separation.

(2) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(3) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention but ultimately did not address it as the applicant already holds an honorable characterization of service and Misconduct (Minor Infractions) narrative reason for separation. Additionally, the applicant met age requirements for entry into military service.

(4) The applicant contends obtaining employment and going to school. The Board considered this contention but ultimately did not address it as the applicant already holds an honorable characterization of service and Misconduct (Minor Infractions) narrative reason for separation.

**c.** The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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.

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000642

## d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service as the applicant already holds an honorable characterization and further relief is not available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

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

## 10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

## Authenticating Official:

11/20/2024

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

### 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  
UOTH – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs