

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**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, through counsel, requests an upgrade to honorable.

The applicant seeks relief contending, in effect, seven months after arriving at their duty station at Fort Stewart, the applicant was deployed to Iraq. The applicant was a combat medic and was shocked at the amount of death and destruction which surrounded the applicant, including the death of a fellow combat medic. The applicant's experiences in Iraq deeply affected the applicant, as well as the applicant's friend. After completing the deployment, the applicant returned home for a break from combat, but it created more anxiety. The applicant found many of their fellow Soldiers resorted to drugs, alcohol, and suicide as a result of battle stress. The chain of command in battle was replaced with leadership, which placed little value on their unit's accomplishments in Iraq. The applicant was unable to cope with the stress of intense combat and was sent to consult a mental health professional. A psychologist informed the applicant, they were suffering from post-traumatic stress disorder (PTSD). The condition prevented the applicant from accomplishing basic tasks. Out of despair and hopelessness, the applicant requested to be discharged. The commander had the applicant handcuffed and jailed until the required documents were generated for the applicant's removal. The applicant agreed to an under other than honorable conditions discharge and reduction to E-1 because the applicant was desperate to be released from the Army and to be with their family. The government failed to maintain and provide the applicant service medical records, which are pertinent to their request for an upgrade, and to rebut the presumption of regularity, citing various case law. The applicant's misconduct most likely resulted from their undiagnosed, untreated PTSD. The applicant should be given a favorable character of service. Counsel further details the contentions in the Legal Brief submitted with the application.

b. Board Type and Decision: In a records review conducted on 12 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 offenses of FTR, AWOL, illegal substance abuse, and dereliction of duty. 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. 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 detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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a. Reason / Authority / Codes / Characterization: Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 9 April 2007

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 14 March 2007

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant was willfully and negligently derelict in their duties, and the applicant verbally and through a lack of compliance refused to perform duties normally expected of a Soldier in the Army, by which dereliction the applicant damaged unit morale and was a distraction to the chain of command. On 24 January 2006, the applicant tested positive for marijuana. The applicant had a history of failing to report on multiple occasions between 2 June and 13 August 2006, being absent from the unit without leave for the purpose of avoiding movement to deployment readiness exercises on 14 September 2006 and other field exercises on 9 August 2006.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 14 March 2007

(5) Administrative Separation Board: On 14 March 2007, 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: 27 March 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 November 2003 / 4 years

b. Age at Enlistment / Education / GT Score: 25 / 1 Year College / 111

c. Highest Grade Achieved / MOS / Total Service: E-4 / 68W10, Health Care Specialist / 3 years, 4 months, 26 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (4 January 2005 – 6 January 2006)

f. Awards and Decorations: NDSM, GWOTSM, ICM, ASR, OSR / The applicant's AMHRR reflects award of the CMB; however, the award is not reflected on the applicant's DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 7 February 2006, reflects the applicant tested positive for THC 238 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 24 January 2006.

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Field Grade Article 15, 8 March 2006, for wrongfully using marijuana (between 10 and 24 January 2006). The punishment consisted of a reduction to E-1; forfeiture of \$640 pay per month for two months (suspended); and extra duty and restriction for 45 days.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 10 August 2006;
From AWOL to PDY, effective 14 August 2006;
From PDY to AWOL, effective 15 September 2006; and
From AWOL to PDY, effective 20 September 2006.

Report of Mental Status Evaluation, 7 June 2006, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

Offer to Plead Guilty, 1 December 2006, reflects the applicant offered to accept a summary court-martial and plead guilty to Charges I, II and III, and their Specifications; and waive their right to an administrative separation board. In exchange the convening authority would not seek referral of the charges to a Special Court-Martial, empowered to adjudge a bad conduct discharge. The convening authority accepted the Offer.

Stipulation of Fact, 1 December 2006, reflects the applicant stipulated to facts of the charges referred against that applicant were true, accurate, susceptible of proof, and admissible as evidence.

Report of Mental Status Evaluation, 8 February 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

Numerous Developmental Counseling Forms, for going absent without leave (AWOL); being restricted to the barracks; being insubordinate; failing to report on multiple occasions; missing movement; disobeying a commissioned officer; testing positive for THC.

i. Lost Time / Mode of Return: 10 days:

AWOL, 10 August 2006 – 14 August 2006 / NIF
AWOL, 15 September 2006 – 19 September 2006 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

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; Legal Brief; two VA letters; and National Personnel Records Center letter.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is involved in the church by organizing picnics and holiday fundraisers.

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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(6) 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.

(7) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 contends undiagnosed and untreated combat-related PTSD affected behavior, which led to the discharge and the discharge was too harsh, given the applicant's mental condition. 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 two mental status evaluations (MSEs) on 7 June 2006 and 8 February 2007, which indicates the applicant was mentally responsible and recognized right from wrong. The MSEs do not indicate any diagnosis. The MSEs were considered by the separation authority.

The applicant contends good service, including a combat tour.

The applicant contends the government failed to maintain and provide the applicant's service and medical records, creating an adverse presumption of regularity. The applicant provided documents reflecting the National Personnel Records Center searched for the applicant's records with negative results. The VA provided the applicant with a copy of their DA Form 214. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the government.

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 an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends being involved in the church by organizing picnics and holiday fundraisers. 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, Acute Stress Reaction.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found the applicant is 70 percent SC for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board determined, based on the Board's Medical Advisor's opine, that the applicant's behavioral health conditions mitigate the discharge. Given the nexus between PTSD and problems with authority, using substances to self-medicate, avoidance, and increased fear of re-traumatization, the applicant's offenses of dereliction of duty, FTR, AWOL, and missing movements are mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the BMA's opine, the Board determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's offenses of FTR, AWOL, illegal substance abuse, and dereliction of duty.

b. Response to Contention(s):

(1) The applicant contends undiagnosed and untreated combat-related PTSD affected behavior, which led to the discharge and the discharge was too harsh, given the applicant's mental condition. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's offenses of FTR, AWOL, illegal substance abuse, and dereliction of duty.

(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 offenses of FTR, AWOL, illegal substance abuse, and dereliction of duty.

(3) The applicant contends the government failed to maintain and provide the applicant's service and medical records, creating an adverse presumption of regularity. 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 offenses of FTR, AWOL, illegal substance abuse, and dereliction of duty.

(4) 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.

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

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(6) The applicant contends being involved in the church by organizing picnics and holiday fundraisers. 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 offenses of FTR, AWOL, illegal substance abuse, and dereliction of duty.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's offenses of FTR, AWOL, illegal substance abuse, and dereliction of duty. 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. 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 Post Traumatic Stress Disorder outweighed the applicant's offenses of FTR, AWOL, illegal substance abuse, and dereliction of duty. 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.

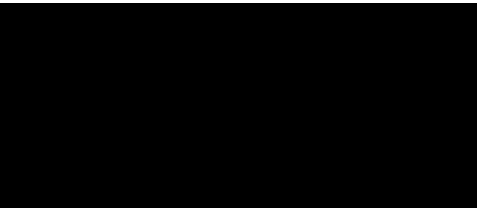
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

12/16/2024



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

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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