

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 honorable. The applicant requests a narrative reason change.

The applicant seeks relief contending, in effect, although they acknowledge their wrongdoing, they disagree with the narrative reason for the discharge because they have never used drugs. The applicant claims to be a good Soldier who has never caused any trouble, but after serving in Iraq, they returned to a broken household and was suffering from post-traumatic stress disorder (PTSD). The applicant made a poor choice by turning to marijuana to ease their mental suffering and regrets ever engaging in the one-time occurrence because it was out of character.

b. Board Type and Decision: In a records review conducted on 31 October 2024, and by a 5-0 vote, the Board, based on the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Anxiety, and Chronic Adjustment Disorder outweighing the applicant's illegal substance abuse offense, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service and reentry code were proper and equitable and voted not to change them.

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 (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Honorable

b. Date of Discharge: 1 May 2006**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 31 March 2006

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant tested positive for marijuana on a urinalysis held on 17 January 2006.

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

(4) Legal Consultation Date: On 5 April 2006, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

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(6) Separation Decision Date / Characterization: 11 April 2006 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 14 November 2004 / 4 years

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 19D10, Calvary Scout / 6 years, 8 months, 29 days

d. Prior Service / Characterizations: ARNG, 11 December 1999 – 8 July 2001 / NA
AD, 9 July 2001 – 6 September 2001 / HD
ARNG, 7 September 2001 – 30 September 2002 / HD

e. Overseas Service / Combat Service: Germany, Kosovo, SWA / Iraq – Kuwait (10 February 2004 – 12 January 2005)

f. Awards and Decorations: PH, ARCOM, VUA, NDSM, GWOTEM, GWOTSM, KCM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 27 October 2005, for on or about 17 October 2005, were disrespectful in language toward SFC S., a noncommissioned officer, who was then in the execution of their office, by saying to them "Fuck You, Sergeant," or words to that effect. This is in violation of Article 91, UCMJ. The punishment consisted of extra duty and restriction for 14 days.

Electronic Copy of DD Form 2624, 27 January 2006, reflects the applicant tested positive for THC 123 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 17 January 2006.

FG Article 15, 10 February 2006, for wrongfully using marijuana (between 18 December 2005 and 17 January 2006). The punishment consisted of forfeiture of \$636 pay per month for two months (suspended); and extra duty for 45 days and restriction (suspended).

Five Developmental Counseling Forms, for failing a urinalysis; failure to obey; insubordination and the Army core values.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Benefits letter, 12 April 2011, reflects a rating of 70 percent.

(2) AMHRR Listed: Report of Mental Status Evaluation, 10 March 2006, reflects the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong. The evaluation included a diagnosis of Anxiety disorder not otherwise specified. The diagnoses above do not require a medical board as it does not limit

their ability to do their job in the Army. The applicant reports no suicidal or homicidal thoughts currently. The applicant was cleared for any administrative action deemed appropriate by command.

Report of Mental Status Evaluation, 14 March 2006, reflects the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The evaluation included a diagnosis of occupational problems. There was no evidence of any mental disease or defect, which would warrant a disposition through medical/psychiatric channels. The applicant reports no suicidal or homicidal thoughts currently. The applicant was cleared for any administrative 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; Department of Veterans Benefits letter, VA Form 21-22; VA Form 21-8940.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(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 prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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 the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends suffering from post-traumatic stress disorder (PTSD). The applicant provided a Department of Veterans Benefits letter, 12 April 2011, reflecting a rating of 70 percent but the diagnosis was not available for review. The AMHRR includes a Report of Mental Status Evaluation, 10 March and 14 March 2006, reflecting Anxiety disorder not otherwise specified and occupational problems.

The applicant contends returning to a broken household and turning to marijuana to ease the suffering. 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 applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends good service, including a combat tour. 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, Anxiety, Chronic Adjustment Disorder, TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with PTSD and Anxiety Disorder NOS and is service connected by the VA for Chronic Adjustment Disorder and TBI. Service-connection establishes that the Chronic Adjustment Disorder and TBI also existed during military service.

(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, Anxiety, Chronic Adjustment Disorder, TBI and self-medicating with substances, the marijuana use that led to the separation 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, Traumatic Brain Injury, Anxiety, and Chronic Adjustment Disorder outweighed the applicant's illegal substance abuse.

b. Response to Contention(s):

(1) The applicant contends suffering from post-traumatic stress disorder. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Anxiety, and Chronic Adjustment Disorder outweighed the applicant's illegal substance abuse.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined that it was valid based on medical mitigation of the applicant's misconduct.

(3) The applicant contends returning to a broken household and turned to marijuana to ease the suffering. 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, Traumatic Brain Injury, Anxiety, and Chronic Adjustment Disorder outweighing the applicant's illegal substance abuse offense.

(4) The applicant contends the event which led to the discharge from the Army was an isolated incident. 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, Traumatic Brain Injury, Anxiety, and Chronic Adjustment Disorder outweighing the applicant's illegal substance abuse offense.

(5) 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, Traumatic Brain Injury, Anxiety, and Chronic Adjustment Disorder outweighing the applicant's illegal substance abuse offense.

c. The Board, based on the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Anxiety, and Chronic Adjustment Disorder outweighing the applicant's illegal substance abuse offense, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service and reentry code were proper and equitable and voted not to change them.

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 to change the reason for discharge to Misconduct (Minor Infractions) based on the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Anxiety, and Chronic Adjustment Disorder outweighing the applicant's illegal substance abuse offense, 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.

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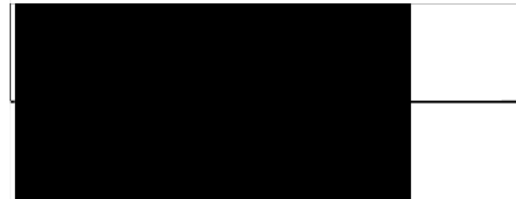
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10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- 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:

11/12/2024



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