

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, a period of 180 days has expired. The applicant's medical documents show the Army admitted the applicant into the hospital. The Army health center did not provide the applicant with the required medication when they were discharged, which caused the applicant to begin a chaotic lifestyle and their military career to decline dramatically.

b. Board Type and Decision: In a records review conducted on 21 November 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Mood Disorder, Bipolar Disorder, and Panic Disorder outweighing the separating illegal substance abuse and AWOL 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 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, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 16 January 2013**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 15 November 2012

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully possessed synthetic cannabis and marijuana, and was absent without leave on three occasions.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: On 16 November 2012, the applicant waived legal counsel.

(5) Administrative Separation Board: On 16 November 2012, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 27 November 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 October 2010 / 3 years, 18 weeks

b. Age at Enlistment / Education / GT Score: 18 / AED / 111

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B10, Infantryman / 2 years, 2 months, 5 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (12 April 2011 – 6 January 2012)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 19 July 2012, reflects the applicant was apprehended for: possession of controlled substance (on post). Investigation revealed Military Police responded to a possible controlled substance violation. Contact was made with the Criminal Investigation Division and the applicant consented to a search of their room. There were three packages found containing K2 and two smoking devices containing an unknown green leafy substance. The applicant was apprehended, read their rights, and admitted to the offense.

Military Police Report, 18 August 2012, reflects the applicant was apprehended for: driving under the influence of alcohol or drugs (off post). Investigation revealed the applicant was driving the wrong way with no headlights on at night when a traffic stop was initiated. The applicant failed the field sobriety tests. The applicant was arrested by a Riley County Police Officer but refused to submit to a blood alcohol content test. After complaining of a swollen left hand, the applicant was transported to the Army Community Hospital. The applicant stated they were suicidal during processing.

General Officer Memorandum Of Reprimand, 11 September 2012, reflects the applicant was driving under the influence of alcohol and underage drinking. After being stopped for reckless driving on 18 August 2012, the applicant refused to take a lawfully requested breath test. A search of the applicant's vehicle revealed an open container of alcohol placed under the front driver seat.

Field Grade Article 15, 17 September 2012, for wrongfully possessing synthetic cannabis (19 July 2012). The punishment consisted of a reduction to E-2; reduction to E-1 (suspended); forfeiture of \$745 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Criminal Investigation Division (CID) Report of Investigation - Initial Final, 2 October 2012, reflects an investigation established probable cause to believe the applicant committed the

offense of Wrongful Possession of a Controlled Substance when a plastic bag containing marijuana was discovered on 27 September 2012, during a search of the applicant's assigned room.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 2 October 2012;
From PDY to AWOL, effective 3 October 2012;
From AWOL to PDY, effective 4 October 2012;
From PDY to AWOL, effective 5 October 2012;
From AWOL to PDY, effective 9 October 2012;
From PDY to AWOL, effective 11 October 2012;
From AWOL to Dropped From Rolls (DFR), effective 12 October 2012;
From DFR to Confined by Civil Authorities (CCA), effective 2 November 2012;
From CCA to Confined by Military Authorities (CMA), effective 2 November 2012;
From CMA to PDY, effective 2 November 2012;
From DFR to PDY, effective 2 November 2012;
From PDY to AWOL, effective 18 December 2012; and
From AWOL to PDY, effective 2 January 2013.

Report of Return of Absentee, 2 November 2012, reflects the applicant's absence began on 11 October 2012. On 2 November 2012, the applicant was apprehended by civil authorities.

Two Developmental Counseling Forms, for disobeying a lawful order; being arrested for possession of illegal drugs and paraphernalia, and pending separation for possession of drugs.

i. Lost Time / Mode of Return: 41 days:

AWOL, 2 October 2012 – 3 October 2012 / NIF
AWOL, 5 October 2012 – 8 October 2012 / NIF
AWOL, 11 October 2012 – 1 November 2012 / Apprehended by Civil Authorities
AWOL, 18 December 2012 – 1 January 2013 / Returned to Duty

j. Behavioral Health Condition(s):

(1) Applicant provided: Salina Regional Health Care Center Behavioral Health Plan of Care / Kardex, 22 August 2012, reflecting the applicant was admitted because of suicidal ideation with plan to cut self with a knife. The applicant was diagnosed / assessed with post-traumatic stress disorder (PTSD); bipolar, not otherwise specified (NOS); panic disorder; alcohol dependence; history of polysubstance abuse, with most recent use of synthetic substance; asthma; psychosocial stressors, occupational and legal; and a global assessment of functioning (GAF) score of 30.

Prairie View Behavioral Mental Healthcare medical documents, 24 June 2012, reflecting the applicant was voluntarily admitted to the hospital in medically stable condition. The initial assessment of the applicant appeared to indicate PTSD and bipolar disorder. The applicant was receiving psychiatric treatment, including prescribed medication. The applicant underwent psychological testing which suggested the presence of avoidant, schizotypal, and borderline scales; anxiety, dysthymia, PTSD, major depression, somatoform disorder; bipolar disorder; mania; paranoia; and cognitive impairment, possibly linked to the applicant's history of traumatic brain injury (TBI). The medical physician recommended further assessment for a substance abuse problem.

Discharge Summary Medicine Profile, 24 June 2012, reflecting the applicant was prescribed various medications, between 7 and 22 May 2012, for mood control; anxiety; prevention of nightmares; and sleeplessness.

(2) AMHRR Listed: Report of Mental Status Evaluation, 31 July 2012, reflects the applicant was cleared for separation proceedings. 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, with positive results. Further assessment was warranted. The applicant was diagnosed with adjustment disorder with anxiety and depressed mood; and K-2 abuse.

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; and medical records.

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 14-2c, 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 14-12c(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 improperly treated mental health issues affected behavior, which led to the discharge. The applicant provided medical documents reflecting diagnoses and/or assessments of various mental health conditions: PTSD; bipolar, NOS; panic disorder; alcohol dependence; history of polysubstance abuse, with most recent use of a synthetic substance; asthma; psychosocial stressors, occupational and legal; schizotypal and borderline scales; anxiety, dysthymia, major depression, somatoform disorder; mania; paranoia; cognitive impairment, possibly linked to the applicant's history of TBI; and a GAF score of 30. The applicant was prescribed various medications for mood and anxiety while in-service. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 31 July 2012, which indicates the applicant was mentally responsible and recognized right from wrong. The applicant had been screened for PTSD and mTBI with positive results, but further assessment was warranted. The applicant was diagnosed with adjustment disorder with anxiety and depressed mood; and K-2 abuse. The MSE was considered by the separation authority.

The applicant contends the 180 day period has expired and the discharge should be upgraded. The applicant's issue about an upgrade based on the passage of time was carefully considered. The U.S. Army does not have, nor has it ever had, a policy to automatically upgrade discharges. Each case is decided on its own merits when an applicant submits a DD Form 293 requesting a

change in discharge. Changes may be warranted if the Board determines the characterization of service or the reasons for discharge, or both were improper or inequitable.

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: Adjustment Disorder, PTSD, TBI, Mood Disorder NOS, Bipolar Disorder NOS, and Panic Disorder.

(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, PTSD, TBI, Mood Disorder NOS, Bipolar Disorder NOS, and Panic Disorder and the VA has service connected the PTSD.

(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. The applicant was diagnosed in service with an Adjustment Disorder, PTSD, TBI, Mood Disorder NOS, Bipolar Disorder NOS, and Panic Disorder and the VA has service connected the PTSD. Given the nexus between PTSD, TBI, Mood Disorder NOS, Bipolar Disorder NOS, Panic Disorder, self-medicating with substances, and avoidance, the applicant's BH conditions mitigate the possession of synthetic cannabis and marijuana and the AWOLs that led to the separation.

(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 Post Traumatic Stress Disorder, Traumatic Brain Injury, Mood Disorder, Bipolar Disorder, and Panic Disorder outweighed the applicant's illegal substance abuse and AWOL offenses.

b. Response to Contention(s):

(1) The applicant contends improperly treated mental health issues affected behavior, which led to the discharge. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Mood Disorder, Bipolar Disorder, and Panic Disorder outweighed the applicant's illegal substance abuse and AWOL offenses. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the 180 day period has expired and the discharge should be upgraded. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Mood Disorder, Bipolar Disorder, and Panic Disorder outweighing the separating illegal substance abuse and AWOL offenses.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Mood Disorder, Bipolar Disorder, and Panic Disorder outweighing the separating illegal substance abuse and AWOL 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.

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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 Post Traumatic Stress Disorder, Traumatic Brain Injury, Mood Disorder, Bipolar Disorder, and Panic Disorder outweighed the separating illegal substance abuse and AWOL 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.

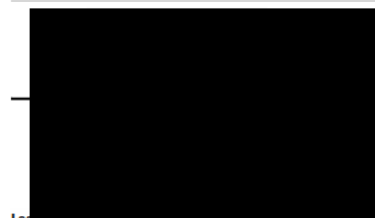
(3) The RE code will not change due to the service connected BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

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:

11/21/2024



Leg

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