

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, since their discharge, the applicant found out they had post-traumatic stress disorder (PTSD), which caused them anger. The applicant states they are 100 percent disabled.

b. Board Type and Decision: In a records review conducted on 8 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Bipolar Disorder outweighing the applicant's offenses of illegal substance abuse, Disobeying a Lawful Order, Disrespect Toward an NCO, Driving Without a License, and Driving While Privileges Were Revoked. 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, and 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 details regarding the Board's decision. Board member names available upon request.

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 22 October 2008**c. Separation Facts**

(1) Date of Notification of Intent to Separate: 27 June 2008

(2) Basis for Separation: The applicant was informed of the following reasons: on or about 3 November and 3 December 2007, the applicant wrongfully used marijuana, a controlled substance.

On 17 January 2008, the applicant wrongfully drove a vehicle without a valid driver's license.

On 14 March 2008, the applicant wrongfully drove a vehicle while their driving privileges were revoked.

On 9 April 2008, the applicant willfully disobeyed a lawful order from SSG W.

On 9 April 2008, the applicant disrespected SSG W.

On 21 April 2008 the applicant wrongfully drove a vehicle while their driving privileges were revoked.

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

(4) Legal Consultation Date: On 30 June 2008, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 15 July 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 May 2007 / 6 years

b. Age at Enlistment / Education / GT Score: 21 / High School Graduate / 103

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92W10, Water Treatment Specialist / 3 years, 4 months, 20 days

d. Prior Service / Characterizations: USAR, 10 May 2005 – 25 May 2005 / NA
AD, 26 May 2005 – 9 November 2005 / UNC
USAR, 10 November 2005 – 18 January 2006 / NA
RA, 19 January 2006 – 18 May 2007 / HD

e. Overseas Service / Combat Service: Hawaii, SWA / Iraq (24 July 2006 – 18 October 2007)

f. Awards and Decorations: ICM, ARCOM, MUC, NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 13 December 2007, reflects the applicant tested positive for THC 73 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 3 December 2007.

Military Police Report, 7 February 2008, reflects the applicant was apprehended for: Wrongful use of marijuana determined by a urinalysis test; Wrongful use of marijuana; Controlled substance violations, possession of marijuana (on post).

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 28 May 2008. The applicant was charged with nine specifications. The summary of offenses, pleas, and findings:

Charge I, Violation of the UCMJ, Article 112. The Specification: on or about 3 November 2007 and 3 December 2007, wrongfully use marijuana, a controlled substance. Plea: Not Guilty; Finding Guilty.

Charge II, Violation of the UCMJ, Article 92:

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Specification 1: on or about 14 March 2008, fail to obey a lawful order by wrongfully driving a vehicle on Wheeler Army Airfield. Plea: Guilty; Finding: Guilty.

Specification 2: on or about 14 March 2008, fail to obey a lawful order by wrongfully driving a vehicle on Wheeler Army Airfield. Plea: Guilty; Finding: Guilty.

Specification 3: on or about 17 January 2008, violate a lawful general regulation, to wit: Army Regulation 190-5, Chapter 2, Paragraph 2-1, dated 22 May 2006, by wrongfully driving without a valid driver's license. Plea: Guilty; Finding: Guilty.

Charge III, Violation of the UCMJ, Article 121. The Specification: on or about 17 January 2008, wrongfully appropriate a US Military Identification Card, not belonging to them, having some value, the property of the United States Government. Finding: Not Guilty; Plea: Not Guilty.

Charge IV, Violation of the UCMJ, Article 91:

Specification 1: on or about 10 April 2008, assault Sergeant First Class (SFC) T. by hitting SFC T. on the top of the head with the applicant's hand, hitting SFC T. on their arm twice with the applicant's hand, and then kicking SFC T. on their foot with the applicant's foot. Plea: Not Guilty; Plea: Not Guilty.

Specification 2: on or about 9 April 2008, willfully disobey a lawful order. Plea: Guilty; Finding: Guilty.

Specification 3: on or about 9 April 2008, willfully disobey a lawful order. Plea: Guilty; Finding: Guilty.

Specification 4: on or about 9 April 2008, was disrespectful in deportment and language toward Staff Sergeant R., a noncommissioned officer, then known by the applicant to be a noncommissioned officer, who was then in the execution of their office, by displaying their middle finger and calling Staff Sergeant R. a "Mother Fucker."

Sentence: Reduction to E1 and confinement for 30 days is effective 28 May 2008.

Developmental Counseling Forms for failing to follow orders.

i. Lost Time / Mode of Return: 23 days (CMA, 28 May 2008 – 20 June 2008) / Released from Confinement.

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 18 March 2008, 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 evaluation did not include a diagnosis.

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: Application for the Review of Discharge; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed

combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12b, 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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends being diagnosed with PTSD and is a 100 percent disabled. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR includes a Report of Mental Status Evaluation, 18 March 2008, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The evaluation did not include a diagnosis. The mental status evaluation was considered by the separation authority.

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's Medical Advisor, a voting member, 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, Bipolar Disorder (BPAD), Adjustment Disorder, and ADHD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent service-connected for 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. Given the nexus between PTSD and the use of substances to self-medicate, the applicant's illegal substance abuse is mitigated. Given the nexus between PTSD and problems with authority figures, the applicant's offenses of disobeying a lawful order by failing to "at ease" and disrespect of an NCO by calling the NCO a "MF" are mitigated. The applicant's offenses of driving without a license and driving while privileges were revoked are not mitigated by PTSD but can be mitigated by Bipolar Disorder. Given the health care provider endorsed at least one manic or hypomanic episode, the applicant's instances of driving without a license and driving while privileges were revoked could have been the result of impulsive actions during manic/hypomanic episodes and are thus mitigated under liberal consideration.

(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 and Bipolar Disorder outweighed the applicant's offenses of illegal substance abuse, Disobeying a Lawful Order, Disrespect Toward an NCO, Driving Without a License, and Driving While Privileges Were Revoked.

b. Response to Contention(s): The applicant contends being diagnosed with PTSD and is a 100 percent disabled. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder and Bipolar Disorder outweighed the applicant's offenses of illegal substance abuse, Disobeying a Lawful Order, Disrespect Toward an NCO, Driving Without a License, and Driving While Privileges Were Revoked.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Bipolar Disorder outweighing the applicant's offenses of illegal substance abuse, Disobeying a Lawful Order, Disrespect Toward an NCO, Driving Without a License, and Driving While Privileges Were Revoked. 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, and 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 given the behavioral health conditions 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 and Bipolar Disorder outweighing the applicant's offenses of illegal substance abuse, Disobeying a Lawful Order, Disrespect Toward an NCO, Driving Without a License, and Driving While Privileges Were Revoked. 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 diagnosed behavioral health conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

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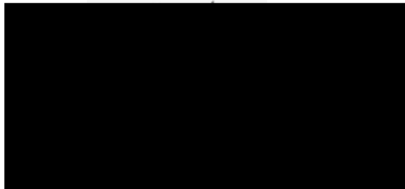
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10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: 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:

10/16/2024



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

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