

**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 honorable. The applicant, through counsel, requests an upgrade to honorable.

The applicant seeks relief contending, in effect, an upgrade would allow the applicant to use the GI Bill. The applicant is employed but wants to improve their life and does not want to end up homeless like other veterans. The Department of Veterans Affairs (VA) diagnosed the applicant with service-connected disabilities, the major disability being post-traumatic stress disorder (PTSD). The last months before the applicant's release from the Army, the applicant had complex emotional issues because of PTSD and traumatic brain injury (TBI). The applicant was trying to maintain some sort of sanity while coping with these emotions. On one occasion, while at a club, the applicant was drinking too much and was hanging out with people the applicant did not know. They possessed illegal substances, and the applicant was not aware. At some point during the night someone slipped an illegal substance into the applicant's drink. The applicant honestly did not know. The applicant would not purposely use illegal substances when the applicant's expiration term of service (ETS) from the Army was quickly approaching. The applicant had three weeks before the applicant began clearing the unit. The applicant explained to the chain of command the applicant was not aware the illegal substance was in the applicant's system. During a routine unit urinalysis, the applicant tested positive for cocaine, but the applicant was caught off guard and was not expecting the drug to be in their system. The applicant was an emotional wreck because of PTSD. The command knew the applicant was receiving counseling and medical help for the condition. The chain of command did not understand the applicant's dilemma, and because of it, the applicant was discharged. The applicant's DD Form 214 reflects the applicant deployed to Afghanistan. The applicant was involved in a vehicular rollover, an improvised explosive device (IED) explosion, and various firefights. The applicant earned the Expert Infantry Badge the hard way along with the applicant's Soldiers-in-arms. The applicant further details the contentions in self-authored statements submitted with the application.

**b. Board Type and Decision:** In a records review conducted on 10 October 2024, and by a 5-0 vote, the Board, based on the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Major Depression, and Anxiety 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 eligibility 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 (Drug Abuse) / AR 635-200, Paragraph 14-12c (2) / JKK / RE-4 / Honorable

**b. Date of Discharge:** 4 February 2014

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 16 January 2014

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive for cocaine from a sample collected on 18 November 2013.

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

**(4) Legal Consultation Date:** On 16 January 2014, the applicant waived legal counsel.

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 21 January 2014 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 17 February 2010 / 4 years

**b. Age at Enlistment / Education / GT Score:** 19 / Occupational Program / 84

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 3 years, 11 months, 18 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** Germany, SWA / Afghanistan (25 July 2011 – 10 June 2012)

**f. Awards and Decorations:** ACM-CS, ARCOM, MUC, AGCM, NDSM, GWOTSM, ASR, OSR-2, CIB / The applicant's AMHRR reflects award of the NATOMDL, however, the award is not reflected on the DD Form 214.

**g. Performance Ratings:** None

**h. Disciplinary Action(s) / Evidentiary Record:** The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c (2), with a narrative reason of Misconduct (Drug Abuse). The DD Form 214 was not authenticated with the applicant's signature.

The applicant's Enlisted Record Brief (ERB), 5 February 2014, reflects the applicant was flagged for Army Body Composition Program (KA), effective 13 March 2013; Involuntary Separation or Discharge (Field Initiated) (BA), effective 25 October 2013; Punishment Phase

(HA), effective 3 February 2014; and was ineligible for reenlistment because of Pending Separation (9V). The applicant was reduced from E-4 to E-1, effective 26 April 2013.

**i. Lost Time / Mode of Return:** None

**j. Behavioral Health Condition(s):**

**(1) Applicant provided:** Department of Veterans Affairs Rating Decision and VA letter, 22 and 28 October 2014, reflects the applicant was rated 50 percent service-connection disability for PTSD, depressive disorder, cannabis use disorder, and alcohol use disorder (also with sleep impairment); 10 percent for tinnitus; 10 percent thoracolumbar spine strain; 10 percent for cervical spine strain; and 0 percent for left knee patellofemoral syndrome; a combined total of 70 percent.

**(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; two self-authored statements; two Monterey County Military and Veterans Affairs Office letters; VA compensation letter; VA Rating Decision; and third party character reference.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is successfully moving forward by pursuing an education in a field.

**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(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 current characterization of service for the period under review is honorable.

The applicant contends suffering from PTSD, TBI, and depression. The applicant provided documents reflecting the VA rated the applicant 50 percent service-connected disabled for PTSD, depressive disorder, cannabis use disorder, and alcohol use disorder (also with sleep impairment), and 10 percent for tinnitus. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends unintentionally consuming drugs. The applicant's AMHRR reflects the applicant was given the opportunity to consult counsel and submit rebuttal matters, but waived legal counsel and did not submit rebuttal matters. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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 successfully moving forward by pursuing an education in a field. 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.

The third party statement provided with the application speak highly of the applicant. The author recognizes the applicant's good military service.

#### **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 found that, based on the Board's Medical Advisor opine, a review of the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, TBI, Major Depression, Anxiety.

**(2)** Did the condition exist or experience occur during military service? **Yes.** The Board found that, based off the Board's Medical Advisor's opine, the applicant was diagnosed in service with PTSD, TBI, Major Depression, and Anxiety. The VA has service connected the PTSD and Major Depression.

**(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, TBI, Major Depression, Anxiety, and self-medicating with substances, the cocaine use that led to the applicant's 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, Major Depression, and Anxiety outweighed the applicant's illegal substance abuse.

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

(1) The applicant contends suffering from PTSD, TBI, and depression. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Major Depression, and Anxiety outweighed the applicant's illegal substance abuse. Therefore, a narrative reason upgrade is warranted.

(2) The applicant contends unintentionally consuming drugs. 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, Major Depression, and Anxiety outweighing the applicant's illegal substance abuse offense.

(3) 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, Major Depression, and Anxiety outweighing the applicant's illegal substance abuse offense.

(4) The applicant contends an upgrade would allow educational benefits through the GI Bill. 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's narrative reason 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.

(6) The applicant contends successfully moving forward by pursuing an education in a field. 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, Major Depression, and Anxiety outweighing the applicant's illegal substance abuse offense.

c. The Board, based on the applicant's Post Traumatic Stress Disorder, Traumatic Brain Injury, Major Depression, and Anxiety 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 the reentry eligibility 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 medical mitigation of the applicant's misconduct, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

## ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000718

(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: 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:



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