

**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, the Army failed to treat the applicant for post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). The Army used nonjudicial punishment to separate the applicant when they should have treated the applicant for the medical conditions.

**b. Board Type and Decision:** In a records review conducted on 26 September 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighing the applicant's illegal substance abuse. 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 and reentry code of RE-3.

*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:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

**b. Date of Discharge:** 8 March 2012**c. Separation Facts:**

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

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive for cocaine on a urinalysis conducted on or about 1 December 2011, misconduct – abuse of illegal drugs.

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

**(4) Legal Consultation Date:** 22 February 2012

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

**(6) Separation Decision Date / Characterization:** 28 February 2012 / General (Under Honorable Conditions) .

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 9 October 2011 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 23 / GED / 105
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 68W10, Health Care Specialist / 2 years, 6 months, 27 days
- d. **Prior Service / Characterizations:** RA / 12 August 2009 – 8 October 2011 / HD
- e. **Overseas Service / Combat Service:** SWA / Iraq (13 November 2010 – 9 November 2011)
- f. **Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CAB
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 8 December 2011, reflects the applicant tested positive for COC 10006 (cocaine), during an Inspection Random (IR) urinalysis testing, conducted on 1 December 2011.

Field Grade Article 15, 18 January 2012, for wrongfully using cocaine (between 28 November and 1 December 2011). The punishment consisted of a reduction to "Private First Class (E-1)" [sic]; forfeiture of \$733 pay per month for two months (suspended); and extra duty and restriction for 45 days.

The applicant's Enlisted Record Brief (ERB), 1 March 2012, reflects the applicant was flagged for Adverse Action (AA), effective 9 January 2012; and was ineligible for reenlistment because of Pending Separation (9V). The applicant was reduced from E-4 to E-1 effective 18 January 2012.

Three Developmental Counseling Forms, for being restricted to post because of a positive urinalysis; testing positive for cocaine; and being recommended for separation.

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

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

- (1) **Applicant provided:** Two Department of Veterans Affairs letters, 3 and 4 December 2012, reflecting the VA rated the applicant 50 percent for PTSD; 0 percent service-connection disabled for TBI; 10 percent for recurrent tinnitus; and 30 percent for migraines residual of TBI; a combined rating 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; and two VA letters.

**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) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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 being diagnosed with PTSD and TBI by the VA and the conditions affected behavior, which led to the discharge. The applicant provided medical documents reflecting the VA rated the applicant 50 percent service-connected disabled for PTSD; 0 percent for TBI; 10 percent for recurrent tinnitus; and 30 percent for migraines residual of TBI. The AMHRR is void of a mental status evaluation.

The applicant contends the command failed to treat the applicant's mental health conditions and used nonjudicial punishment to separate the applicant from the Army. Army Regulation 635-200, 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. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

#### **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: Adjustment Disorder, PTSD, and TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and is service connected by the VA for PTSD and TBI. Service connection establishes

that the PTSD and TBI 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, TBI, and self-medicating with substances, the applicant's PTSD and TBI mitigate the abuse of illegal drugs 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 opine, the Board determined that the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighed the applicant's illegal substance abuse separating offense.

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

(1) The applicant contends being diagnosed with PTSD and TBI by the VA and the conditions affected behavior, which led to the discharge. The Board liberally considered this contention and determined that it was valid due to the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the command failed to treat the applicant mental health conditions and used nonjudicial punishment to separate the applicant from the Army. 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 and Traumatic Brain Injury outweighing the applicant's illegal substance abuse offense.

**c.** The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Traumatic Brain Injury outweighing the applicant's illegal substance abuse. 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 and reentry code of RE-3.

**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 Traumatic Brain Injury outweighing the applicant's illegal substance abuse offense. 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 change to RE-3.

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000722

## 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: RE-3
- 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  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs