

**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, upon returning from Operation Iraqi Freedom (OIF), one of the hottest zones in Iraq at the time, the applicant immediately began having severe panic attacks and was severely depressed and somewhat suicidal. In 2007, the applicant lost their best battle buddy on Christmas day. The applicant went to Mental Health for assistance and was given several medicines, which made the applicant mentally out of it and crazy. The applicant received a traumatic brain injury (TBI) because of experiencing multiple explosions of indirect fire from rocket-propelled grenades (RPGs) while on patrol. The applicant is embarrassed to admit to using pain pills. One night the applicant had an extreme mental breakdown and took too many of their prescribed pain pills. The Military Police (MP) became involved, and the applicant was charged with possession of a controlled substance. The MPs were called because the applicant was staying with their battle buddy in on-post housing at the time. The applicant regrets their actions because the applicant recently reenlisted for six years, and the actions destroyed the applicant. The applicant loves the Army. Every day, the applicant regrets their foolishness and their weakness in coping with the death of their best friend. If the applicant could trade with their friend, the applicant would. The applicant does not want their bad judgment to hinder them from continuing to serve their country. The applicant desires to work in law enforcement or some federal agency, but the discharge would hinder the applicant's opportunities. The applicant wants to do the only thing the applicant believes they were made to do and serve and protect the people of this country, the country the applicant loves and would give their life for.

**b. Board Type and Decision:** In a records review conducted on 1 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse and FTR 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, 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 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, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 19 May 2009

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 24 April 2009

**(2) Basis for Separation:** The applicant was informed of the following reasons:

Misconduct-abuse of illegal drugs, between on or about 14 December 2008 and 13 January 2009, the applicant wrongfully used marijuana;

On or about 13 January 2009, the applicant wrongfully possessed oxycodone, a schedule II controlled substance, for which the applicant received an Article 15 for the above mentioned offenses;

On or about 13 January 2009, the applicant failed to report to their appointed place of duty; and

On or about 13 January 2009, the applicant possessed an unregistered weapon.

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

**(4) Legal Consultation Date:** 29 April 2009

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

**(6) Separation Decision Date / Characterization:** 6 May 2009 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 9 December 2008 / 5 years

**b. Age at Enlistment / Education / GT Score:** 22 / HS Graduate / 101

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 13F10, Fire Support Specialist / 3 years, 1 month, 9 days

**d. Prior Service / Characterizations:** RA, 11 April 2006 – 8 December 2008 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (1 May 2007 – 1 August 2008)

**f. Awards and Decorations:** NDSM, GWOTSM, ICM-CS, ASR, OSR / The applicant's AMHRR reflects award of the ARCOM and CAB; however, the awards are not reflected on the DD Form 214.

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 14 January 2009, reflects the applicant was apprehended for: wrongful possession and use of a controlled substance (on post). Investigation revealed, after receiving a report of possible possession of controlled substances from the unit's leadership, the Military Police was given permission to search a Soldier's quarters, where the applicant and the applicant's spouse lived at the time. The unit leadership visited the residence because of concerns regarding the applicant. The search revealed drug paraphernalia and THC. A purse belonging to the applicant's spouse

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210000754**

contained drug paraphernalia and THC. The applicant's spouse waived their rights and admitted to the offense of possession of a controlled substance. The applicant waived their rights and admitted the drug paraphernalia in the spouse's purse belonged to the applicant, and the applicant used the spoons to crush up OxyContin.

Sworn Statement, by Specialist D. F., the Soldier the applicant and the applicant's spouse were residing with, indicated the applicant owned a pistol.

Sworn Statement by Staff Sergeant (SSG) R. D., 13 January 2009, indicated the SSG R. D. retrieved the applicant's weapon from the residence and placed it in the unit's arms room.

Army Substance Abuse Program (ASAP) Enrollment form, and ASAP Medical Appointment document, reflects the applicant was command-referred in the ASAP for unexcused absences, improper use of drugs, and unusual excuses for absences. The applicant was scheduled for an ASAP medical appointment on 6 February 2009. The AMHRR is void of the second page of the ASAP Enrollment form.

Field Grade Article 15, 18 March 2009, for wrongfully using marijuana (between 14 December 2008 and 13 January 2009), and wrongfully possessing oxycodone (13 January 2009). The punishment consisted of a reduction to E-1; forfeiture of \$699 pay per month for two months; extra duty for 45 days; and restriction for 45 days (suspended).

Three Developmental Counseling Forms, for using and possessing illegal drugs, induction of illegal drug; and pending separation for using and possession of illegal drugs.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Medical History, 20 February 2009, the examining medical physician noted the comments section the applicant was under care for panic attacks.

Report of Mental Status Evaluation, 7 April 2009, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant reported a history of PTSD and anxiety before entering the military. The applicant had a history of attention deficient hyperactivity disorder (ADHD). The applicant claimed their PTSD had been worsened by their military experience and they also have traumatic brain injury. The applicant was diagnosed with polysubstance abuse; cluster B personality features; legal and financial problems; and global assessment of functioning (GAF) score of 30.

*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.

**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 14-12c 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 waivable. 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 contends depression, severe panic attack, a mental breakdown, and a TBI, affected behavior which led to the discharge. The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 7 April 2009, which indicates the applicant could understand and participate in administrative proceedings and was mentally responsible. The applicant claimed their PTSD had been worsened by their military experience and they also have traumatic brain injury. The applicant was diagnosed with polysubstance abuse; cluster B personality features; legal and financial problems; and a GAF score of 30. The MSE was considered by the separation authority.

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.

#### **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, Anxiety Disorder NOS, Depression NOS, GAD, Panic Disorder w/o Agoraphobia

**(2)** Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent SC for PTSD.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. Given the nexus between PTSD and the use of substances to self-medicate, the applicant's wrongful use of marijuana and wrongful possession of oxycodone are mitigated. The applicant's FTRs are mitigated given the nexus between PTSD and avoidant behavior. The applicant's offense of possessing an unregistered weapon is not mitigated as it is not natural sequela of any diagnose behavioral health condition, as none impair the ability to differentiate between right and wrong and adhere to the right.

**(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 outweighed the applicant's illegal substance abuse and FTR offenses. The Board found that the applicant's offense of possessing an unregistered weapon did not rise to a level to negate meritorious service.

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

(1) The applicant contends depression, severe panic attack, a mental breakdown, and a TBI, affected behavior which led to the discharge. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse and FTR offenses. The Board found that the applicant's offense of possessing an unregistered weapon did not rise to a level to negate meritorious service. Therefore, a discharge upgrade is warranted.

(2) The applicant contends an upgrade of the discharge 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.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse and FTR 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, 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.

**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 outweighed the applicant's illegal substance abuse and FTR offenses. The Board found that the applicant's offense of possessing an unregistered weapon did not rise to a level to negate meritorious service. 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.

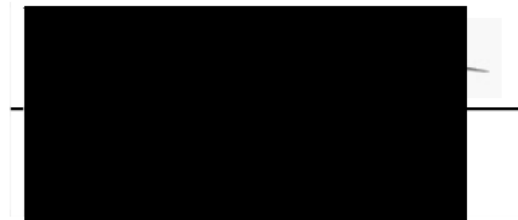
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

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



Le

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