

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being unfairly discharged. The applicant claims their chain of command stated in the separation packet "rehabilitation and further counseling be waived as it will not produce a quality, Soldier." Except for negative counseling, there are no rehabilitation efforts on record. The commission of a significant offense was misrepresented as defined in Chapter 14, AR 635-200, and the separation action violated the Army guideline of "Limited Use." The applicant was not given the option to self-enroll and was not directed to ADAPC or ASAP. The applicant was not given adequate medical care and consideration for wounds sustained during deployment, which may have contributed significantly to their misconduct.

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 offenses of illegal substance abuse and falling asleep on sentinel. 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 / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 30 December 2004

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 19 November 2004

(2) Basis for Separation: The applicant was informed of the following reasons: On or about 21 October 2003, while deployed to Afghanistan, the applicant was posted as a sentinel and found sleeping upon their post. Between on or about 14 June 2004 and on or about 14 July 2004, the applicant wrongfully used marijuana. On or about 22 October 2004, the applicant was convicted by

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Summary Court-Martial for disobeying a superior commissioned officer and wrongfully using marijuana.

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

(4) Legal Consultation Date: 9 December 2004

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 14 December 2004 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 29 May 2002 / 3 years

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 88

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 2 years, 7 months, 2 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (29 March 2004 – 15 May 2004)

f. Awards and Decorations: PH, NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 4 December 2003, on or about 21 October 2003, at Bagram Airfield Afghanistan was found sleeping on their post as a sentinel. The punishment consisted of a reduction to E-2; forfeiture of \$645 pay per month for two months (suspended); and extra duty for 45 days.

FG Article 15, 30 July 2004, for wrongfully using marijuana (between 14 June and 14 July 2004). The punishment consisted of a reduction to E-1; forfeiture of \$597 pay per month for two months and extra duty and restriction for 45 days.

Electronic Copy of DD Form 2624, 21 July 2004, reflects the applicant tested positive for THC 43 (marijuana), during a urinalysis testing, conducted on 14 July 2004.

DD Form 2624, 16 September 2004, reflects the applicant tested positive for THC (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 7 September 2007.

Record of Trial by Summary Court-Martial, reflects the applicant was charged with:

Charge I Violation of the UCMJ, Article 90. The Specification: Willfully disobeyed a superior commissioned officer on 13 August 2004. Plea Guilty; Finding: Guilty.

Charge II: Violation of the UCMJ, Article 112. The Specification: Wrongful use of marijuana between on or about 7 August 2004 and on or about 7 September 2004. Plea: Guilty; Finding: Guilty.

The sentence adjudged: Forfeiture \$796 pay per month for one month and confinement for 30 days.

Three Developmental Counseling Forms, for Urinalysis; sleeping on guard duty and intent to separate.

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

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

(1) **Applicant provided:** Report of Mental Status Evaluation, 26 August 2004, 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 command was advised to consider the influence of these conditions. The evaluation included a medical condition.

Department of Veterans Affairs Benefits letter; 24 November 2014, reflects an evaluation of 50 percent and a medical diagnosis.

(2) **AMHRR Listed:** MSE as described in previous paragraph 4j(1).

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; self-authored letter; Department of Veterans Affairs Benefits letter; The Mountaineer online article; letter of support; separation packet.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought help for their mental health from the VA.

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 600-85 (The Army Substance Abuse Program), 3-8 Self-referrals The ASAP clinical staff will conduct an initial interview with all eligible personnel who self-refer to the ASAP counseling center for assistance. During the initial interview, the clinician will advise soldiers of their unit commander's role in the referral, evaluation, and treatment process, or other disposition, explain limited use policy, and provide information about ASAP services. If after the initial screening interview further services are warranted, the ASAP clinician will contact the unit commander and coordinate the Soldier's formal referral using DA Form 8003, which will be signed by the unit commander and be annotated as a self-referral.

e. 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.

(7) Paragraph 14-12c (2) Abuse of illegal drugs is serious misconduct.

f. 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).

g. 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 contends their chain of command stated in the separation packet "rehabilitation and further counseling be waived as it will not produce a quality, Soldier." Except for negative

counseling, there are no rehabilitation efforts on record. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. Army Regulation 635-200, paragraph 1-17d(2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality, Soldier. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment.

The applicant contends the commission of a significant offense was misrepresented as defined in Chapter 14, AR 635-200, and the separation action violated the Army guideline of "Limited Use." The applicant was not given the option to self-enroll and was not directed to ADAPC or ASAP. 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. Abuse of illegal drugs is serious misconduct. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. Army Regulation 600-85, paragraph 7-3 entitled voluntary (self) identification and referral, states voluntary (self) ID is the most desirable method of identifying substance use disorder. The individual whose performance, social conduct, interpersonal relations, or health becomes impaired because of these problems has the personal obligation to seek help. Soldiers seeking self-referral for problematic substance use may access services through BH services for a SUD evaluation. The Limited Use Policy exists to encourage Soldiers to proactively seek help. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends they were not given adequate medical care and consideration for wounds sustained during deployment, which may have contributed significantly to their misconduct. The applicant provided a Report of Mental Status Evaluation, 26 August 2004, 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 included a medical condition. A Department of Veterans Affairs Benefits letter; 24 November 2014, reflects an evaluation of 50 percent and a medical diagnosis. The AMHRR includes the Report of Mental Status Evaluation, which includes a medical diagnosis. The separation authority considered mental status evaluation.

The applicant contends good service, including a combat tour. The third-party statement provided with the application reflecting the applicant was the type of Soldier who met every challenge no matter how tough, the applicant was a motivator, a leader without rank or position.

The applicant contends seeking help for their mental health from the VA. 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.

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's 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

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that, based on the Board's Medical Advisor's opine, the applicant is 30 percent SC for PTSD.

(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. As there is a nexus between PTSD and self-medicating with substance, the misconduct characterized by wrongful use of marijuana is mitigated. Given the nexus between PTSD and sleep issues that often result in fatigue and inopportune tiredness, the applicant's offense falling asleep on sentinel would also be 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 outweighed the applicant's offenses of illegal substance abuse and falling asleep while posted as a sentinel.

b. Response to Contention(s):

(1) The applicant contends they were not given adequate medical care and consideration for wounds sustained during deployment, which may have contributed significantly to their misconduct. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's offenses of illegal substance abuse and falling asleep on sentinel.

(2) The applicant contends their chain of command stated in the separation packet "rehabilitation and further counseling be waived as it will not produce a quality, Soldier." Except for negative counseling, there are no rehabilitation efforts on record. 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 outweighing the applicant's offenses of illegal substance abuse and falling asleep on sentinel.

(3) The applicant contends the commission of a significant offense was misrepresented as defined in Chapter 14, AR 635-200, and the separation action violated the Army guideline of "Limited Use." The applicant was not given the option to self-enroll and was not directed to ADAPC or ASAP. 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 outweighing the applicant's offenses of illegal substance abuse and falling asleep on sentinel.

(4) 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 outweighing the applicant's offenses of illegal substance abuse and falling asleep on sentinel.

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

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falling asleep on sentinel. 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 offenses of illegal substance abuse and falling asleep while posted as a sentinel. 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.

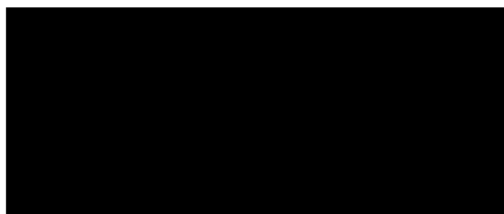
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

11/22/2024



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