

1. Applicant's Name:

- 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 period under review is honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was the result of being on medication for depression. The applicant claims they were rushed out of the Army and not properly treated for their post-traumatic stress disorder (PTSD). The applicant's service in Afghanistan has resulted in PTSD symptoms (including nightmares, night sweats, and anxiety). The applicant believes, if everything had been considered, they would have obtained a general (under honorable conditions) discharge.

b. **Board Type and Decision:** In a records review conducted on 12 September 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Board Discussion and Determination 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 (Minor Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-3 / Honorable

b. **Date of Discharge:** 15 December 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 30 November 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive for THC on 28 February 2011.

The applicant failed to report on 18, 25, and 28 April, and 12 May 2011.

The applicant was disrespectful to senior NCOs on 18 April 2011.

The applicant disobeyed a lawful order on 18 April 2011.

The applicant was AWOL from 23 May 2011 until 21 June 2011.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 1 December 2011

(5) Administrative Separation Board: On 1 December 2011, the applicant unconditionally waived consideration of the case before an administrative separation board.

On 7 December 2011, the applicant's unconditional waiver was approved.

(6) Separation Decision Date / Characterization: 7 December 2011 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 August 2007 / 5 years

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42A10, Human Resources / 4 years, 2 months, 25 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (7 April 2009 – 6 June 2010)

f. Awards and Decorations: JSCM, JSAM, AAM-2, AGCM, NDSM, ACM-2 CS, GWOTSM, ASR, OSR, NATOMDL, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 9 March 2011, reflects the applicant tested positive for THC lol (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 28 February 2011.

FG Article 15, 31 March 2011, for wrongfully using marijuana (between 29 January and 28 February 2011). The punishment consisted of a reduction to E-2; forfeiture of \$822 pay per month for two months (suspended); and extra duty for 45 days.

CG Article 15, 18 May 2011, on 18 April 2011 failed to go at the time prescribed to their appointed place of duty. On 18 April 2011 was disrespectful to two senior noncommission officers. On 18 April 2011 disobeyed a lawful order. The punishment consisted of a reduction to E-1; forfeiture of \$342; extra duty and restriction for 14 days.

Two Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 23 May 2011; and From AWOL to Present for Duty (PDY), effective 21 June 2011.

Numerous Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: 28 days (AWOL, 23 May 2011 – 20 June 2011) / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), 5 April 2011, reflects the applicant had the mental capacity to understand and participate in the proceedings. The applicant meets the retention requirements of Chapter 3, AR 40-501. The applicant was cleared for any administrative actions deemed appropriate by command. The evaluation included a medical diagnosis.

Report of Medical Examination, 27 June 2011, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a medical diagnosis.

Report of Medical History, 1 July 2011, the examining medical physician noted the applicant's medical conditions in the comments section. The evaluation included a medical diagnosis.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: 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) 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.

(4) 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.

(5) Paragraph 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (minor infractions).

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the discharge was the result of being on medication for depression. The applicant claims they were rushed out of the Army and not properly treated for their post-traumatic stress disorder (PTSD). The applicant's service in Afghanistan has resulted in PTSD symptoms (including nightmares, night sweats, and anxiety). The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a Report of Behavioral Health Evaluation and a Report of Medical Examination and History. All the evaluations included a medical diagnosis. All the medical documents in the AMHRR were considered by the separation authority.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Depression, and PTSD.

(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 Depression and is service connected by the VA for PTSD. Service connection establishes that the PTSD also existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of BH conditions that likely contributed to all of the misconduct in the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder and Depression and is service connected by the VA for PTSD. Given the nexus between PTSD, Depression, avoidance, and

self-medicating with substances, the applicant's PTSD and Depression likely contributed to the FTRs, AWOL, and testing positive for THC. PTSD also has a nexus with difficulty with authority, so the PTSD likely contributed to the disrespect and disobeying a lawful order as well. However, the applicant already holds a narrative reason for separation and characterization of service to which further mitigation is applied only in instances potentially warranting a change to Secretarial Authority.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression, and Post Traumatic Stress Disorder outweighed the applicant's discharge as the applicant already holds an honorable characterization of service with a Misconduct (Minor Infractions) narrative reason for separation.

b. Response to Contention(s): The applicant contends the discharge was the result of being on medication for depression. The applicant claims they were rushed out of the Army and not properly treated for their post-traumatic stress disorder (PTSD). The applicant's service in Afghanistan has resulted in PTSD symptoms (including nightmares, night sweats, and anxiety). The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression, and/or Post Traumatic Stress Disorder outweighed the applicant's discharge as the applicant already holds an honorable characterization of service with a Misconduct (Minor Infractions) narrative reason for separation.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because the applicant already holds an honorable characterization and further relief is not available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code. The reason the applicant was discharged was both proper and equitable and was previously upgraded by an ADRB.

(3) The RE code will not change given the BH conditions. The current code is also consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

9/16/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

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