

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, through counsel, requests an upgrade to honorable.

The applicant seeks relief contending, in effect, an upgrade to honorable, a narrative reason change to Chapter 5-17, and a reentry eligibility code change would allow the applicant to receive treatment at the Department of Veterans Affairs (VA) for the applicant's service-connected injuries. The request is based on propriety and equity. The applicant suffered from severe post-traumatic stress disorder (PTSD) after serving in Iraq in the Infantry during the early stages of Operation Iraqi Freedom. Despite numerous desperate cries for help, the applicant's command did nothing to support the applicant. The command court-martialed the applicant for offenses clearly and directly linked to PTSD, although the applicant requested to be discharged under Army Regulation 635-200, Chapter 10, in lieu of court-martial. The applicant was an outstanding Soldier, with impeccable performance until the PTSD. It is likely if the applicant had received the support and help the applicant needed to overcome their disorder, the applicant would have continued to serve honorably and faithfully in the Army. The absence without leave and drug offenses were directly caused by PTSD. It is likely the applicant would not have been treated the way the applicant was under current regulations and policies. The current Army Regulation 635-200, Chapters 5-13 and 5-17, recognize and impose a requirement to properly diagnose Soldiers suffering from mental health problems. The applicant was discharged with less than an honorable discharge. With nowhere else to go, the applicant was taken in by the church ministry. The applicant spent a year and a half receiving help and then becoming a counselor to assist others in need. The applicant was a cocreator of the "Ride for Recovery Program," which was an equine program to assist injured Soldiers. The applicant joined the Military Ministry and traveled with the ministry, speaking one-on-one and in group settings about PTSD to help other suffering Soldiers. In 2009, with the support of those around the applicant, the applicant was able to afford to receive a brain scan at the Amen Clinic and was formally diagnosed with PTSD and remains in treatment. The applicant continues to become a better person and contribute to society. The applicant continues to suffer from PTSD. Counsel and the applicant further detail the contentions in the Legal Brief and self-authored statement submitted with the application.

b. Board Type and Decision: In a records review conducted on 12 September 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 separating offenses of AWOL and 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: Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 2 April 2009

c. Separation Facts:

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 12, 6 April 2007, on 18 October 2006, the applicant was found guilty of the following:

Charge I, in violation of Article 85, UCMJ. Plea: Not Guilty, but guilty of the lesser included charge of Article 86, UCMJ. The Specification: The applicant on or about 19 April 2006, without authority, was absent from the unit and did remain absent until apprehended on or about 14 July 2006. Plea: Guilty.

Charge II, in violation on Article, 86, UCMJ. The Specification: The applicant, on or about 13 September 2005, without authority, was absent from the unit until on or about 9 April 2006. Plea: Guilty.

Charge III, in violation of Article 112a, UCMJ: Specifications 1 through 6: The applicant did between on or about 8 April and 14 July 2006, wrongfully used cocaine (x2), ecstasy, methamphetamines, and marijuana (x2). Pleas: Guilty.

(2) Adjudged Sentence: Reduction to E-1; forfeiture of \$849 pay per month for 6 months; to be confined for 180 days, and to be discharged from the service with a bad conduct discharge.

(3) Date / Sentence Approved: 6 April 2007 / The sentence was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed. The applicant was credited with 138 days of confinement towards the sentence to confinement.

(4) Appellate Reviews: The Record of Trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: 18 September 2008

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 31 May 2004 / 4 years / The AMHRR is void of any enlistment contract retaining the applicant on active duty after the most recent enlistment period.

b. Age at Enlistment / Education / GT Score: 23 / NIF / NIF

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B20, Infantryman / 5 years, 17 days / The applicant's DD Form 214 reflects the applicant was on excess leave for 887 days from 29 October 2006 to 2 April 2009.

d. Prior Service / Characterizations: RA, 9 February 2003 – 30 May 2004 / HD

e. Overseas Service / Combat Service: Germany, SWA / Iraq (NIF) / The applicant provided two ARCOM Certificates and two Recommendations for Award reflecting the applicant was awarded for service in Iraq from 12 May 2003 to 15 July 2004.

f. Awards and Decorations: ARCOM-2, AAM, AGCM, GWOTSM, ASR, OSR, EIB

g. Performance Ratings: NIF

h. Disciplinary Action(s) / Evidentiary Record: Special Court Martial Order Number 12, as described in the previous paragraph 3c.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 13 September 2005;

From AWOL to Dropped From Rolls (DFR), effective 20 October 2005;

From PDY to AWOL, effective 19 April 2006;

From AWOL to DFR, effective 19 May 2006;

From PDY to Confined by Military Authorities (CMA), effective 11 July 2006; and

From CMA to Present for Duty (PDY), effective 29 October 2006.

Report of Return of Absentee, 14 June 2006, reflects the applicant's absence began on 13 September 2005 and the applicant surrendered to military authorities on 9 April 2006.

Report of Return of Absentee, 12 July 2006, reflects the applicant's absence began on 19 April 2006 and the applicant was apprehended by civilian authorities on 12 July 2006, and returned to military authorities.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was restored to the grade of E-5.

The applicant provided memorandum, 4 October 2006, reflecting the applicant's request for Chapter 10, Discharge in Lieu of Court-Martial was disapproved.

i. Lost Time / Mode of Return: 1 year, 1 month, 8 days:

AWOL, 13 September 2005 – 9 April 2006 / Surrendered to Military Authorities

AWOL, 19 April 2006 – 10 July 2006 / Apprehended by Civil Authorities

CMA, 11 July 2006 – 28 October 2006 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Amen Clinics, INC., Adult Evaluation Report, 25 August 2009, reflecting the applicant was diagnosed with PTSD; alcohol and drug abuse as self-medication for PTSD, in remission; prefrontal cortex dysfunction; anterior cingulate hyperperfusion; thalamolimbic hyperperfusion; basal ganglia hyperperfusion; insular hyperperfusion; temporal lobe dysfunction; brain toxicity, mild; and brain trauma, mild.

Fly Therapy Consulting, 2 March 2010, reflecting the applicant began receiving treatment in August 2009 for PTSD using a combination of Cognitive Behavioral Therapy and Electroencephalogram Neurofeedback, and the applicant responded exceptionally well to the therapies. The licensed marriage and family therapist (LMFT) states had the applicant received such treatment after the assignment in Iraq the applicant would not have acted as they did when they returned.

William J. Farley Center Treatment Summary and Continuing Care Plan, 26 November 2013, reflecting the applicant was admitted into the center on 29 October 2013, and the interventions used was medically monitored detox, group and individual therapy, didactic substance abuse education, Alcoholic Anonymous / Narcotics Anonymous attendance with local sponsorship, stress management and relapse prevention. The applicant began to develop insight into their addiction and shared their history of PTSD and began to process feelings of flashbacks and intrusive thoughts.

(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; self-authored statement; Legal Brief with all listed enclosures 1 through 19.

6. POST SERVICE ACCOMPLISHMENTS: The applicant became a counselor at the Military Ministry to assist others in need and was a cocreator of the "Ride for Recovery Program," which was an equine program to assist injured Soldiers.

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), dated 25 September 2019, 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. A characterization of under

honorable conditions may be issued only when the reason for separation specifically allows such characterization.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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.

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's Army Military Human Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 3, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Court-Martial (Other)," and the separation code is "JJD." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends severe PTSD affected behavior which led to the discharge. The applicant provided medical documents reflecting the applicant was diagnosed with various mental health conditions, including PTSD; alcohol and drug abuse as self-medication for PTSD, in remission; and brain trauma. The applicant provided third party letters from other soldiers which described the applicant's change in behavior after returning from combat and supported the applicant's contention. The applicant's AMHRR is void of a mental status evaluation (MSE).

The applicant contends the command, the ASAP, and medical personnel failed to provide the assistance the applicant needed for the PTSD. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command and/or medical personnel.

The applicant contends harassment by members of the chain of command. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

The applicant contends other Soldiers with similar offenses were provided relief and contends, in effect, the same relief was not afforded to the applicant. The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant requests a reentry eligibility (RE) code change. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment matter.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits 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 being a counselor at the Military Ministry to assist others in need and was a cocreator of the "Ride for Recovery Program." 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 statements provided with the application speak highly of the applicant. They all recognize the applicant's good military service and/or good conduct after leaving the Army.

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, and a review of the applicant's DOD and VA health records, the 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 diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board applied liberal consideration, to include considering the Board's Medical Advisor's opine, and determined that the applicant is diagnosed and service connected by the VA for PTSD which mitigates the separating misconduct. Given the nexus between PTSD, avoidance, and self-medicating with substances, the applicant's PTSD likely contributed to the AWOLs and wrongful use of 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's opine, the Board determined that the applicant's PTSD outweighed the separating offenses of AWOL and illegal substance abuse.

b. Response to Contention(s):

(1) The applicant contends severe PTSD affected behavior which led to the discharge. The Board liberally considered this contention and found it valid. The applicant's PTSD outweighed the separating offenses of AWOL and illegal substance abuse.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined that it was valid based on medical mitigation.

(3) The applicant contends the command, the ASAP, and medical personnel failed to provide the assistance the applicant needed for the PTSD. The Board considered this contention during proceedings, but ultimately did not address it in detail due relief being granted for medical mitigation.

(4) The applicant contends harassment by members of the chain of command. The Board considered this contention during proceedings, but ultimately did not address it in detail due relief being granted for medical mitigation.

(5) The applicant contends other Soldiers with similar offenses were provided relief and contends, in effect, the same relief was not afforded to the applicant. The Board considered this contention during proceedings, but ultimately did not address it in detail due relief being granted for medical mitigation.

(6) The applicant contends good service, including a combat tour. The Board noted the accomplishments in the evidentiary record but ultimately did not address it in detail due relief being granted for medical mitigation.

(7) The applicant requests a reentry eligibility (RE) code change. The Board considered this contention during proceedings voted to change the RE to 3 based on the diagnosed and service-connected PTSD.

(8) The applicant contends an upgrade of the discharge would allow veterans benefits. 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.

(9) The applicant contends being a counselor at the Military Ministry to assist others in need and was a cocreator of the "Ride for Recovery Program." The Board noted the post-service accomplishments in the evidentiary record, but ultimately did not address it further given relief being granted for medical mitigation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD outweighing the separating offenses of AWOL and 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 PTSD outweighed the separating misconduct of illegal substance abuse and AWOL. 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 given the diagnosed and service-connected PTSD.

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