

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 bad conduct. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, they were the definition of a great Soldier and deployed three times to Iraq. The applicant changed in the worse ways and became dependent on alcohol and drugs to cope with nightmares from deployment. The applicant was diagnosed with PTSD and received no help. It has been hard to receive medical treatment from the VA for the PTSD with the bad conduct discharge the applicant received.

b. Board Type and Decision: In a records review conducted on 3 September 2024, and by a 3-2 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, AWOL, and recklessly operating a vehicle while drunk. 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 Board Discussion and Determination 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: Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. Date of Discharge: 1 February 2008**c. Separation Facts:**

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 19, 8 November 2006, on 8 August 2006, the applicant was found guilty of the following:

Charge I, in violation of Article 86, UCMJ.

Specification 1: Without authority, absent oneself from the unit on or about 9 November 2005 until on or about 18 November 2005.

Specification 2: Without authority, absent oneself from the unit on or about 19 November 2005 until on or about 23 November 2005.

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Specification 3: Without authority, absent oneself from the unit on or about 29 November 2005 until on or about 11 January 2006.

Specification 4: Without authority, absent oneself from the unit on or about 19 January 2006 until on or about 2 February 2006.

Specification 5: Without authority, absent oneself from the unit on or about 3 February 2006 until on or about 26 April 2006.

Specification 6: Without authority, absent oneself from the unit on or about 27 April 2006 until on or about 1 May 2006.

Charge II, in violation of Article 111, UCMJ. The Specification: On or about 27 August 2005, operated a vehicle in a reckless manner while drunk.

Charge III, in violation of Article 112a, UCMJ.

Specification 1: Between on or about 6 October 2005 and 16 October 2005, wrongfully used cocaine.

Specification 2: Between on or about 8 November 2005 and 18 November 2005, wrongfully used cocaine.

Specification 3: Between 22 January 2006 and 2 February 2006, wrongfully used cocaine.

(2) Adjudged Sentence: To be discharged from the service with a bad conduct discharge, to be confined for 6 months, and to be reduced to the grade of E-1.

(3) Date / Sentence Approved: 8 November 2006 / Except for the part of the sentence extending to a bad conduct discharge would be executed. The applicant would be credited with 104 days of confinement against 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: 1 November 2007

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 4 May 2004 / 5 years

b. **Age at Enlistment / Education / GT Score:** 21 / some college / 88

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92Y10, Unit Supply Specialist / 5 years, 1 month, 16 days

d. **Prior Service / Characterizations:** RA, 19 February 2002 – 3 May 2004 / HD

e. **Overseas Service / Combat Service:** NIF

f. **Awards and Decorations:** AGCM, NDSM, GWOTSM

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Four Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 29 November 2005;
 From AWOL to Dropped From Rolls (DFR), effective 29 December 2005;
 From Present for Duty (PDY) to Confined by Military Authorities (CMA) effective 3 May 2006; and,
 From CMA to PDY, effective 25 September 2006.

SCMO Number 19, 8 November 2006, as described in previous paragraph 3c(1).

SCMO Number 200, 1 November 2007, ordered the Bad Conduct discharge to be executed.

Memorandum for Record, 25 January 2008, reflects there are missing documents which cover several periods of AWOL.

i. Lost Time / Mode of Return: 1 year, 29 days:

AWOL, 9 November 2005 – 17 November 2005 / NIF
 AWOL, 19 November 2005 – 22 November 2005 / NIF
 AWOL, 29 November 2005 – 10 January 2006 / NIF
 AWOL, 19 January 2006 – 1 February 2006 / NIF
 AWOL, 3 February 2006 – 25 April 2006 / NIF
 AWOL, 27 April 2006 – 30 April 2006 / NIF
 CMA, 3 May 2006 – 24 September 2006 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: United States Marine Corps letter, 29 June 2006, reflects the applicant was seen and evaluated. The letter reflects the applicant's condition.

Authorization and Consent to Release Information to the Department of Veterans Affairs (VA), 5 June 2014, reflects the applicant's condition.

(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: Application for Correction of Military Record; United States Marine Corps letter; VA Form 21-4142; Orders 025-0194; Certificate of Release or Discharge from Active Duty.

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), 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.

(4) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Paragraph 3-11 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

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-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 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 good service, including three combat tours.

The applicant contends becoming dependent on alcohol and drugs to cope with the nightmares from the deployments to Iraq. The applicant was diagnosed with PTSD and received no help. The applicant cannot receive medical treatment from the VA for the PTSD with a bad conduct discharge. The applicant provided United States Marine Corps letter, 29 June 2006, which reflects the applicant was seen and evaluated. The letter reflects the applicant's condition. Authorization and Consent to Release Information to the Department of Veterans Affairs (VA), 5 June 2014, reflects the applicant's condition. The AMHRR does not contain any medical documents to support the applicant's contention. 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.

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 NOS, Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with PTSD Chronic, during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the discharge. Given the nexus between PTSD and the use of substances to self-medicate and PTSD and avoidant behavior, the applicant's offenses of wrongful use of cocaine, AWOL, and recklessly operating a vehicle while drunk are 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, AWOL, and recklessly operating a vehicle while drunk.

b. Response to Contention(s):

(1) The applicant contends becoming dependent on alcohol and drugs to cope with the nightmares from the deployments to Iraq. The applicant was diagnosed with PTSD and received no help. The applicant cannot receive medical treatment from the VA for the PTSD with a bad

conduct discharge. 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, AWOL, and recklessly operating a vehicle while drunk. Therefore, the Board determined that an upgrade is warranted.

(2) The applicant contends good service, including three combat tours. The Board considered this contention but determined that the applicant's record did not warrant further upgrade beyond what is being granted based on medical mitigation of the applicant's offenses.

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, AWOL, and recklessly operating a vehicle while drunk. 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, AWOL, and recklessly operating a vehicle while drunk.

(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.

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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

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