

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 under other than honorable. The applicant requests an upgrade to honorable conditions.

The applicant seeks relief contending, in effect, struggling with being a single parent after being in Afghanistan for 14 months. The applicant needs assistance from the Veterans Hospital for Psychiatric care.

b. Board Type and Decision: In a records review conducted on 13 June 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD diagnosis outweighing the multiple incidents of AWOL, marijuana abuse, and Failure To Report (FTR) basis for separation. 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 eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service.

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: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 10 July 2009**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 4 March 2009

(2) Basis for Separation: The applicant was informed of the following reasons: Between on or about 3 and 17 February 2009 and 25 December 2008 and 8 January 2009, for wrongfully using marijuana; for on or about 10 October 2008 departed the unit and remained absent without leave until on or about 16 October 2008; and for on or about 25 and 27 August 2008, 21 and 24 September 2008 and 1, 2, 3, 6, and 7 October 2008, failing to go at the time prescribed to the appointed place of duty;

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 5 March 2009

(5) Administrative Separation Board: On 5 March 2009, the applicant voluntarily waived consideration of the case by an administrative separation board contingent upon receiving a characterization of service or description of separation no less favorable than general (under honorable conditions).

On 19 March 2009, the applicant's request to voluntarily waive rights to an administrative separation board conditioned upon receiving a general (under honorable conditions) discharge, was disapproved.

On 26 May 2009, the applicant unconditionally waived rights to an administrative separation board.

On 4 June 2009, the applicant's unconditional waiver was approved.

(6) Separation Decision Date / Characterization: 4 June 2009 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

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

b. Age at Enlistment / Education / GT Score: 23 / GED / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M10, Motor Transport Operator / 3 years, 2 months, 16 days

d. Prior Service / Characterizations: RA, 4 April 2006 – 22 November 2007 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (2 April 2007 – 1 May 2008)

f. Awards and Decorations: ACM-CS; ARCOM; NDSM; GWOTSM; OSR; NATOMDL; CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Nine Developmental Counseling Forms, for various acts of misconduct.

Record of Trial by Summary Court-Martial, dated 18 December 2008, reflects the applicant was charged with:

Four specifications of violation of Article 86:

The sentenced adjudged: To be reduced to Private (E-1); to forfeit \$933 pay per month for one month; and hard labor without confinement for 45 days.

Charge Sheet, dated 15 December 2008, reflects the applicant was charged with:

Charge I, Violation of Article 86, UCMJ, for without authority:

Specifications 1-8, on or about 25 and 27 August, 24 September, and on or about 1, 2, 3, 6 and 7 October 2008, failed to go at the time prescribed to the appointed place of duty.

Specification 9, on or about 10 October 2008, without authority, departed the unit and did remain so absent until on or about 16 October 2008.

Charge II, Violation of Article 112a, UCMJ, Specification: Between on or about 21 September 2008 and on or about 24 September 2008, the applicant wrongfully used 3, 4-Methylenedioxymethamphetamine.

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

From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 10 October 2008, and

From "AWOL" to "PDY," effective 16 October 2008.

i. Lost Time / Mode of Return: 5 days (AWOL, 10 October 2008 – 15 October 2008) / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, dated 19 February 2009, reflects the applicant was diagnosed with Cannabis Abuse and Occupational Stress but 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 was mentally responsible for the behavior.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; State of Illinois Department of Veterans Affairs Submittal Cover Sheet.

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 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 3-7c 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.

(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 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

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

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

The applicant contends family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

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.

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, MDD, Moderate recurrent depression/mood concerns and Bipolar Disorder (depressed type).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found evidence in applicant's VA records of PTSD/depression likely predating service and potentially aggravated by combat/service. Applicant was diagnosed 10 years post service with MDD, Moderate, recurrent and Bipolar Disorder (depressed type).

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that applicant has a rather complicated mental health history to include post-service treatment diagnosis of PTSD that appears to be related to both childhood trauma and combat-related residuals. However, active-duty medical records are void of any compelling references to mental health concerns, and applicant is not service connected for any such conditions. It is reasonable under liberal consideration guidelines to weigh and consider the potential psychological impact of both childhood and combat experiences, given applicant's VA treatment records and diagnoses, despite the lack of clear diagnostic evidence of PTSD at the time of service and/or by service connection. The medical advisor ultimately finds that applicant's overall history supports partial mitigation in that it is reasonably likely that there was some degree of impactful/contributory behavioral health residuals at the time of service. Illicit substance use is a form of self-medicating post-traumatic distress, and AWOL/FTR are both avoidance behaviors commonly seen within the natural history and sequelae of post-traumatic functioning. Records also indicate post-service diagnoses of bipolar disorder, MDD moderate, and recurrent, although there is no compelling suggestive that these were of potential concern at the time of service.

(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 PTSD outweighed the AWOL, marijuana abuse and FTR basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends family issues affected behavior and ultimately caused the discharge. 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 PTSD outweighing the applicant's AWOL, marijuana abuse and FTR basis for separation.

(2) 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.

c. The Board determined the discharge is inequitable based on the applicant's PTSD diagnosis outweighing the multiple incidents of AWOL, marijuana abuse, and Failure To Report (FTR) basis for separation. 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 eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the 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 to change the applicant's characterization of service to Honorable because the applicant's PTSD diagnosis outweighed the applicant's misconduct of multiple incidents of AWOL, marijuana abuse, and FTR. 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 Board determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service.

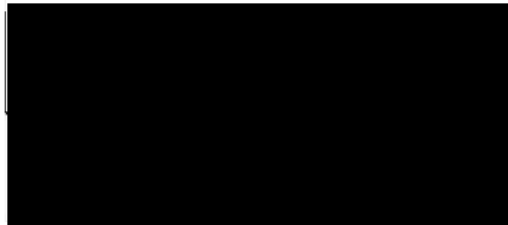
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000867

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, paragraph 14-12a

Authenticating Official:

2/13/2024


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