

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

The applicant seeks relief contending, in effect, being wrongfully discharged due to an isolated incident in which the applicant was not present. The incident occurred at an apartment off-base. There was a Super Bowl party, and people were smoking marijuana and taking prescription Adderall. The applicant was not at the apartment and was riding motorcycles with the team leader and squad leader. Later at night, someone was involved in an automobile accident, and the applicant was called into the company area. The party at the apartment was brought up during the investigation of the accident. The applicant was reprimanded because they were a roommate of the person involved in the accident. The applicant had to move back on base and received an Article 15 with 30 days extra duty and was discharged. The applicant passed the drug test given the same day. Two weeks after the applicant's discharge, the 1SG was relieved of their duties due to the wrongdoing of the situation. During the time, the applicant injured their back on an airborne operation and believes the injury was used against them as they were not in 100 percent physical condition. The applicant has since had four surgeries on their ankle and is rated 100 percent total permanent disability/unemployable. The applicant proudly served two combat tours in Support of Operation Iraqi Freedom and received several awards. The applicant aided in a Humanitarian mission where they rescued 24 disabled and starving special needs children near death. This mission gained national media attention.

b. **Board Type and Decision:** In a records review conducted on 29 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on medical mitigation for the basis of separation (BOS) misconduct (drug use). Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing 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. The Board determined the RE Code was proper and equitable and voted not to change it.

Please see the Board Discussion and Determination section 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 (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)
- b. **Date of Discharge:** 26 June 2008
- c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 13 May 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: Between on or about 1 January 2008 and 31 January 2008, the applicant wrongfully used marijuana; and between on or about 3 February 2008 and 5 February 2008, the applicant wrongfully used cocaine.

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

(4) **Legal Consultation Date:** 14 May 2008

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 30 May 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 26 September 2005 / 4 years, 22 weeks

b. **Age at Enlistment / Education / GT Score:** 19 / High School Transcript / 106

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B1P, Infantryman / 2 years, 8 months, 29 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** SWA / Iraq (19 July 2006 – 20 December 2006; 4 January 2007 – 15 November 2007)

f. **Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CIB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 4 March 2008, for wrongfully using marijuana between on or about 1 January and 31 January 2008; and wrongfully using cocaine between on or about 3 February and 5 February 2008. The punishment consisted of a reduction to E-2; forfeiture of \$755 pay per month for two months; and extra duty and restriction for 30 days.

Developmental Counseling Form, for substance abuse.

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

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

(1) **Applicant provided:** VA Rating Decision letter, 3 October 2012, reflects the applicant was granted 100 percent disability because the applicant is unable to work due to the service-connected disabilities.

(2) **AMHRR Listed:** Report of Mental Status Evaluation (MSE), 16 April 2008, 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 evaluation includes a diagnosis.

Report of Medical History, 30 April 2008, the examining medical physician noted the applicant's medical conditions in the comments section.

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; two self-authored statements; VA Rating Decision Letter; Certificate of Release or Discharge from Active Duty; five third-party letters; two certificates.

6. POST SERVICE ACCOMPLISHMENTS: The applicant risked their life to save an elderly person in a wheelchair and their family from a house fire and was recognized by the fire chief for their efforts.

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 3-5c provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

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 "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).

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 good service, including two combat tours and receiving several awards. The applicant aided in a humanitarian mission where they rescued 24 disabled, starving special needs children near death. This mission gained national media attention. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant contends using drugs to cope with depression issues caused by PTSD after serving two deployments. The applicant wanted to numb the pain and emotional stress from the things they did and saw in Iraq. The applicant never failed a drug test; however, admitted their wrongdoing and was looking for help. The applicant injured their back on an airborne operation and believes the injury was used against them as they were not in 100 percent physical condition. The applicant was granted 100 percent service-connected disability by the VA. The

applicant provided VA Rating Decision letter, 3 October 2012, which reflects the applicant was granted 100 percent disability because the applicant is unable to work due to the service-connected disabilities. The AMHRR shows Report of Mental Status Evaluation (MSE), 16 April 2008, which 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 evaluation contains a diagnosis. Report of Medical History, 30 April 2008, the examining medical physician noted the applicant's medical conditions in the comments section. All the medical documents contained in the AMHRR were considered by the separation authority.

The third-party statements provided with the application reflect the applicant's character and hard work while serving in the Army. One of the statements provided is from the applicant's ex-company commander who recommended the applicant receive a general (under honorable conditions) discharge due to drug use. The commander states prior to the incident, the applicant served extremely well under the command and deployed twice. In both deployments, they encountered numerous firefights, improvised explosive devices and mortar fire which caused many Soldiers to be treated for PTSD. Some who did not get treated, turned to drugs to self-medicate. The company commander states in hindsight, they should have recognized the applicant was part of a group which self-medicated to cope with combat experiences.

The applicant risked their life to save an elderly person in a wheelchair and their family from a house fire and was recognized by the fire chief for their efforts. 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'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: Post Traumatic Stress Disorder (PTSD).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed, and service connected by the VA for PTSD. Service connection establishes that the PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed, and service connected by the VA for PTSD. Given the nexus between PTSD and self-medicating with substances, the wrongful use of marijuana and cocaine that led to the separation are mitigated.

(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 wrongful use of marijuana and cocaine BOS for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends good service, including two combat tours and receiving several awards. The applicant aided in a Humanitarian mission where they rescued 24 disabled, starving special needs children near death. This mission gained national media attention. The Board liberally considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's wrongful use of marijuana and cocaine BOS.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board liberally considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's wrongful use of marijuana and cocaine BOS.

(3) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board liberally considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's wrongful use of marijuana and cocaine BOS. The AMHRR did show that the applicant met entrance qualification standards, to include age requirements.

(4) The applicant contends using drugs to cope with depression issues caused by PTSD after serving two deployments. The applicant wanted to numb the pain and emotional stress from the things they did and saw in Iraq. The applicant never failed a drug test; however, admitted their wrongdoing and was looking for help. The applicant injured their back on an airborne operation and believes the injury was used against them as they were not in 100 percent physical condition. The applicant was granted 100 percent service-connected disability by the VA. The Board liberally considered this contention, found it supported by the evidentiary record, and upgraded the discharge accordingly.

(5) Third-party statements provided with the application contend good character, quality service while in the Army, and post-service accomplishments. The Board liberally considered these statements as part of the entirety of the evidentiary record, but ultimately did not address them in detail due to the applicant's PTSD outweighing the wrongful use of marijuana and cocaine BOS.

c. The Board determined the discharge is inequitable based on medical mitigation of the BOS. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a separation code of JKN. The Board determined the RE Code was 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 PTSD medically mitigated the BOS misconduct of wrongful use of marijuana and cocaine. Thus, the prior characterization is no longer appropriate.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000872

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same rationale. Thus, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

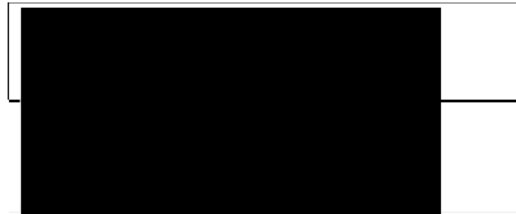
(3) The RE code will not change due to the applicant's behavioral health condition.

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:

9/8/2024



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