

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, after their best friend was killed by an Improvised Explosive Device (IED), they were discharged. The applicant claims they had a drug issue and began to drink excessively. The applicant failed a drug test, and the only alternative considered by the chain of command was separation from the service. The applicant contends they did not receive any assistance from the chain of command for their drug and alcohol problems. The applicant believes they could have been successful in the military if given the opportunity. The applicant states after their discharge, they spent three years in jail but is working on getting their life in order. The applicant has graduated from rehabilitation and is doing well. The applicant claims to be a fine person who has some troubles but desires to work and discuss their military experience. The applicant desires access to VA and GI Bill benefits. The applicant claims to suffer from post-traumatic stress disorder (PTSD). The applicant states being nine years sober, having been employed by the same company since 2013, and having their criminal record expungement on 3 June 2021.

b. Board Type and Decision: In a records review conducted on 3 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Depression, Anxiety, and Post Traumatic Stress Disorder outweighing the applicant's illegal drug abuse offenses. 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, and the reentry code to RE-3.
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: Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / General (Under Honorable Conditions) / The applicant's Army Military Human Resource Record (AMHRR) contains the Veteran's Administration Copy of the DD Form 214. Blocks 25, 26 and 27 are blacked out; block 28 reflects misconduct (drug abuse).

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

(1) Date of Notification of Intent to Separate: 20 July 2009

(2) Basis for Separation: Under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense, the applicant was informed of the following reasons: The applicant wrongfully used cocaine, D Amphetamines, and D-Methamphetamines.

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

(4) Legal Consultation Date: 22 July 2009

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: In an undated memorandum, the separation authority approved the applicant's separation under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 29 September 2005 / 6 years

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 127

c. Highest Grade Achieved / MOS / Total Service: E-5 / 63H20 H8, Tracked Vehicle Mechanic / 3 years, 10 months, 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (25 October 2007 – 4 January 2009)

f. Awards and Decorations: ARCOM, AAM, AGCM, NDSM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record: CG Article 15, 5 June 2008, on or about 26 May 2008, behaved oneself with disrespect toward Captain D., their superior commissioned officer, then known by the applicant to be their superior commissioned officer, by expressing provocative language and showing undue familiarity in an email correspondence. The punishment consisted of extra duty and a formal written/oral apology to Captain D., due within 14 days to Captain M., written to standard using Army writing style.

Electronic Copy of DD Form 2624, 21 May 2009, reflects the applicant tested positive for cocaine 1235, D-Amphetamine 1329; D-Methamphetamine lol, during an Inspection Other (IO) urinalysis testing, conducted on 12 May 2009.

FG Article 15, 14 July 2009, for wrongfully using cocaine, D-Amphetamine and D-Methamphetamine (between 8 May and 12 May 2009). The punishment consisted of a reduction to E-4; forfeiture of \$1,012 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Three Developmental Counseling Forms, for separation from the Army; disrespect and recommendation for a Field Grade Article 15.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Certificate of Graduation for completion of the phase one Trinity Mission Life Transformation Program.

(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 letter; State of Indiana Presentence Investigation Report Face Sheet; White Superior Court Document; White Superior Court Assessment Summary; Certificate of Graduation.

6. POST SERVICE ACCOMPLISHMENTS: The applicant completed phase one of the Trinity Mission Life Transformation Program. The applicant is nine years sober and is currently employed with the same company since 2013.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a

civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) 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.

(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 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

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

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 contends being diagnosed with PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR is void of a mental status evaluation.

The applicant contends an upgrade of the discharge would allow veterans benefits and educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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 failing a drug test, and the only alternative considered by the chain of command was separation from the service. The applicant contends they did not receive any assistance from the chain of command for their drug and alcohol problems. The applicant believes they could have been successful in the military if given the opportunity. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The evidence of the applicant's AMHRR shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment. Army Regulation 635-200, paragraph 1-17d(2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality Soldier. Army Regulation 600-85, paragraph 7-3 entitled voluntary (self) identification and referral, states voluntary (self) ID is the most desirable method of identifying substance use disorder. The individual whose performance, social conduct, interpersonal relations, or health becomes impaired because of

these problems has the personal obligation to seek help. Soldiers seeking self-referral for problematic substance use may access services through BH services for a SUD evaluation. The Limited Use Policy exists to encourage Soldiers to proactively seek help.

The applicant contends good service, including a combat tour.

The applicant completed phase one of the Trinity Mission Life Transformation 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.

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: Depression, Anxiety. Additionally, the applicant asserts PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with Depression and was diagnosed by the VA with Anxiety two months after his discharge from the Army. The applicant also self-asserts PTSD, and the VA medical record supports the applicant's assertion of experiencing symptoms of PTSD related to combat.

(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 Depression, Anxiety, PTSD, and self-medicating with substances, the applicant's BH conditions likely contributed to the use of cocaine and (meth)amphetamines. Accordingly, the applicant's Depression, Anxiety, and PTSD mitigate the drug use 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 opine, the Board determined that the applicant's Depression, Anxiety, and Post Traumatic Stress Disorder outweighed the applicant's illegal drug abuse offenses.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD. The Board liberally considered this contention and determined that the applicant's Depression, Anxiety, and Post Traumatic Stress Disorder outweighed the applicant's illegal drug abuse offenses.

(2) The applicant contends an upgrade of the discharge would allow veterans benefits and educational benefits through the GI Bill. 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.

(3) The applicant contends failing a drug test, and the only alternative considered by the chain of command was separation from the service. The applicant contends they did not receive any assistance from the chain of command for their drug and alcohol problems. The applicant believes they could have been successful in the military if given the opportunity. 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 Depression, Anxiety, and Post Traumatic Stress Disorder outweighing the applicant's illegal drug abuse offenses.

(4) The applicant contends good service, including a combat tour. 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 Depression, Anxiety, and Post Traumatic Stress Disorder outweighing the applicant's illegal drug abuse offenses.

(5) The applicant completed phase one of the Trinity Mission Life Transformation Program. 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 Depression, Anxiety, and Post Traumatic Stress Disorder outweighing the applicant's illegal drug abuse offenses.

c. The Board determined the discharge is inequitable based on the applicant's Depression, Anxiety, and Post Traumatic Stress Disorder outweighing the applicant's illegal drug abuse offenses. 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, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Depression, Anxiety, and Post Traumatic Stress Disorder outweighed the applicant's illegal drug abuse offenses. 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.

10. BOARD ACTION DIRECTED:

a. Issue a New DD-214: Yes

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000891

- 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:

10/16/2024



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