

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, returning from deployment with PTSD. The applicant turned to substances, and failed a couple of drug tests, and was discharged. The applicant is recovering and taking steps to better their life; an upgrade would help the applicant be a better contributor to society and the family. The applicant desires to use education benefits.

b. **Board Type and Decision:** In a records review conducted on 1 August 2024, and by a 4-1 vote, the Board determined that the current characterization of service is honorable and there is no further relief available with respect to characterization. In addition, the narrative reason for separation, Misconduct (Minor Infractions) with a corresponding separation code of JKN was proper and equitable and voted not to change it. However, the board did determine that the reentry eligibility (RE) code is inequitable based on the applicant's length and quality of service, the circumstances surrounding the discharge (Post Traumatic Stress Disorder (PTSD) and Depression diagnoses mitigating the applicant's use of marijuana that led to separation), and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of 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 (Minor Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-4 / Honorable

b. **Date of Discharge:** 30 November 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 18 October 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: Misconduct abuse of illegal drugs, the applicant received a Field Grade Article 15 on 20 September 2010 for wrongfully using Marijuana. Additionally, the applicant tested positive for Marijuana on 12 May 2010.

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

(4) **Legal Consultation Date:** On 25 October 2010, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 10 November 2010 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 November 2007 / 3 years, 24 weeks

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / 90

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92G10, Food Service Operation
/ 3 years, 1 month

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (15 June 2008 – 30 September 2009)

f. Awards and Decorations: ICM-2CS, ARCOM, AAM-2, NDSM, GWOTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 19 May 2010, reflects the applicant tested positive for THC 22 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 12 May 2010.

Electronic Copy of DD Form 2624, 22 July 2010, reflects the applicant tested positive for THC >LOL (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 19 July 2010.

Army Substance Abuse Program (ASAP) Enrollment Form, 27 July 2010, reflects the applicant was command referred in the ASAP.

FG Article 15, 20 September 2010, on or about 10 June 2010 and 10 July 2010, wrongfully use marijuana. The punishment consisted of a reduction to E-1; forfeiture of \$723 pay per month for two months; and extra duty and restriction for 45 days.

Developmental Counseling Form, for wrongful use, possession, etcetera, of controlled substances.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Mental Status Evaluation (MSE), 13 August 2010, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. PTSD screen was elevated due to generalized anxiety and TBI screen was within normal limits. The applicant can continue processing for Chapter 14. Continued treatment from ASAP and primary care provider is recommended.

Report of Medical Assessment, 22 September 2010, the health care provider noted the applicant's medical conditions in the comments section.

(2) AMHRR Listed: MSE as described in previous paragraph 4j (1).

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 the Review of Discharge; Mental Status Evaluation; Report of Medical Assessment; Orders 334-0114; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is in recovery and taking steps to better their life.

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) 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.

(4) 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.

(5) Paragraph 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

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

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. Delete if NA.

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 returning from deployment with PTSD. The PTSD caused the applicant to turn to substances and failing a couple of drug tests. The applicant provided a Mental Status Evaluation (MSE), 13 August 2010, which reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. A PTSD screen was elevated due to generalized anxiety and TBI screen was within normal limits. The applicant could continue processing for Chapter 14. Continued treatment from ASAP and primary care provider was recommended. A Report of Medical Assessment, 22 September 2010, the health care provider noted the applicant's medical conditions in the comments section. The MSE was considered by the Separation Authority.

The applicant contends an upgrade would allow 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 an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant is in recovery and taking steps to better their life. 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: Post Traumatic Stress Disorder (PTSD), Depression.

(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 with Depression. Service connection establishes that the conditions existed during military service.

(3) Does the condition or experience actually 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 with Depression. Given the nexus between PTSD, Depression, and self-medicating with substances, the marijuana use that led to the applicant's separation is mitigated. The applicant has an Honorable discharge suggesting that mitigation has already been applied.

(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 (PTSD) and Depression outweighed the wrongful use of marijuana basis for separation for the aforementioned reason(s). The applicant has an Honorable discharge suggesting that mitigation has already been applied.

b. Response to Contention(s):

(1) The applicant contends returning from deployment with PTSD. The PTSD caused the applicant to turn to substances and failing a couple of drug tests. 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 Post Traumatic Stress Disorder (PTSD) and Depression fully outweighing the applicant's wrongful use of marijuana basis for separation. The applicant has an Honorable discharge suggesting that mitigation has already been applied.

(2) The applicant contends an upgrade would allow educational benefits through the GI Bill. 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 Post Traumatic Stress Disorder (PTSD) and Depression fully outweighing the applicant's wrongful use of marijuana basis for separation. The applicant has an Honorable discharge suggesting that mitigation has already been applied.

(3) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. 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 Post Traumatic Stress Disorder (PTSD) and Depression fully outweighing the applicant's wrongful use of marijuana basis for separation. The applicant has an honorable discharge suggesting that mitigation has already been applied.

(4) The applicant is in recovery and taking steps to better their life. 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 Post Traumatic Stress Disorder (PTSD) and Depression fully outweighing the applicant's wrongful use of marijuana basis for separation. The applicant has an Honorable discharge suggesting that mitigation has already been applied.

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c. The Board determined that the current characterization of service is onorable and there is no further relief available with respect to characterization. In addition, the narrative reason for separation, Misconduct (Minor Infractions) with a corresponding separation code of JKN was proper and equitable and voted not to change it. However, the board did determine that the reentry eligibility (RE) code is inequitable based on the applicant's length and quality of service, the circumstances surrounding the discharge (Post Traumatic Stress Disorder (PTSD) and Depression diagnoses mitigating the applicant's use of marijuana that led to separation), and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable and a narrative Reason of Misconduct (Minor Infractions); therefore is no further relief available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

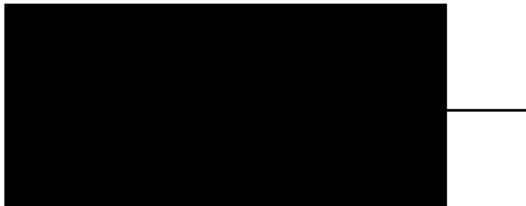
(3) The Board voted to change the RE code to RE-3, which is congruent with the nature of the misconduct and the applicant's length and quality of service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes**
- b. Change Characterization to: No Change**
- c. Change Reason / SPD Code to: No Change**
- d. Change RE Code to: RE-3**
- e. Change Authority to: AR 635-200**

Authenticating Official:

8/14/2024



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