

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, the discharge is directly correlated to the applicant's post-traumatic stress disorder (PTSD) caused by their combat deployment in Afghanistan. The applicant is 70 percent disabled for PTSD with generalized anxiety disorder (GAD), with an overall or combined rating of 80 percent as of 17 May 2012. The applicant would like to use the GI bill to further a career in nursing. The reason for the applicant's discharge from the Army was misconduct, serious offense, because of driving under the influence (DUI) within months of the applicant's deployment to Afghanistan because the applicant was self-medicating with alcohol to cope with the effects of PTSD. The applicant received a DUI at the gates of Fort Campbell, which is the reason for the discharge under Chapter 14-12c. Despite all the current symptoms and turmoil, the applicant is enduring because of deployment, the applicant is striving to become a better person and further their career in the medical field. The upgrade would assist the applicant in achieving their goals in the medical field.

b. **Board Type and Decision:** In a records review conducted on 8 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's DUI and illegal substance abuse offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

Please see 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 (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 16 May 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 21 February 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was found driving while under the influence of alcohol and in possession of synthetic cannabinoids.

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

(4) **Legal Consultation Date:** 4 April 2012

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

(6) **Separation Decision Date / Characterization:** 12 April 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 19 November 2008 / 4 years

b. **Age at Enlistment / Education / GT Score:** 23 / Some College / 114

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 68W10, Health Care Specialist / 3 years, 9 months, 14 days

d. **Prior Service / Characterizations:** ARNG, 21 July 2008 – 18 November 2008 / HD

e. **Overseas Service / Combat Service:** SWA / Afghanistan (13 August 2010 –3 August 2011)

f. **Awards and Decorations:** ACM-CS, ARCOM, NATOMDL, NDSM, GWOTSM, ASR, OSR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report (Blotter Report), 14 February 2010, reflects the applicant was apprehended by the Clarksville Police Department for: driving under the influence (off post).

Clarksville Police Department, 13 February 2010, reflects the applicant was arrested by civilian authorities for DUI when the applicant was operating a vehicle, traveling at 67 miles per hour (mph) in a 45 mph zone. The applicant was unable to perform any field sobriety tests and registered .155 percent on the intoximeter.

General Officer Memorandum Of Reprimand, 26 March 2010, reflects the applicant was driving a motor vehicle on 14 February 2010, in the state of Tennessee with a blood alcohol content of .155 percent. After being stopped for reckless driving on 13 November 2010, the applicant refused to take a lawfully requested intoximeter test.

Military Police Report, 3 October 2011, reflects the applicant was apprehended for: driving under the influence and implied consent violation (on post). Investigation revealed the applicant was operating a motor vehicle and approached the Fort Campbell gate. The Gate Guard detected the odor of an alcoholic beverage emitting from the applicant. The applicant was administered a series of field sobriety tests, apprehended, and transported to the Provost Marshal's Office. The applicant refused to submit to an intoximeter test to determine their blood alcohol content.

General Officer Memorandum Of Reprimand, 5 October 2011, reflects the applicant violated the Implied Consent law in the state of Kentucky, when the applicant refused to submit to a lawfully

requested intoximeter test, to measure the alcohol content of the applicant's breath when there was reasonable belief the applicant was driving under the influence of alcohol on 3 October 2011.

Developmental Counseling Form, 5 October 2011 for DUI.

Criminal Investigation Division (CID) Report of Investigation - Initial Final, 11 October 2011, reflects an investigation established probable cause to believe the applicant committed the offense of Failure to Obey a General Order when the applicant admitted to possessing and consuming synthetic cannabinoids. On 3 October 2011, the CID Office was notified by the Military Police, suspected synthetic cannabinoids were found on the applicant. The CID Office obtained a verbal search authorization from the Military Magistrate, for a search of the applicant's privately owned vehicle, conducted the search, and collected two packages of synthetic cannabinoids as evidence.

Memorandum, subject: Characterization of Potential for Future Service, and Commander Recommendation for [Applicant], 21 February 2012, reflects the applicant performed well while deployed, but after returning from deployment, the applicant was found driving under the influence and possessing synthetic drugs. The applicant sought help for alcoholism with the Army Substance Abuse Program in the form of rehabilitation; however, the chain of command believed the applicant's desire to take care of the problem came too late.

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

From Present for Duty to Confined, effective 16 April 2012; and
From Confined to Present for Duty, effective 27 April 2012.

i. Lost Time / Mode of Return: 11 days (Confined by Civilian Authorities, 16 April 2012 – 27 April 2012) / Released from Confinement.

j. Behavioral Health Condition(s):

(1) Applicant provided: Two Department of Veterans Affairs (VA) letters, 1 November 2012, and 3 September 2013, reflect the VA rated the applicant 70 percent service-connected disabled for PTSD, with GAD, and 30 percent for tinea versicolor.

(2) AMHRR Listed: Lincoln Trail Behavioral Health System Discharge Summary, 17 November 2011, reflects the applicant was admitted on 18 October 2011. The applicant was diagnosed with alcohol dependence; generalized anxiety disorder (GAD); and required further evaluation for PTSD.

Report of Mental Status Evaluation, 16 December 2011, 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 applicant had been screened for PTSD and mild traumatic brain injury (mTBI). The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with alcohol dependence.

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; VA compensation letter; and VA Rating Decision.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is striving to become a better person and further their career in the medical field.

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 waiverable and nonwaiverable 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 waiverable. 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 being rated 70 percent service-connected disabled for PTSD, with GAD, by the VA, and the PTSD affected behavior which led to the discharge. The applicant provided VA letters supporting the contention. The applicant's AMHRR shows the applicant was diagnosed with alcohol dependence; generalized anxiety disorder (GAD); and required further evaluation for PTSD. The applicant underwent a mental status evaluation (MSE) on 16 December 2011, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant was diagnosed with alcohol dependence. The documents in the applicant's AMHRR were 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 striving to become a better person and further their career in the medical field. 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: PTSD,

Generalized Anxiety Disorder.

(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 Generalized Anxiety Disorder and is service connected by the VA for PTSD and Generalized Anxiety Disorder. Service connection establishes that the applicant's PTSD also 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's behavioral health conditions mitigate the discharge. Given the nexus between PTSD and self-medicating with substances, the DUI and possession of synthetic cannabinoids 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 opine, the Board determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's DUI and illegal substance abuse offense.

b. Response to Contention(s):

(1) The applicant contends being rated 70 percent service-connected disabled for PTSD, with GAD, by the VA, and the PTSD affected behavior which led to the discharge. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's DUI and illegal substance abuse offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends an upgrade would allow 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 striving to become a better person and further their career in the medical field. The Board considered the applicant's post-service accomplishments during proceedings but ultimately did not address this contention after determining that a discharge upgrade is warranted based on medical mitigation.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's DUI and illegal substance abuse offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder outweighed the applicant's DUI and illegal substance abuse offense. Thus, the prior characterization is no longer appropriate.

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

8/13/2024



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