

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 bad conduct. The applicant requests an upgrade to general under honorable conditions.

The applicant seeks relief contending, in effect, the discharge should be changed to reflect the applicant's service before the applicant went absent without leave (AWOL) and subsequent court-martial. The applicant requests the narrative be changed to allow the applicant to move forward in life. The applicant regrets their decision to walk away and not face the consequences of their actions.

b. Board Type and Decision: In a records review conducted on 2 July 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's PTSD mitigating the applicant's misconduct of 2x AWOL, wrongful marijuana use, and disobeying a Non-Commissioned Officer. The Board determined the remaining unmitigated misconduct of communicating a threat did not rise to a level that negated meritorious service required for an Honorable Discharge. 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. Accordingly, the narrative reason for separation was changed 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: Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. Date of Discharge: 19 December 2005**c. Separation Facts:**

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 16, 18 April 2003, on 13 December 2002, the applicant was found guilty of the following:

Charge I, in violation of Article 86, UCMJ:

Specification 1: AWOL from 17 October, until apprehended on 2 November 2002. Plea: Guilty.

Specification 2: AWOL from 2 November until apprehended on 5 November 2002. Plea: Guilty. The date was corrected by the United States Army Court of Criminal Appeals, on 15 January 2004, to 3 November 2002.

Charge II, in violation of Article 91, UCMJ, The Specification: Disobeying a noncommissioned officer (NCO) on 2 November 2002. Plea: Guilty.

Charge III, in violation of Article 112a, UCMJ, The Specification: Wrongfully using marijuana between 30 August and 29 September 2002. Plea: Guilty.

Charge IV, in violation of Article 134, UCMJ, The Specification: Communicating a threat on 2 November 2002.

(2) Adjudged Sentence: Reduction to E-1; forfeiture of \$737 pay per month for 5 months; to be confined for 5 months, and to be discharged from the service with a Bad Conduct discharge.

(3) Date / Sentence Approved: 18 April 2003 / The sentence was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed. The applicant was credited with 35 days of confinement towards the sentence to confinement.

(4) Appellate Reviews: The Record of Trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals (ACCA) affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: 22 July 2004

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 17 November 2000 / 3 years / The applicant extended the most recent enlistment by a period of 5 months on 18 May 2001, giving the applicant a new ETS of: 16 April 2004

b. Age at Enlistment / Education / GT Score: 22 / GED / 111

c. Highest Grade Achieved / MOS / Total Service: E-3 / 21B10, Combat Engineer / 4 years, 8 months, 12 days / The applicant was on excess leave for 1003 days from 23 March 2003 to 19 December 2005.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany / None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Special Court-Martial Order Number 16; Special Court Martial Order Number 65; and ACCA Notice of Court-Martial Order Correction described in previous paragraph 3c.

a. Lost Time / Mode of Return: 138 days: AWOL, 17 October 2002 –5 November 2002 / Apprehended / Corrected to 3 November 2002 confined by Military Authorities, 8 November 2002 – 9 March 2003 / Released from Confinement.

b. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs Medical Center medical records from 11 June to 15 August 2014, reflecting the applicant was diagnosed with opioid abuse; alcohol abuse; addictive disorder; personality disorder, not otherwise specified (NOS); alcohol use disorder; chronic pain; homelessness; financial, chronic medical condition; marital/relationship discord; legal problems; unemployed; global assessment of functioning of 25 on admission into the hospital and 50 upon discharge; alcohol induced depressive disorder a mood disorder, moderate. The applicant did not meet the full criteria for PTSD, but the diagnosis could not be ruled out. The applicant reported a past diagnosis of bipolar and PTSD.

(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: DD Form 214; DD Form 293; Special Court-Martial Order Number 65; and VA medical documents.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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

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

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

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

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

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

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

(4) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Paragraph 3-11 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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's Army Military Human Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 3, AR 635-200 with a bad conduct discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Court-Martial (Other)," and the separation code is "JJD." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends being diagnosed with mental health conditions. The applicant provided several medical documents indicating diagnoses of opioid abuse; alcohol abuse; addictive disorder; personality disorder, NOS; alcohol use disorder; chronic pain; alcohol induced depressive disorder and mood disorder, moderate. The applicant did not meet the full criteria for PTSD, but the diagnosis could not be ruled out. The applicant reported a past diagnosis of bipolar and PTSD. The AMHRR is void of a mental status evaluation.

The applicant contends good service before the AWOL and subsequent court-martial.

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.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found a VA provider diagnosed the applicant with PTSD related to childhood and military traumas.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has a BH condition that partially mitigates applicant's misconduct as outlined in the BoS. The applicant has a post-service diagnosis of PTSD, related to childhood and military trauma, rendered by a VA provider. There is no initial PTSD DBQ in the records for the applicant. Although it is not clear to this advisor that the applicant experienced an in-service criteria A event, this advisor will concede to such under liberal guidance. Therefore, as there is a nexus between PTSD and avoidance, PTSD and self-medicating with substances, and PTSD and problems with authority, the applicant's misconduct characterized by AWOLx2, wrongful use of marijuana, and disobeying and NCO is mitigated. Regarding the charge of communicating a threat, in absence of additional information, this advisor cannot render an informed decision related to mitigation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD outweighed the basis for applicant's separation – communicating a threat.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD mitigating the applicant's misconduct of 2x AWOL, wrongful marijuana use, and disobeying a Non-Commissioned Officer. The Board determined the remaining unmitigated misconduct of communicating a threat did not rise to a level that negated meritorious service required for an Honorable Discharge.

(2) The applicant contends being diagnosed with mental health conditions. The Board liberally considered this contention and determined the applicant was diagnosed with PTSD.

(3) The applicant contends good service before the AWOL and subsequent court-martial. The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD mitigating the applicant's misconduct of 2x AWOL, wrongful marijuana use, and disobeying a Non-Commissioned Officer. The Board determined the remaining unmitigated misconduct of

communicating a threat did not rise to a level that negated meritorious service required for an Honorable Discharge.

c. The Board determined the discharge is inequitable based on the applicant's PTSD mitigating the applicant's misconduct of 2x AWOL, wrongful marijuana use, and disobeying a Non-Commissioned Officer. The Board determined the remaining unmitigated misconduct of communicating a threat did not rise to a level that negated meritorious service required for an Honorable Discharge. 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. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD and matters surrounding the discharge outweighed the applicant's misconduct of 2x AWOL, wrongful marijuana use, disobeying a Non-Commissioned Officer and communicating a threat. Thus, the prior characterization is no longer appropriate.

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

(3) The Board voted to change the RE code to RE-3.

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:** RE-3
- e. **Change Authority to:** AR 635-200, paragraph 14-12a

Authenticating Official:

1/10/2025

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AMHRR – Army Military Human Resource Record	CID – Criminal Investigation Division
BCD – Bad Conduct Discharge	ELS – Entry Level Status
BH – Behavioral Health	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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000982

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