

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, serving nine years in the military and receiving an honorable discharge from the Georgia Army National Guard. The applicant completed a term in the Active Army. The applicant received a general (under honorable conditions) discharge on the applicant's expiration term of service (ETS) date for misconduct. The chapter paperwork was not completed until four days before the applicant's ETS date, and the applicant did not have enough time to fight the case. The applicant was attending the Army Substance Abuse Program before the chapter was done. The applicant was having trouble with the applicant's chain of command. The chain of command was so determined to separate the applicant, the process was not done correctly.

b. **Board Type and Decision:** In a records review conducted on 16 July 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Anxiety Disorder outweighing the illegal substance abuse. 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, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 5 August 2014

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 2 June 2014

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully used marijuana between on or about 21 February and 21 March 2014.

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

(4) **Legal Consultation Date:** 4 June 2014

(5) Administrative Separation Board: On 4 June 2014, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: NIF / The Notification for Separation reflects the Commander, Headquarters, 3rd Infantry Division and Fort Stewart was the separation authority and would make the final decision in the case.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 May 2012 / 4 years

b. Age at Enlistment / Education / GT Score: 25 / HS Graduate / 80

c. Highest Grade Achieved / MOS / Total Service: E-4 / 12B10, Combat Engineer / 5 years, 6 months, 29 days / The applicant's AMHRR reflects the applicant served 3 years, 5 months, 2 days total prior inactive service; total service of 9 years, 1 day. The inactive service is not reflected on the DD Form 214.

d. Prior Service / Characterizations: ARNG, 5 August 2005 – 27 January 2010 / HD
IADT, 9 January 2006 – 28 April 2006 / HD
(Concurrent Service)
AD, 30 March 2008 – 20 April 2009 / HD
(Concurrent Service)
RA, 28 January 2010 – 3 May 2012 / HD

e. Overseas Service / Combat Service: Korea, SWA / Afghanistan (7 February 2012 – 19 October 2012); Iraq (30 March 2008 – 31 March 2009)

f. Awards and Decorations: AAM, ACM-CS, ARCOM-2, AGCM, NDSM-2, GWOTSM, ICM-CS, OSR-2, NATOMDL, AFRM

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Company Grade Article 15, 16 January 2014, for on four occasions failing to go at the time prescribed to the appointed place of duty (16 and 22 August, 26 September, and 1 November 2013); and willfully disobeying a lawful order from Sergeant N. P., a noncommissioned officer (1 November 2013). The punishment consisted of a reduction to E-3 (suspended); forfeiture of \$470 pay (suspended); and extra duty for 7 days.

Record Of Supplementary Action Under Article 15, UCMJ, 5 February 2014, reflects the suspended portion of the punishment imposed on 16 January 2014, was vacated for: Article 86, failure to go at the time prescribed to the appointed place of duty (28 January 2014).

Field Grade Article 15, 30 April 2014, for wrongfully using marijuana (between 21 February and 21 March 2014). The punishment consisted of a reduction to E-1; forfeiture of \$765 pay per month for two months (suspended); and extra duty for 45 days.

Record Of Supplementary Action Under Article 15, UCMJ, 22 May 2014, reflects the suspended portion of the punishment imposed on 30 May 2014, was vacated for: Article 86, failure to go at the time prescribed to the appointed place of duty (1 May 2014).

The applicant's two Enlisted Record Briefs (ERB), 19 May 2014 and 25 August 2014, reflect the applicant was flagged for Drug Abuse (Adverse Action) (UA), effective 7 April 2014; was ineligible for reenlistment because Adverse Action Flag (Flag Codes A, H, L, M, U, V, and X) (9B). The applicant was reduced from E-4 to E-3, effective 5 February 2014; and from E-3 to E-1, effective 30 April 2014. The applicant's expiration term of service was listed as 5 August 2014.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 19 May 2014, 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 post-traumatic stress disorder and mild traumatic brain injury. 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 marijuana abuse.

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 149.

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), 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) Paragraph 1-26, in effect at the time, provides retention beyond a Soldier's ETS to process administrative separation proceedings pursuant to this regulation is not authorized. If it is desirable to retain a Soldier beyond the ETS for any reason must be submitted to the appropriate authority.

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

(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(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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends having issues with the chain of command; not having enough time to fight the chapter; and the chapter was improperly done because it was processed four days before the applicant's ETS date. The applicant's AMHRR reflects the applicant was given the opportunity to have the case heard by an administrative separation board, but the applicant waived the board contingent upon receiving a general (under honorable conditions) discharge.

The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being chaptered on the applicant's ETS date. Army Regulation 635-200, paragraph 1-26, in effect at the time, provides retention beyond a Soldier's ETS to process administrative separation proceedings pursuant to this regulation is not authorized. The regulation does not provide any restrictions to involuntarily separate a Soldier on the Soldier's scheduled ETS date. In this case, the applicant's ERB reflects the applicant's ETS date was 5 August 2014; however, the applicant reenlisted on 4 May 2012 for 4 years, which indicates the original ETS date should reflect on or about 4 May 2016.

The applicant contends good service, including honorable service in the ARNG and two combat tours. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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: Anxiety Disorder, PTSD, Adjustment Disorder with Depressed Mood.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 30 percent SC for Anxiety Disorder.

(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 BH conditions mitigates the discharge. Given the nexus between Anxiety Disorder and the use of substances to self-medicate, the applicant's misconduct of wrongful use of marijuana is 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 Anxiety Disorder outweighed the illegal substance abuse.

b. Response to Contention(s):

(1) The applicant contends having issues with the chain of command; not having enough time to fight the chapter; and the chapter was improperly done because it was processed four days before the applicant's ETS date. 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 Anxiety Disorder outweighing the illegal substance abuse.

(2) The applicant contends being chaptered on the applicant's ETS date. 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 Anxiety Disorder outweighing the illegal substance abuse.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001009

(3) The applicant contends good service, including honorable service in the ARNG and two combat tours. 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 Anxiety Disorder outweighing the illegal substance abuse.

c. The Board determined the discharge is inequitable based on the applicant's Anxiety Disorder outweighing the illegal substance abuse. 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 Anxiety Disorder outweighed the illegal substance abuse. 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.

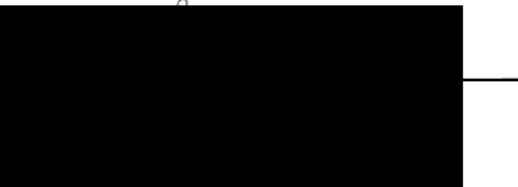
(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- 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:

7/23/2024



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