

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 and a change to the narrative reason for separation.

The applicant seeks relief contending, in effect, the applicant learned much in the Army, including the Army values and what it truly means to be a Soldier. The applicant learned how to endure and execute punishment for the applicant's poor decisions. The applicant had the opportunity and responsibility to protect and serve the great nation. In August 2009, shortly after the applicant was assigned to the unit, the applicant's grandparent, who raised the applicant, had to undergo emergency triple bypass, open heart surgery. The applicant received an American Red Cross message, but the commander denied the applicant's leave because, according to the commander, the applicant's grandparent was not dead and was not going to die. The applicant was overcome by depression. As a new Soldier, the applicant requested advice from the leadership and was advised the applicant could not leave because the commander said "no." The applicant, not knowing the regulations and having a command which was not structured to provide support to the Soldiers, things spiraled out of control. The applicant turned to alcohol and drugs. The applicant felt guilty for not being able to be there for the grandparent. The applicant tested positive on a urinalysis and received the maximum punishment under the Uniform Code of Military Justice (UCMJ). Things became chaotic because of the Fort Hood attacks. The applicant was depressed and continued to drink alcohol. The applicant sought counseling and was diagnosed with an adjustment disorder with mixed emotional features. The applicant endured Article 15 punishment, with verbal and physical harassment from members of the chain of command up to the senior noncommissioned officer (NCO). The applicant consulted JAG about the harassment, and was told to do the punishment, "suck it up and drive on." The issues caused much emotional distress and led to the applicant frequently contemplating suicide.

The applicant continued counseling and using the prescribed medication. The applicant stopped drinking and using drugs and successfully completed the rehabilitation treatment plan. The applicant completed the punishment, but was teased by the first sergeant (1SG) about having another chance. The applicant's discharge paperwork continued to be processed. The applicant's condition improved, but the applicant was never given another chance. The applicant missed opportunities, such as the GI Bill benefits. An upgrade would possibly reinstate the applicant's benefits. The applicant also requests a narrative reason change. The applicant does not abuse drugs and has not used drugs in the past years. The applicant maintained two jobs, working at Wal-Mart as an unloader and tire and lube technician, and currently as a Consumer Solutions Representative for CenturyLink. The applicant accepted Christ, which helped the applicant realize God forgives and gives second chances. The applicant is very active in the applicant's church as a youth minister. The applicant cares for the applicant's grandparent, who is 69 years of age, and health has been a roller coaster. The applicant regrets the actions and realizes the impact they had on the applicant's military career. The applicant made life changes through counseling and treatment and an upgrade would change the applicant's life for the better, with consideration for career advancement and educational benefits.

b. Board Type and Decision: In a records review conducted on 13 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Depression, Unspecified Anxiety Disorder, and Traumatic Brain Injury outweighing the applicant's illegal substance 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, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 23 February 2010

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 29 January 2010 / The applicant's AMHRR reflects the applicant inadvertently entered the year 2009, on the Acknowledgement.

(2) Basis for Separation: Under the provisions of AR 635-200, Section III, Paragraph 14-12c, Commission of a Serious Offense, the applicant was informed of the following reasons: The applicant tested positive on a urinalysis on 17 December 2009 for marijuana and on another urinalysis on 20 September 2009 for cocaine.

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

(4) Legal Consultation Date: On 3 February 2010, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 4 February 2010 / General (Under Honorable Conditions) / The separation authority approved the applicant's separation under the provisions of AR 635-200, Section III, Paragraph 14-12c, Commission of a Serious Offense.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 October 2008 / 4 years, 26 weeks

b. Age at Enlistment / Education / GT Score: 23 / 3 Years College / 100

c. Highest Grade Achieved / MOS / Total Service: E-3 / 92F10, Petroleum Supply Specialist / 1 year, 3 months, 26 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. **Awards and Decorations:** NDSM, ASR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Memorandum for Record, subject: Probable Cause for Urinalysis conduct on [Applicant], 15 October 2009, reflects the applicant was arrested by civilian authorities for possession of cocaine on or about 19 September 2009.

Electronic Copy of DD Form 2624, 29 September 2009, reflects the applicant tested positive for COC (cocaine) during urinalysis testing, conducted on 20 September 2009. The information, in part, is illegible.

Field Grade Article 15, 3 November 2009, for wrongfully using cocaine (between 17 and 20 September 2009). The punishment consisted of a reduction to E-1; forfeiture of \$699 pay per month for two months; and extra duty and restriction for 45 days.

Electronic Copy of DD Form 2624, 30 December 2009, reflects the applicant tested positive for THC 42 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 17 December 2009.

NG Levels Query, 31 December 2009, reflects the applicant tested positive for cocaine 4039 (cocaine) and THC 42 (marijuana).

Field Grade Article 15, 26 January 2010, for wrongfully using marijuana (between 18 November and 17 December 2009). The punishment consisted of a forfeiture of \$723 pay per month for two months (suspended) and extra duty and restriction for 45 days.

Two Developmental Counseling Forms, for testing positive for marijuana and cocaine.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 13 November 2009, reflects the applicant was cleared for separation under Army Regulation 635-200, Chapter 14. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant had been screened for PTSD and mild traumatic brain injury (mTBI). The applicant was previously diagnosed with adjustment disorder and had a continuing need for treatment.

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; self-authored statement; third party support statement; and three character references.

6. **POST SERVICE ACCOMPLISHMENTS:** The applicant is not abusing drugs, maintains employment, and is actively involved in the church.

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 depression and a family issue affected behavior and ultimately led to the discharge. The applicant provided a third party letter from the grandparent, which indicated the applicant suffered from depression and post-traumatic stress disorder, and described the applicant's change in behavior after being denied emergency leave. The record shows the applicant underwent a mental status evaluation (MSE) on 13 November 2009, which indicates the applicant was mentally responsible. The provider indicated the applicant was previously diagnosed with adjustment disorder. The MSE was considered by the separation authority.

The applicant contends harassment and discrimination by members of the chain of command. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

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 contends not abusing drugs, maintaining employment, and being actively involved in the church. 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.

The third party statements provided with the application speak highly of the applicant. The all recognize the applicant's good work ethic as a civilian employee.

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: Adjustment Disorder, Depression, Unspecified Anxiety Disorder, TBI.

(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 an Adjustment Disorder and Depression and is service connected by the VA for Unspecified Anxiety Disorder and TBI. Service connection establishes that the applicant's Unspecified Anxiety Disorder and TBI 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 there is evidence of multiple mitigating BH conditions. The applicant was diagnosed in service with an Adjustment Disorder and Depression and is service connected by the VA for Unspecified Anxiety Disorder and TBI. Given the nexus between Depression, Unspecified Anxiety Disorder, TBI, and self-medicating with substances, the failed UAs for marijuana and cocaine 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 Depression, Unspecified Anxiety Disorder, and Traumatic Brain Injury outweighed the applicant's illegal substance abuse offenses.

b. Response to Contention(s):

(1) The applicant contends depression and a family issue affected behavior and ultimately led to the discharge. The Board liberally considered this contention and determined that the applicant's Depression, Unspecified Anxiety Disorder, and Traumatic Brain Injury outweighed the applicant's illegal substance abuse offenses. Therefore, a discharge upgrade is warranted.

(2) The applicant contends harassment and discrimination by members of the chain of command. 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, Unspecified Anxiety Disorder, and Traumatic Brain Injury outweighing the applicant's illegal substance abuse offenses.

(3) 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.

(4) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(5) The applicant contends not abusing drugs, maintaining employment, and being actively involved in the church. 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, Unspecified Anxiety Disorder, and Traumatic Brain Injury outweighing the applicant's illegal substance abuse offenses.

c. The Board determined the discharge is inequitable based on the applicant's Depression, Unspecified Anxiety Disorder, and Traumatic Brain Injury outweighing the applicant's illegal

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001086

substance 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, Unspecified Anxiety Disorder, and Traumatic Brain Injury outweighed the applicant's illegal substance 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.

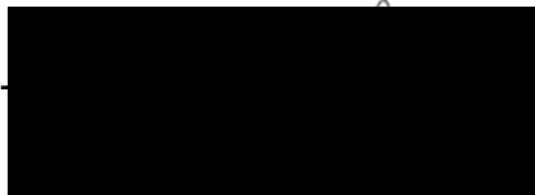
(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

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

7/17/2024



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