

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is honorable. The applicant requests a narrative reason change.

The applicant seeks relief contending, in effect, the discharge was based on personal actions taken while suffering from a mental illness. The applicant had not received any adverse action. The applicant deployed to Iraq with the 92nd Engineer Battalion, Fort Stewart, between 2006 and 2007. The unit conducted engineering operations throughout Iraq, and the applicant was awarded the Army Commendation Medal. When the applicant returned from Iraq, the applicant graduated from the Warrior Leadership Course. The applicant's spouse left the applicant in 2009, and the applicant began using alcohol and occasionally marijuana. The unit conducted a urinalysis and the applicant tested positive. The applicant's commander had a zero-tolerance policy, which resulted in the applicant's discharge from the Army. Shortly thereafter, the applicant learned the applicant was suffering from post-traumatic stress disorder (PTSD) and had received continuous treatment by the Department of Veterans Affairs (VA) since the discharge. The applicant learned why the applicant made the decision which led to this point and now knows how to cope with some of the challenges everyone faces. The applicant requests the discharge accurately reflect the applicant's total time in service and requests "drug abuse," be removed from the narrative reason. Defense Secretary Hagel recently directed boards for correction of military records to "fully and carefully consider every petition based on PTSD brought by each veteran." The applicant requests a favorable decision by the Board.

**Board Type and Decision:** In a records review conducted on 6 June 2024, and by a 5-0 vote, the Board determined the narrative reason for the applicant's separation is inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing: the separation authority to AR 635-200 paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), the separation code to JKN, and the reentry code to RE-3.

*Please see Section 9 of this document for more details 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 / Honorable

b. **Date of Discharge:** 23 October 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 30 September 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive on two occasions for marijuana, a controlled substance, or about 28 May

2008 and on or about 20 July 2009. The applicants' actions were not becoming of a Soldier in the Army.

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

**(4) Legal Consultation Date:** 30 September 2009

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

**(6) Separation Decision Date / Characterization:** 14 October 2009 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 22 September 2006 / 3 years / The AMHRR is void of any enlistment contract retaining the applicant on active duty after the most recent enlistment period. The DD Form 214 reflects the applicant was extended for 35 days for the convenience of the government.

**b. Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 107

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 21W10, Carpentry / Masonry Specialist / 5 years, 5 months, 16 days

**d. Prior Service / Characterizations:** USAR, 8 May 2004 – 21 September 2006 / NA

**e. Overseas Service / Combat Service:** SWA / Iraq (23 December 2006 – 29 October 2007)

**f. Awards and Decorations:** NAM, NDSM, ICM-CS, ASR, OSR / The applicant's AMHRR reflects award of the ARCOM, however, the award is not reflected on the DD Form 214.

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 5 June 2008, reflects the applicant tested positive for THC 44 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 28 May 2008.

Field Grade Article 15, 23 July 2008, for wrongfully using marijuana (between 28 April and 28 May 2008). The punishment consisted of a reduction to E-1; forfeiture of \$673 pay (suspended); extra duty for 45 days; and restriction for 45 days (suspended).

Memorandum, Positive Test and Required Action(s), (illegible) September 2009, and DD Form 2624, reflect the applicant tested positive for THC 114 (marijuana), during a Rehabilitation Testing (RO) urinalysis testing, conducted on 2 September 2009.

Electronic Copy of DD Form 2624, 6 August 2009, reflects the applicant tested positive for THC 86 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 20 July 2009.

Field Grade Article 15, 2 September 2009, for wrongfully using marijuana (between 20 June and 20 July 2009). The punishment consisted of a reduction to E-1; forfeiture of \$699 pay; extra duty for 45 days; and restriction for 45 days (suspended).

Report of Mental Status Evaluation, 2 September 2009, reflects the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements.

Electronic Copy of DD Form 2624, 5 October 2009, reflects the applicant tested positive for THC 146 (marijuana), during a Rehabilitation Testing (RO) urinalysis testing, conducted on 23 September 2009.

Three Developmental Counseling Forms, for wrongful use and possession of marijuana; positive urinalysis on two occasions; and pending separation.

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

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

**(1) Applicant provided:** Department of Veterans Affairs medical records, between 25 February 2011 and 8 October 2014, reflecting the applicant was diagnosed with, among other medical conditions, PTSD; depression; and migraine headaches.

Department of Veterans Affairs, eBenefits webpage, 23 June 2015, reflecting the VA rated the applicant 50 percent service-connected disabled for PTSD, with major depressive disorder; 80 percent combined disability.

**(2) AMHRR Listed:** Report of Medical History, 31 August 2009, (second page missing), reflects the examining medical physician noted in the comments section: Migraine headache controlled with oral medication; developed symptoms, secondary to the Chapter for substance abuse, of nervous trouble (anxiety or panic attacks), frequent trouble sleeping, depression or worry, and used illegal drugs or abused prescription drugs. The applicant was treated by Behavioral Health.

*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; Navy and Marine Corps Achievement Medal Certificate; The Army Accommodation Medal Certificate; Noncommissioned Officer Academy Graduate Certificate; Enlisted Record Brief; VA medical document; VA eBenefits webpage; and Army Review Boards Agency letter.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the applicant.

**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 600-85, (The Army Substance Abuse Program), paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of

discharge to “Honorable” if protected evidence is used. Protected evidence under this policy includes information administered solely as a required part of a DoD or Army SUD treatment program.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

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

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier’s service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(4) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier’s overall record.

(5) Paragraph 14-12c(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.

f. 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).

g. 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 a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's separation packet includes four DD Forms 2624 (Specimen Custody Document for Drug Testing), which shows two of the urinalysis tests coded "RO," which indicates "Rehabilitation Testing." The government introduced these documents into the discharge process, revealing the test was administered solely as a required part of a DoD or Army SUD treatment program. The Rehabilitation Testing is limited use information as defined in AR 600-85. Use of this information mandates award of an honorable discharge. The current characterization of service for the period under review is honorable.

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." 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 PTSD affected behavior which ultimately led to the discharge. The applicant provided medical documents reflecting the VA diagnosed the applicant with PTSD, with major depressive disorder, and the VA rated the applicant 50 percent service-connected disabled for the condition. The applicant's AMHRR reflects the applicant underwent a medical examination on 21 August 2009, and the examiner commented the applicant developed symptoms, secondary to the Chapter for substance abuse, of nervous trouble (anxiety or panic attacks), frequent trouble sleeping, depression or worry. The applicant underwent a mental status evaluation (MSE) on 2 September 2009, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The documents contained the applicant's AMHRR were considered by the separation authority.

The applicant contends family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends good service, including a combat tour. 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, PTSD, and Major Depressive 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 an Adjustment

Disorder and is diagnosed and service connected by the VA for PTSD and Major Depressive Disorder. Service connection establishes that the applicant's PTSD and Major Depressive Disorder also existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder and is diagnosed and service connected by the VA for PTSD and Major Depressive Disorder. Given the nexus between PTSD, Major Depressive Disorder, and self-medicating with substances, the marijuana use that led to the applicant's separation is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's PTSD and Major Depressive Disorder outweighed the multiple marijuana use basis for separation.

**b. Response to Contention(s):**

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and found it valid based on the applicant's PTSD and Major Depressive Disorder outweighing the applicant's marijuana use BOS.

(2) The applicant contends PTSD affected behavior which ultimately led to the discharge. The Board considered this contention and found it valid based on the applicant's PTSD and Major Depressive Disorder outweighing the applicant's marijuana use BOS.

(3) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention but ultimately did not address it in detail due to an upgrade being granted based on the applicant's PTSD and Major Depressive Disorder outweighing the applicant's marijuana use BOS.

(4) The applicant contends good service, including a combat tour. The Board considered this contention during board proceedings and noted the totality of the service record, including the quality of service.

**c.** The Board determined the narrative reason for separation is inequitable based on the PTSD and MDD mitigating the BOS misconduct. Therefore, the Board directed the issue of a new DD Form 214 changing: the separation authority to AR 635-200 paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), the separation code to JKN, and the reentry code to RE-3. The applicant may request a personal appearance hearing to address further issues before a Board. 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 determined the discharge is proper and equitable as the applicant has a Characterization of Honorable. No further relief is available.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) based on medical mitigation for the BOS misconduct. Thus, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001089**

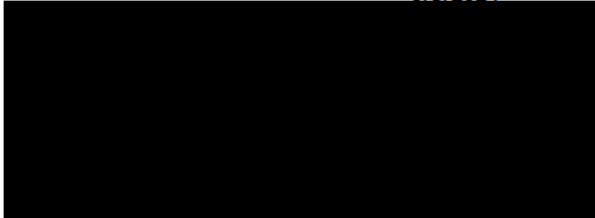
(3) The Board voted to change the RE code to RE-3 based on the new narrative reason/SPD and diagnosed BH conditions.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- 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:**

9/5/2024



**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