

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, an upgrade would allow access to their GI Bill. The applicant accepts their punishment and believes they deserve more for their time in the service. The applicant contends they joined the military at the age of 18, straight out of high school, to attend college and obtain a degree. The applicant contends they served in the Army for 10 years, deployed to Iraq three times, and received the Army Commendation Medal for their performance of duty. The applicant states the Veterans Administration diagnosed them with posttraumatic stress disorder related to their military service.

b. **Board Type and Decision:** In a records review conducted on 6 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and depression mitigating the applicant's marijuana use basis of separation (BOS). 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 changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN and reentry code of 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, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 16 September 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 21 June 2000

(2) **Basis for Separation:** Under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense and the applicant was informed of the following reasons: The applicant received a Field Grade Article 15 on 21 April 2010, for a violation of Article 112a (Wrongful use of Marijuana).

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 23 June 2010

(5) Administrative Separation Board: On 12 July and 13 August 2010, the applicant was notified to appear before an administrative separation board and advised of rights.

On 19 July 2010, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon their discharge being suspended for twelve months by the separation authority pursuant to Paragraph 1-18, AR 635-200.

The applicant's conditional waiver was denied (date illegible).

On 17 August 2010, the administrative separation board convened, and the applicant appeared with counsel. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

On 17 August 2010, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: On 2 September 2010, the separation authority approved the applicant's separation under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense. / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 18 December 2009 / 3 years

b. **Age at Enlistment / Education / GT Score:** 27 / High School Graduate / 113

c. **Highest Grade Achieved / MOS / Total Service:** E-6 / 13D30, Field Artillery Automation / 10 years, 1 month, 19 days

d. **Prior Service / Characterizations:** RA, 9 August 2000 – 12 February 2004 / HD
RA, 13 February 2004 – 22 June 2005 / HD
RA, 23 June 2005 – 15 August 2006 / HD
RA, 16 August 2006 – 8 March 2009 / HD
RA, 9 March 2009 – 17 December 2009 / HD

e. **Overseas Service / Combat Service:** Korea, SWA / Iraq (12 April 2003 – 23 March 2004; 28 October 2006 – 16 January 2008; 15 February 2009 – 14 February 2010)

f. **Awards and Decorations:** ICM-3CS, ARCOM-3, AAM-6, MUC, VUA, AGCM-2, NDSM, GWOTEM, GWOTSM, NCOPDR-2, ASR, OSR-5

g. **Performance Ratings:** 1 April 2006 – 31 August 2008 / Among the best
1 September 2008 – 31 August 2009 / Among the best
1 September 2009 – 10 May 2010 / Marginal

h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 5 April 2010, reflects the applicant tested positive for THC 89 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 29 March 2010.

FG Article 15, 21 April 2010, for wrongfully using marijuana (between 28 February and 29 March 2010). The punishment consisted of a reduction to E-5; forfeiture of \$1,380 pay per month for two months and extra duty and restriction for 45 days.

Developmental Counseling Forms, for positive test for marijuana.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Mental Status Evaluation, 27 May 2010, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was diagnosed with a medical condition.

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 149; DD Form 214, DD Form 293; self-authored letter; four NCOERS; two DA Forms 1059; seven DA Forms 638; six AAM Certificates; three ARCOM Certificates; Warrior Leader Course Certificate; two Certificates of Training; Unit Movement Officer Development Course Diploma; Basic Noncommission Officer Course Diploma; two Certificates of Appreciation; five Certificates of Achievement; Order of Spur Certificate; Order of the Combat Spur Certificate; four Honorable Discharge Certificates; four Oath of Reenlistments Certificates; two Certificates of Promotion; Order 079-219; Order 049-128; A note of congratulations; Certificate of the Manchu Buckle.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has accumulated over 60 college hours to receive an Associate of Science degree and currently attending school at My Computer Career in order achieve certifications in the Information Technology field.

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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

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

(2) Paragraph 3-7a 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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(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 suffering from PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a Mental Status Evaluation, 27 May 2010, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was diagnosed with a medical condition. The mental status evaluation was considered by the separation authority.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

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

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 accumulating over 60 college hours to receive an Associate of Science degree and attending school at My Computer Career in order achieve certifications in the Information Technology field. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Depression and PTSD.

(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 Depression and is service connected by the VA for PTSD and Depression. Service connection establishes that the applicant's PTSD 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 Depression and is service connected by the VA for PTSD and Depression. Given the nexus between PTSD, Depression, 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 Depression and PTSD outweighed the marijuana use BOS.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board determined that this contention was valid and voted to upgrade the characterization of service due to depression and PTSD mitigating the applicant's marijuana use BOS.

(2) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's depression and PTSD fully outweighing the applicant's marijuana use BOS.

(3) The applicant contends good service, including three combat tours. The Board noted the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(4) 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.

(5) The applicant contends accumulating over 60 college hours to receive an Associate of Science degree and currently attending school at My Computer Career in order achieve certifications in the Information Technology field. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's depression and PTSD fully outweighing the applicant's marijuana use BOS.

c. The Board determined the discharge is inequitable based on the applicant's PTSD and depression mitigating the applicant's marijuana use basis for separation. 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 changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN and reentry code of 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 voted to change the applicant's characterization of service to Honorable because the applicant's depression and PTSD mitigated the applicant's misconduct of marijuana use. 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 based on the behavioral health conditions and new discharge narrative reason/SPD.

10. BOARD ACTION DIRECTED:

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001118

- 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:

9/5/2024



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