

**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, completing the first term of service honorably; however, never receiving a DD Form 214 for the period of service. The applicant reenlisted while in Iraq. The applicant has talked to numerous people who deployed with the applicant in the same situation who say they received an honorable discharge after the first term. The applicant has come to a point in their life where they would like to be able to do something to better their self for the family. The applicant made their mistakes and has learned from them. The applicant has dreams of becoming a barber and starting a summer league for children. The applicant is anxious to get back in school and provide a better life for the family.

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 length of service, including combat service, and the circumstances surrounding the medically unmitigated basis of separation misconduct. The applicant's behavioral health (BH) diagnosis was also a factor considered in the context of the upgrade. As such, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board found the RE code proper and equitable.

*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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 15 March 2006

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 27 February 2006

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant used marijuana on separate occasions and possessed marijuana. The applicant assaulted another Soldier and failed to report on multiple occasions.

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

(4) **Legal Consultation Date:** 27 February 2006

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

(6) **Separation Decision Date / Characterization:** 3 March 2006 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 5 September 2002 / 3 years (Extension of service at the request and convenience of the government) / NIF

b. **Age at Enlistment / Education / GT Score:** 18 / High School Letter / 97

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 13D10, Field Artillery Automation / 3 years, 6 months, 10 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** SWA / Iraq (15 March 2004 – 18 March 2005)

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

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 19 August 2003; and,

From AWOL to PDY, effective 20 August 2003.

Electronic Copy of DD Form 2624, 29 September 2003, reflects the applicant tested positive for THC 164 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 17 September 2003.

FG Article 15, 7 November 2003, for assaulting PVT C. by striking in the face with the fist on or about 22 August 2003; fail to go at the time prescribed to the appointed place of duty on or about 18 August 2003; absent oneself from the unit on or about 19 August 2003 and did remain so absent until 20 August 2003; and wrongfully used marijuana on or between 17 August 2003 and 17 September 2003. The punishment consisted of a reduction to E-1; forfeiture of \$575 pay per month for two months; and extra duty and restriction for 45 days.

FG Article 15, 11 March 2004, for wrongfully using marijuana on or between 6 December 2003 and 6 January 2004. The punishment consisted of forfeiture of \$597 pay per month for two months; and extra duty and restriction for 45 days.

FG Article 15, 26 October 2005, for wrongfully possessing an unknown quantity of marijuana on or about 19 August 2005. The punishment consisted of a reduction to E-1; forfeiture of \$617 pay per month for two months; and extra duty and restriction for 45 days.

Several Developmental Counseling Forms, for various acts of misconduct.

i. **Lost Time / Mode of Return:** 1 day (AWOL, 19 August 2003 – 19 August 2003) / Returned to Military Control

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Medical Examination, 6 December 2005, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Medical History, 6 December 2005, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation, 15 February 2006, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The evaluation does not contain a diagnosis.

*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 and DD Form 214.

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) 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 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

f. Army Regulation 635-8 (Separation Processing and Documents) provides the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirements, or discharge. RA Soldier on termination of active duty because of administrative separation (including separation because of retirement or ETS), physical disability separation, or punitive discharge resulting from a court-martial. Army Regulation 635-8 Paragraph 5-2 provides a DD Form 214 will not be prepared for the following Soldiers: Soldiers discharged for immediate reenlistment in the RA.

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-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

**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 completing the first term of service honorably; however, never receiving a DD Form 214 for the period of service. The applicant reenlisted while in Iraq and has talked to numerous people who deployed with the applicant in the same situation who say they received an honorable discharge after the first term. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR does not reflect the applicant reenlisted while in Iraq. Army Regulation 635-8 states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD,

retirements, or discharge, RA Solider on termination of active duty because of administrative separation (including separation because of retirement or ETS), physical disability separation, or punitive discharge resulting from a court-martial. A DD Form 214 will not be prepared for the following Soldiers: Soldiers discharged for immediate reenlistment in the RA. The creation of discharge certificates is not within the purview of the Army Discharge Review Board. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The applicant contends an upgrade would allow educational benefits through the GI Bill. The applicant is anxious to get back in school and provide a better life for the family. The applicant has learned from their mistakes. 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.

#### 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. Additionally, the applicant asserts Anxiety, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that there is evidence that the applicant was diagnosed and treated for Depression in service. The applicant also self-asserted Anxiety during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence that the applicant was diagnosed and treated for Depression in service. The applicant also self-asserted Anxiety, but there is no medical documentation to substantiate the claim. Given the nexus between Depression, avoidance, decreased motivation, and self-medicating with substances, the applicant's Depression mitigates the FTRs and the possession and use of marijuana. However, there is no natural sequela between Depression or asserted Anxiety and assaulting another soldier since neither of these conditions have a nexus with physical aggression.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's depression and asserted anxiety do not outweighed the totality of the basis of separation misconduct.

b. Response to Contention(s):

(1) The applicant contends completing the first term of service honorably; however, never received a DD Form 214 for the period of service. The applicant reenlisted while in Iraq and has talked to numerous people who deployed with the applicant in the same situation who say they received an honorable discharge after the first term. 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 length of service and combat service.

(2) 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.

(3) 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.

c. The Board determined the discharge is inequitable based on the applicant's length of service, including combat service, and the circumstances surrounding the unmitigated basis of separation misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board voted not to change the RE code due to applicant's BH diagnosis warranting consideration prior to reentry of military service. However, 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 length of service, combat service, and circumstances surrounding the medically unmitigated misconduct. Specifically, the assault of another Soldier (in context) was not necessarily egregious enough to warrant a General characterization. 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 not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

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: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

9/4/2024



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