

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]**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 change to the narrative reason for separation to "Disability", "Severance Pay, and "Combat Related JFI Code."

The applicant seeks relief contending, in effect, PTSD existed at the time of discharge and mitigated the misconduct which caused the discharge. At the time of discharge, adequate rehabilitation efforts were not made, the PTSD was not considered, and the applicant received insufficient counseling. The failure to rehabilitate the applicant violated AR 635-200, Chapter 9. The applicant also states the Commander's report was used improperly and the applicant was not shown the document before waiving the rights.

b. Board Type and Decision: In a records review conducted on 23 May 2024, and by a 5-0 vote, the Board determined the narrative reason for the applicant's separation is now inequitable based on the applicant's PTSD outweighing the applicant's medically mitigated illegal substance abuse offense,. 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), and the separation code to JKN. The Board determined the RE code was proper and equitable and voted not to change it.
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 (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Honorable

b. Date of Discharge: 9 November 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 25 August 2011

(2) Basis for Separation: The applicant was informed of the following reasons:
Misconduct – abuse of illegal drugs.

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

(4) Legal Consultation Date: 25 August 2011

(5) Administrative Separation Board: On 25 August 2011, the applicant requested consideration of the case by an administrative separation board.

On 13 October 2011, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 30 October 2010 / 6 years
- b. Age at Enlistment / Education / GT Score:** 25 / GED / 117
- c. Highest Grade Achieved / MOS / Total Service:** E-5 / 68W20, Health Care Specialist / 8 years, 2 months, 11 days
- d. Prior Service / Characterizations:** ARNG, 29 August 2003 – 27 April 2008 / HD
IADT, 28 March 2005 – 14 October 2005 / HD
(Concurrent Service)
AD, 19 April 2006 – 9 August 2007 / HD
(Concurrent Service)
RA, 28 April 2008 – 29 October 2010 / HD
- e. Overseas Service / Combat Service:** Bulgaria, Germany, Romania, SWA / Iraq (19 July 2006 – 16 July 2007)
- f. Awards and Decorations:** BSM, ARCOM, AAM, AGCM, ARCAM, NDSM, GWOTEM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR, AFRM-M, CMB, CAB
- g. Performance Ratings:** 1 January 2010 – 31 December 2010 / Fully Capable
1 January 2011 – 19 July 2011 / Fully Capable
- h. Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 26 April 2011, reflects the applicant tested positive for COD (Codeine) 13964, during an Inspection Unit (IU) urinalysis testing, conducted on 20 January 2011.
FG Article 15, 19 July 2011, for wrongfully using (between on or about 18 January 2011 and on or about 20 January 2011). The punishment consisted of a reduction to E-4; forfeiture of \$1162 pay per month for two months; extra duty for 45 days; and an Oral Reprimand.
Developmental Counseling Form, for positive urinalysis.
- i. Lost Time / Mode of Return:** None
- j. Behavioral Health Condition(s):**
- (1) Applicant provided:** Department of Veterans Affairs letter, 27 February 2014, reflects the applicant was being treated at the PTSD treatment team since 26 March 2013.

Department of VA Decision Review Officer Decision, 16 June 2014, the decision contains a diagnosis of anxiety disorder with elements of PTSD rated at 30%.

(2) AMHRR Listed: Report of Medical History, 14 July 2011, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Medical Examination, 30 July 2011, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation (MSE), 8 August 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The MSE contains a diagnosis.

The ARBA's medical advisor reviewed DoD and VA medical records, including documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; attorney brief with table of contents and listed enclosures.

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 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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-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 contends the narrative reason for the discharge needs changed to "Disability, Severance Pay, Combat Related JFI Code. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with an Under Honorable Conditions (General) that was subsequently upgraded to Honorable. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents), governs the 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 good service, including a combat tour.

The applicant contends PTSD existed at the time of discharge and mitigated the misconduct which caused the discharge. The discharge should have been for medical reasons. The applicant provided Department of Veterans Affairs letter dated 27 February 2014, which reflects the applicant was being treated at the PTSD treatment team since 26 March 2013. Department of VA Decision Review Officer Decision, 16 June 2014, the decision contains a diagnosis of anxiety disorder with elements of PTSD rated at 30%. The AMHRR contains Report of Medical History, 14 July 2011, the examining medical physician noted the applicant's medical conditions in the comments section. Report of Medical Examination, 30 July 2011, the examining medical physician noted the applicant's medical conditions in the comments section. Report of Mental

Status Evaluation (MSE), 8 August 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The MSE contains a diagnosis. All the medical documents were considered by the separation authority. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

The applicant contends at the time of discharge, adequate rehabilitation efforts were not made. Army Regulation 635-200, paragraph 1-17d does not require rehabilitation for serious misconduct resulting in a Chm 14-12c separation.

The applicant contends the Commander's report was used improperly and the applicant was not shown the document before waiving the rights. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends that the applicant should have been discharged in accordance with AR 635-200, paragraph 1-32 (medical processing) or paragraph 5-13 (for personality disorder).

The applicant contends that the Commander's Report was used improperly because the applicant was not shown the document before waiving the applicant's rights, as required by AR 635-200. The applicant provided a statement that alleges that the applicant never saw the Commander's Report prior to executing the conditional waiver and alleges that the applicant signed the waiver under duress and coercion in fear of separation by court martial.

The applicant contends that the applicant received insufficient counseling and received ineffective counsel prior to accepting the applicant's general discharge because the applicant's Commander served as the applicant's Commander and counsel preventing the applicant from acting with a full understanding of the consequences of the applicant's decision to waive the administrative board as the applicant was 21 years old and suffering from PTSD.

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 determined that a previous Board upgraded the applicant's characterization of service to Honorable based, in part, on the applicant's PTSD that now warrants reconsideration of the applicant's narrative reason and RE code.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined based on the Board Medical Advisor opine that the applicant PTSD existed during the applicant's military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board determined, based on the Board Medical Advisor opine, that the applicant's PTSD mitigates the applicant's abuse of illegal drugs given the nexus between PTSD and self-medicating with substances.

(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 PTSD outweighed the applicant's medically mitigated illegal substance abuse warranting a narrative reason change.

b. Response to Contention(s):

(1) The applicant contends PTSD existed at the time of discharge and mitigated the misconduct which caused the discharge. The discharge should have been for medical reasons. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge should be changed "Disability, Severance Pay, Combat Related JFI Code. The Board considered this contention and determined that the requested change does not fall within the purview of the ADRB. However, the Board determined that narrative reason change to "Minor Misconduct" was warranted based on the applicant's PTSD mitigating the applicant's illegal substance abuse offense. The applicant may apply to the ABCMR to request a change to narrative reason to reflect "Disability."

(3) The applicant contends good service, including a combat tour. 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 PTSD outweighing the applicant's medically mitigated illegal substance abuse.

(4) The applicant contends at the time of discharge, adequate rehabilitation efforts were not made. The Board considered this contention and determined that the AR 635-200, paragraph 1-17c does not require rehabilitation for separations for Chapter 14-12c (Serious Misconduct).

(5) The applicant contends the Commander's report was used improperly and the applicant was not shown the document before waiving rights. 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 Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse.

c. The Board determined the narrative reason for the applicant's separation is now inequitable based on the applicant's PTSD outweighing the applicant's medically mitigated illegal substance abuse offense. 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), and the separation code to JKN. The Board determined the RE code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because the applicant already holds an honorable characterization and no further relief is available.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) based on the applicant's PTSD outweighing the applicant's medically mitigated illegal substance abuse, 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, as the current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001190

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: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

7/17/2024



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