

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, on 21 August 2005, the applicant's life completely changed. The applicant was 20 years old and had to clean up the aftermath of an IED. The IED took out four members of the platoon, one being a great friend. Removing the burned bodies, and pieces of them was an eye-opening experience. Since then, the applicant can still smell the burned flesh, and can see the body sitting rigid and black in the driver's seat as the truck burned. The applicant has never been the same. A week later another Soldier was taken during a fire fight. Upon returning from the deployment in March 2006 they all started drinking; the applicant drank heavily, meaning the applicant blacked out every weekend. The applicant had never had any problems in the Army and had never been in trouble. Things started to change, and the applicant was too young to notice. Although the applicant was seeing a psychiatrist, no one wanted to admit they had nightmares or any signs of weakness. The applicant was promoted to E-5 in September 2006, and continued to excel in the Army, all while coping with demons. One night one of the Soldiers was having a bachelor party, which the applicant attended. The night was filled with shots, beer, and bottles of champagne. The applicant vaguely remembers being there and woke up the next morning hungover as usual and started drinking again. The following Monday, they had the usual monthly UA test, which the applicant knew about because the CO had informed all the NCOs. The applicant took the test as usual and went about their duties. A few weeks later, the applicant received a call, nine Soldiers from the Platoon had tested positive for cocaine. The first sergeant informed the applicant they had also failed the test. The applicant was taken to CID where they were told to give a statement not realizing the gravity of the situation, the applicant agreed without legal counsel. The applicant was taken back to their room where they were not allowed to leave for 48 hours. Over half of the Soldiers who were at the party tested positive. The applicant requested a lie detector to prove they did not knowingly ingest any drugs in their system; however, was denied. After two days the applicant was told to get a lawyer, but their counsel was not much help and the incompetence of the counsel, the applicant believes, made them to accept the discharge instead of taking the charges to court. The applicant accepted the discharge, and unwillingly left the Army after 40 months of service. The applicant was a model Soldier who excelled in every aspect of being an Infantryman. The career ended after one stupid night of drinking where the applicant drank too much and cannot remember. The applicant accepts full responsibility for their actions; however, to end the career on those terms, be denied any benefits, and eventually have to explain to their child what happened is beyond what the applicant believes they deserve. Since being discharged, the applicant has not been in any trouble, had any alcohol issues, and has lived an honest life. The applicant is now married, a parent, holds a job, where the applicant has been promoted several times in the last seven years. The applicant and their doctor both have agreed the applicant showed all signs of PTSD. The applicant has been receiving treatment for PTSD for the past three years, takes daily medication and sees a psychologist monthly. In 2006, no one took PTSD seriously, it was a sign of weakness.

b. Board Type and Decision: In a records review conducted on 18 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD diagnosis mitigating applicant's wrongful use of cocaine and willfully disobeying an order not to drink. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service.

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 / General (Under Honorable Conditions)

b. Date of Discharge: 30 June 2007

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 14 May 2007, the applicant was charged with:

Charge I: Violating Article 90, UCMJ. The Specification: On or about 12 May 2007, having received a lawful command from CPT M. J., to not consume alcohol, or words to the effect, did, at or near Vincenza, Italy, willfully disobey the same.

Charge II: Violating Article 112a, UCMJ. The Specification: Between about 8 April 2007 and about 11 April 2007, the applicant wrongfully used cocaine, a controlled substance.

(2) Legal Consultation Date: 22 June 2007

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 27 June 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 September 2003 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 103

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B20, Infantryman / 3 years, 9 months, 13 days

d. Prior Service / Characterizations: None

- e. **Overseas Service / Combat Service:** Italy, SWA / Afghanistan (28 March 2005 – 21 March 2006)
- f. **Awards and Decorations:** ARCOM, AAM, NDSM, ACM, GWOTSM, ASR, OSR, CIB
- g. **Performance Ratings:** NIF
- h. **Disciplinary Action(s) / Evidentiary Record:** Orders 177-007, 27 June 2007, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 30 June 2007 from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was not authenticated with the applicant's electronic signature.

Charge Sheet as described in previous paragraph 3c(1).

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Clear Creek Psychiatry Letter, 10, 2015, reflects the applicant was being seen and treated in their office and reflects a diagnosis.

(2) **AMHRR Listed:** None

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: Online application; DD Form 214; two third-party letters; Clear Creek Psychiatry letter; ARBA letter.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has not been in any trouble with the law, had no alcohol issues and has lived an honest life. The applicant is married, has a child, and holds a job, where the applicant has been promoted several times.

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 good service, including a combat tour.

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 the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends suffering from PTSD after serving a combat tour in Afghanistan where at 20 years old, the applicant had to clean up the aftermath of an IED. The IED took out four members of the platoon, one being a friend. A week later another member was killed in a fire fight. Upon returning from deployment no one wanted to admit to nightmares because it showed a sign of weakness. The applicant has now been receiving treatment for PTSD, takes daily medication and sees a psychologist monthly. The applicant provided Clear Creek Psychiatry letter, 10, 2015, which reflects the applicant was being seen and treated in their office and reflects a diagnosis. The applicant's AMHRR contains no documentation of PTSD diagnosis. The AMHRR does not contain a mental status evaluation (MSE).

The applicant contends their counsel was not much help and incompetent which the applicant believes made them accept the discharge instead of taking the charges to court. The applicant accepted the discharge, and unwillingly left the Army after 40 months of service. 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 an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits 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 third-party statements provided with the application speak highly of the applicant, they reflect the applicant's leadership and good conduct while being deployed. The statements also reflect the applicant's ability to lead and mentor Soldiers.

Since being discharged, the applicant has not been in any trouble with the law, had no alcohol issues and has lived an honest life. The applicant is married, has a child, and has held a job which the applicant has been promoted in several times for the past seven years. 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed, and service connected by the VA

for combat-related PTSD. Service connection establishes that the PTSD existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed, and service connected by the VA for combat-related PTSD. Given the nexus between PTSD and self-medicating with substances, the applicant's PTSD mitigates disobeying a command not to drink alcohol and wrongful use of cocaine.

(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 disobeying a command not to drink alcohol and wrongful use of cocaine basis for separation.

b. Response to Contention(s):

(1) The applicant contends good service, including a combat tour. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(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 the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's disobeying a command not to drink alcohol and wrongful use of cocaine basis for separation.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. 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 fully outweighing the applicant's disobeying a command not to drink alcohol and wrongful use of cocaine basis for separation.

(4) The applicant contends suffering from PTSD after serving a combat tour in Afghanistan where at 20 years old, the applicant had to clean up the aftermath of an IED. The IED took out four members of the platoon, one being a friend. A week later another member was killed in a fire fight. Upon returning from deployment no one wanted to admit to nightmares because it showed a sign of weakness. The applicant has now been receiving treatment for PTSD, takes daily medication and sees a psychologist monthly. 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 fully outweighing the applicant's disobeying a command not to drink alcohol and wrongful use of cocaine basis for separation.

(5) The applicant contends the counsel was not much help and incompetent, which the applicant believes made them accept the discharge instead of taking the charges to court. 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 fully outweighing the applicant's disobeying a command not to drink alcohol and wrongful use of cocaine basis for separation.

(6) The applicant contends an upgrade of the discharge would allow veterans benefits. 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.

(7) Since being discharged, the applicant has not been in any trouble with the law, had no alcohol issues and has lived an honest life. The applicant is married, has a child, and holds a job, where the applicant has been promoted several times. 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 fully outweighing the applicant's disobeying a command not to drink alcohol and wrongful use of cocaine basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD diagnosis mitigating applicant's wrongful use of cocaine and willfully disobeying an order not to drink. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the 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 PTSD mitigated the applicant's misconduct of disobeying a command not to drink alcohol and wrongful use of cocaine. 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 PTSD diagnosis warranting consideration prior to reentry of military service.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

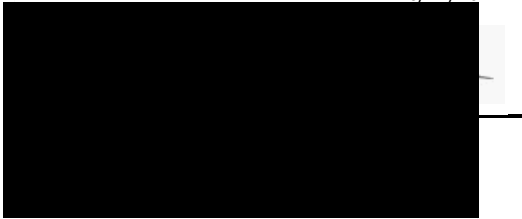
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10. BOARD ACTION DIRECTED:

- 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:

6/27/2024



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