

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, served honorably in the Army and was deployed four times to include Kosovo, Iraq, and two deployments to Afghanistan. The applicant suffered from moderate to severe PTSD which was never properly treated. The lack of effective treatment of the PTSD led to the string of poor choices which caused the applicant to receive a Chapter 10 discharge.

b. Board Type and Decision: In a records review conducted on 2 July 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and applicant's PTSD outweighing applicant's AWOL, wrongful marijuana use, and two specifications of unlawful entry basis for separation. 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. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.
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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 28 October 2014**c. Separation Facts:**

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 23 September 2014, the applicant was charged with:

Charge I: Violating Article 86, UCMJ. The Specification: On or about 2 August 2014, without authority, the applicant absented oneself from the unit and did remain so absent until being apprehended on or about 4 August 2014.

Charge II: Violating Article 112a, UCMJ. The Specification: On or about 8 June 2014 and 8 July 2014, the applicant wrongfully used marijuana.

Charge III: Violating Article 134, UCMJ.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001197

Specification 1: On or about 20 July 2014, the applicant unlawfully entered the office of 1SG S. E. W., such conduct being to the prejudice of good order and discipline in the armed forces.

Specification 2: On or about 20 July 2014, the applicant unlawfully entered the office of CPT K. E. F., such conduct being to the prejudice of good order and discipline in the armed forces.

(2) Legal Consultation Date: 24 September 2014

(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: undated / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 13 April 2009 / 6 years

b. Age at Enlistment / Education / GT Score: 27 / High School Letter / 94

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B2P, Infantryman / 14 years, 3 months, 20 days

d. Prior Service / Characterizations: RA, 27 June 2000 – 3 August 2003 / HD
RA, 4 August 2003 – 21 January 2005 / HD
RA, 22 January 2005 – 28 January 2009 / HD
RA, 29 January 2009 – 12 April 2009 / HD

e. Overseas Service / Combat Service: Germany, SWA / Afghanistan (15 January 2007 – 4 April 2008; 16 August 2009 – 16 August 2010); Iraq (1 January 2004 – 1 January 2005); Kosovo (14 November 2002 – 28 July 2003)

f. Awards and Decorations: ACM-2CS, ARCOM-4, AAM-4, MUC, VUA, AGCM-3, GWOTEM, GWOTSM, KCM, NCOPDR, ASR, OSR-4, NATOMDL-3, CIB, CAB

g. Performance Ratings: 1 June 2010 – 31 March 2013 / Fully Capable
31 March 2013 – 30 March 2014 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 16 January 2007, on or about 30 April 2007, through negligence discharged an M203, in the area of operations. The punishment consisted of a reduction to E-4; forfeiture of \$1031 pay per month for two months; and extra duty and restriction for 45 days.

Three Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 2 August 2014;
From AWOL to Confined by Civil Authorities (CCA), effective 3 August 2014; and,
From CCA to PDY, effective 14 August 2014.

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

i. Lost Time / Mode of Return: 11 days:

AWOL, 2 August 2014 – 3 August 2014 / Apprehended by Civil Authorities
CCA, 3 August 2014 – 14 August 2014 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(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: DD Form 293; self-authored statement; ARBA letter; Fax cover letter; Soldier Deployment History Out processing Report; seven third-party letters.

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 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(5) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However,

the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends good service, including four combat tours.

The applicant contends suffering from untreated moderate to severe PTSD. The lack of treatment of the PTSD led to a string of poor choices which caused the applicant to receive a Chapter 10 discharge. The applicant provided third party letters from fellow Soldiers who served with the applicant which described the applicant's multiple deployments and the experiences during the deployments. The applicant's AMHRR contains no documentation of PTSD diagnosis. The AMHRR does not contain a mental status evaluation (MSE). There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends an upgrade would allow the applicant to receive benefits to treat the PTSD. 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.

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, MDD, Psychosis NOS, Adjustment Disorder with Anxiety.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100% service connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information shows the applicant's BH conditions that partially mitigate applicant's misconduct as outlined in the basis for separation. The applicant has in-service diagnoses of PTSD, Adjustment Disorder w/Anxiety, and Anxiety Disorder NOS, and Psychosis NOS and is 100 percent SC for PTSD by the VA and has a noted history of mTBI. Given the nexus between PTSD and substance use to self-medicate, and PTSD and avoidance, the applicant's misconduct characterized by wrongful use of marijuana and AWOL is mitigated. However, misconduct characterized by two specifications of unlawful entry into offices is not mitigated as it is not natural sequela of either of applicant's potentially mitigating diagnoses as neither rendered the applicant unable to differentiate between right and wrong and adhere to the right. Additionally, there is no evidence that the applicant's mTBI was of a severity to cause changes in cognition or judgement during the period of the misconduct, and insufficient evidence the applicant was actively psychotic during the misconduct.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD, MDD, Psychosis NOS, and Adjustment Disorder with Anxiety outweighed the basis for applicant's separation – two specifications of unlawful entry.

b. Response to Contention(s):

(1) The applicant contends good service, including four combat tours. 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 suffering from untreated moderate to severe PTSD. The lack of treatment of the PTSD led to a string of poor choices which caused the applicant to receive a Chapter 10 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 length and quality of service, to include combat service, and applicant's PTSD fully outweighing the applicant's AWOL, wrongful marijuana use, and two specifications of unlawful entry basis for separation.

(3) The applicant contends an upgrade would allow the applicant to receive benefits to treat the PTSD. 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210001197**

Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and the applicant's PTSD outweighing the applicant's AWOL, wrongful marijuana use, unlawful entry (2x) basis for separation. 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. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length and quality of service, to include combat service, and PTSD outweigh the applicant's misconduct of AWOL, wrongful marijuana use, and two specifications of unlawful entry. 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.

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: RE-3
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

11/25/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs