

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, being forced to leave the Army. Despite the applicant's desire to stay in the military, they had no choice but to request a release due to problems with the leadership.

b. **Board Type and Decision:** In a records review conducted on 21 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offenses. 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, the narrative reason for separation 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:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 30 June 2008

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 21 March 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive for a controlled substance (marijuana) on or about 29 October 2007.

The applicant received a Field Grade Article 15 on 2 February 2008, for the aforementioned misconduct.

The applicant tested positive for a controlled substance (marijuana) on 27 April 2007. The applicant received a Field Grade Article 15 on 1 June 2007 for the misconduct.

The applicant's misconduct is prejudicial to good order and discipline and was not in keeping with the standards set forth by the Battalion or the United States Army.

(3) Recommended Characterization: General (Under Honorable Conditions) / The intermediate commander recommend the execution of the approved separation be suspended IAW 635-200, paragraph 1-18 for a period of six months. After six months, unless suspension was sooner vacated, the suspended separation would be remitted without further action.

(4) Legal Consultation Date: 28 April 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: On 6 May 2008, the separation authority approved the applicant's separation under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense. / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 August 2004 / 3 years, 17 weeks

b. Age at Enlistment / Education / GT Score: 21 / GED / 104

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years, 10 months, 13 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (6 March 2006 – 21 November 2006); Iraq (28 November 2007 – 9 June 2008)

f. Awards and Decorations: ACM-CS, GWOTSM, HSM, ICM-CS, ASR, OSR, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 2 May 2007, reflects the applicant tested positive for THC 49 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 16 April 2007.

Electronic Copy of DD Form 2624, 2 November 2007, reflects the applicant tested positive for THC 33 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 29 October 2007.

FG Article 15, 1 June 2007, for wrongfully using marijuana (between 27 April and 2 May 2007). The punishment consisted of a reduction to E-2; forfeiture of \$729 pay per month for two months and extra duty and restriction for 45 days.

FG Article 15, 2 February 2008, for wrongfully using marijuana (between 30 September and 29 October 2007). The punishment consisted of a reduction to E-1; forfeiture of \$720 pay per month for two months and extra duty and restriction for 45 days.

Two Developmental Counseling Forms, for failing a drug tests.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 28 February 2008, 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.

Report of Medical History, 28 February 2008, the examining medical physician noted the applicant's medical conditions in the comments section and included 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; two DD Forms 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 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense.

Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (drug abuse).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and non-waiverable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a non-waiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends being forced to leave the Army. Despite the applicant's desire to stay in the military, they had no choice but to request a release due to problems with the leadership. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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

The AMHRR includes a Report of Medical History, 28 February 2008, wherein the examining medical physician noted the applicant's medical conditions in the comments section, which included a diagnosis. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 28 February 2008, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis. Both documents were reviewed by the separation authority.

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 applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is diagnosed and service connected by the VA for combat-related PTSD. Given the nexus between PTSD and self-medicating with substances, the marijuana use that led to the applicant's separation is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse offenses.

b. Response to Contention(s):

(1) The applicant contends being forced to leave the Army. Despite the applicant's desire to stay in the military, they had no choice but to request a release due to problems with the leadership. 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 offenses.

(2) The applicant contends good service, including two 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 Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offenses.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offenses. 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, the narrative reason for separation 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 Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse offenses. 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 change to RE-3.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

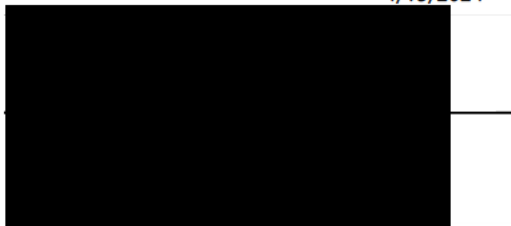
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10. BOARD ACTION DIRECTED:

- 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: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

4/15/2024



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