

**1. Applicant's Name:**

- 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 period under review is honorable. The applicant requests a change to the narrative reason for separation and reentry eligibility code.

The applicant seeks relief contending, in effect, not being properly aware of PTSD when returning from Iraq in 2004. The applicant was diagnosed at the VA with several disabilities. The applicant is trying their best to work through these disabilities and move on with their life.

b. **Board Type and Decision:** In a records review conducted on 11 April 2024, and by a 5-0 vote, the Board denied the request upon finding the discharge was both proper and equitable.

*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 (Minor Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-3 / Honorable

b. **Date of Discharge:** 7 September 2005

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 25 August 2005

(2) **Basis for Separation:** The applicant was informed of the following reason: On 14 May 2005, the applicant tested positive for marijuana.

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

(4) **Legal Consultation Date:** 29 August 2005

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

(6) **Separation Decision Date / Characterization:** undated / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 4 April 2002 / 4 years

- b. Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 95
- c. Highest Grade Achieved / MOS / Total Service:** E-5 / 13B20, Cannon Crewmember / 6 years, 10 months, 8 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** Korea, SWA / Iraq (11 October 2003 – 16 April 2004)
- f. Awards and Decorations:** ARCOM, AAM, NDSM, NCOPDR, GWOTEM, GWOTSM
- g. Performance Ratings:** March 2005 – June 2005 / Marginal
- h. Disciplinary Action(s) / Evidentiary Record:** Commander's Report, undated, reflects on 30 June 2005, the applicant received a Field Grade Article 15 for wrongful use of marijuana. The punishment consisted of reduction to E-4; forfeiture of \$893 pay per month for two months, and restriction for 45 days.

Two Developmental Counseling Forms, for failure to report and lack of motivation during physical training.

**i. Lost Time / Mode of Return:** None

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

**(1) Applicant provided:** VA Progress Notes, 14 July 2009, the medical physician noted the applicant's condition.

**(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; DD Form 214; VA Progress Notes.

**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) 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.

(4) 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.

(5) Paragraph 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (minor infractions).

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 not being properly aware of PTSD after returning from Iraq. The VA has diagnosed the applicant with several disabilities. The applicant provided VA Progress Notes, 14 July 2009, wherein the medical physician noted the applicant's condition. The AMHRR does not contain a mental status evaluation.

## **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 PTSD. Service connection establishes that the applicant's 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 PTSD. Given the nexus between PTSD and self-medicating with substances, the applicant's PTSD mitigates the marijuana use that led to the separation. The applicant already has an HD suggesting that medical mitigation has already been applied.

**(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 offense. However, the applicant already holds the typical discharge granted for cases where there is medical mitigation of an offense of this type: Honorable characterization of service with a Misconduct (Minor Infractions) narrative reason for separation and a reentry eligibility code of RE-3.

**b.** Response to Contention(s): The applicant contends not being properly aware of PTSD after returning from Iraq; the VA has diagnosed the applicant with several disabilities. The Board liberally considered this contention and found that the applicant's determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse offense. However, the applicant already holds the typical discharge granted for cases where there is medical mitigation of an offense of this type: Honorable characterization of service with a Misconduct (Minor Infractions) narrative reason for separation and a reentry eligibility code of RE-3. Therefore, further change to the applicant's discharge is not warranted.

**c.** The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a characterization of Honorable. Therefore, no further relief is available.

**(2)** The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

**(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**

**AR20210001260**

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: No**
- b. Change Characterization to: No Change**
- c. Change Reason / SPD Code to: No Change**
- d. Change RE Code to: No Change**
- e. Change Authority to: No Change**

**Authenticating Official:**

6/11/2024

**X**

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Presiding Officer, COL, U.S. ARMY  
Army Discharge Review Board

**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