

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [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 general (under honorable conditions). The applicant requests an upgrade to honorable and a narrative reason change to "Convenience of the Government."

The applicant seeks relief contending, in effect, the applicant's actions in the military were the result of undiagnosed and untreated PTSD. The applicant's actions were a means of self-medication.

b. Board Type and Decision: In a records review conducted on 29 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD diagnosis mitigating applicant's AWOL and wrongful possession and use of marijuana. 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, 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: 23 May 2008**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 5 May 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: Between 22 November 2008 and 19 January 2008, the applicant tested positive on two occasions for wrongfully using marijuana, a Schedule I controlled substance. In addition to these instances of wrongful use, on 18 October 2007, the applicant received a Field grade Article 15 for wrongfully possessing marijuana and being absent without leave.

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

(4) **Legal Consultation Date:** 6 May 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 12 May 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 19 January 2006 / 3 years, 16 weeks
- b. Age at Enlistment / Education / GT Score:** 18 / High School Transcript / NIF
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11C10, Indirect Fire Infantry / 2 years, 4 months, 5 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** Germany, SWA / Kuwait – Iraq (27 June 2006 – 10 November 2006)
- f. Awards and Decorations:** MUC, NDSM, GWOTSM, ASR, ICM-BS
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 17 September 2007; and

From AWOL to PDY, effective 2 October 2007.

CID Report of Investigation, 4 October 2007, investigation established probable cause to believe the applicant committed the offense of Wrongful Possession of a Controlled Substance and AWOL, when on 16 September 2007, the applicant failed to report for CQ duty and subsequent check of the room revealed an ashtray in open view which contained a green leafy substance which later tested positive for the presence of Marijuana.

FG Article 15, 18 October 2007, for on or about 17 September 2007 without authority absent oneself from the unit; and on or about 16 September 2007, wrongfully possess one half gram of marijuana. The punishment consisted of a reduction to E-1; forfeiture of \$650 pay per month for two months; extra duty and restriction for 45 days; and an oral reprimand.

Electronic Copy of DD Form 2624, 29 January 2008, reflects the applicant tested positive for THC 31 (marijuana), during a Probable Cause (PO) urinalysis testing, conducted on 28 December 2007.

Electronic Copy of DD Form 2624, 15 February 2008, reflects the applicant tested positive for THC 42 (marijuana), during a Probable Cause (PO) urinalysis testing, conducted on 25 January 2008.

Military Police Report Number 00366-2008-MPC167, 3 March 2008, reflects the applicant was charged with Controlled Substance Violations, Use of Marihuana – Determined by Urinalysis Test (Article #112A, UCMJ) (Off Post); and Controlled Substance Violations, Marijuana – Possession of Marihuana (Article #112A, UCMJ).

Two Developmental Counseling Forms, for being AWOL, Failure to Report and Possession of Marijuana.

i. **Lost Time / Mode of Return:** AWOL for 15 days, 17 September 2007 to 2 October 2007. This period is not annotated on the DD Form 214 block 29.

j. Behavioral Health Condition(s):

(1) **Applicant provided:** Report of Mental Status Evaluation (MSE), 24 January 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. The form reflects a diagnosis.

Report of Medical Examination, undated, the examining medical physician noted the summary of defects and diagnoses section the applicant's medical conditions.

Report of Medical History, 7 March 2008, the examining medical physician noted the applicant's medical conditions in the comments section.

VA Rating Decision Letter, 16 November 2012, reflects the applicant was granted 60 percent for service-connected disabilities.

(2) **AMHRR Listed:** MSE, Report of Medical Examination, and Report of Medical History as described in previous paragraph 4j(1).

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; DAV letter; sworn statement; two third-party letters; VA Rating Decision; DA Form 3822-R; PTSD Check List; DD Form 2808; DD Form 2807-1; DD Form 369; DD Form 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 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 applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs to be changed to "Convenience of the Government." The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this

paragraph is "Misconduct (Drug Abuse)," and the separation code is "JJK." Army Regulation 635-8 (Separation Processing and Documents), governs 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 the applicant's actions were the result of undiagnosed and untreated PTSD and self-medication. The applicant provided Report of Mental Status Evaluation (MSE), 24 January 2008, which 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 form reflects a diagnosis. Report of Medical Examination, undated, the examining medical physician noted the summary of defects and diagnoses section the applicant's medical conditions. Report of Medical History, 7 March 2008, the examining medical physician noted the applicant's medical conditions in the comments section. VA Rating Decision letter, 16 November 2012, reflects the applicant was granted 60 percent for service-connected disabilities. The MSE, Report of Medical Examination, and Report of Medical History were considered by the Separation Authority.

The third-party statements provided with the application are from fellow Soldier's which served with the applicant during the deployment which described the attacks the applicant endured while being deployed to Iraq and the applicant's honorable service while being deployed.

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, based on the Board Medical Advisor opine resulting from the review of the applicant's official DoD and VA health records and the applicant's statement, the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder and PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined that, based on the Board Medical Advisor opine and the applicant official records, the applicant was diagnosed in service with an Adjustment Disorder and is diagnosed and service connected by the VA with 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 determined that, based on the Board Medical Advisor opine and the applicant official records, that the applicant's PTSD mitigates the applicant's wrongful use and possession of marijuana and AWOL given the nexus between PTSD, 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 medically mitigated wrongful possession and use of marijuana and AWOL basis for separation.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs to be changed to “Convenience of the Government”. The Board considered this contention but determined the narrative reason should change to Misconduct (Minor Infractions) after considering applicant’s mitigated basis for separation. The actions taken by the applicant do not warrant a change to Convenience of the Government as the applicant was involuntarily separated for misconduct, and the behavioral health condition does not fully excuse the applicant’s responsibility for the misconduct.

(2) The applicant contends the applicant’s actions were the result of undiagnosed and untreated PTSD and self-medication. The Board considered this contention but determined the narrative reason should change to Misconduct (Minor Infractions) and an upgrade to Honorable after considering applicant’s mitigated basis for separation. The actions taken by the applicant do not warrant a change to Convenience of the Government as the applicant was involuntarily separated for misconduct, and the behavioral health condition does not fully excuse the applicant’s responsibility for the misconduct.

c. The Board determined the discharge is inequitable based on the applicant’s PTSD diagnosis outweighing the applicant’s medically mitigated AWOL and wrongful possession and use of marijuana. 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, and the reentry code to RE-3. The applicant has exhausted the applicant’s 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 voted to change the applicant’s characterization of service to Honorable because the applicant’s PTSD outweighed the applicant’s medically mitigated AWOL and wrongful possession and use of marijuana. 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 after considering applicant’s mitigated basis for separation does not warrant a change to Convenience of the Government as the applicant was involuntarily separated for misconduct, and the behavioral health condition does not fully excuse the applicant’s responsibility for the misconduct. 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 due to applicant’s PTSD diagnosis warranting consideration prior to reentry of military service.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

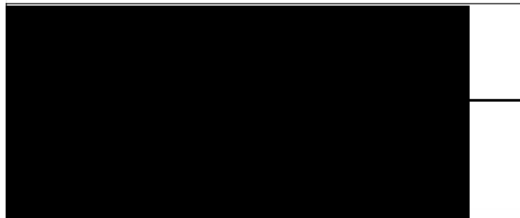
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10. BOARD ACTION DIRECTED:

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

Authenticating Official:

5/14/2024



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