

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.

The applicant seeks relief contending, in effect, based on diagnosed PTSD due to military service and on the new guidelines for PTSD, the applicant requests a review.

b. Board Type and Decision: In a records review conducted on 25 April 2024, and by a 5-0 vote, the Board determined that clemency is warranted because the applicant's Major Depressive Disorder and Post Traumatic Stress Disorder mitigated the applicant's illegal substance abuse offenses and outweighed the applicant's medically unmitigated offense of failure to provide a urine specimen as this offense did not rise to a level to negate meritorious service. 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. The Board determined the reentry code is proper and equitable and voted not to change it.

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: Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 23 May 2008

c. Separation Facts:

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 20, 4 August 2005, on 14 March 2005, the applicant was found guilty of the following:

The Charge: In violation of Article 112a. UCMJ:

Specification 1: On or about 20 August 2004, the applicant wrongfully used marijuana. Plea: Guilty. Finding: Guilty.

Specification 2: On or about 20 August 2004, the applicant wrongfully used methamphetamine. Plea: Guilty. Finding: Guilty.

Specification 3: On or about 22 October 2004 and on or about 5 November 2004, the applicant wrongfully used marijuana. Plea: Guilty. Finding: Guilty.

Additional Charge: In violation of Article 92. UCMJ. The Specification: On or about 1 December 2004, the applicant was derelict in the performance of duties, the applicant willfully failed to provide a urine specimen during a urinalysis, as it was the applicant's duty to do. Plea: Guilty. Finding: Guilty.

(2) Adjudged Sentence: To be discharged from the service with a Bad-Conduct discharge.

(3) Date / Sentence Approved: 4 August 2005 / Only so much of the sentence, a bad conduct discharge was approved, but the sentence would not be executed until completion of appellate review.

(4) Appellate Reviews: The record of trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: 1 November 2007

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 22 October 2002 / 3 years

b. **Age at Enlistment / Education / GT Score:** 22 / High School Letter / 100

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 14J10, Air Defense C41 Tactical Operations Center Operator/Maintainer / 5 years, 7 months, 2 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** SWA / Kuwait / Iraq (4 July 2003 – 28 January 2004)

f. **Awards and Decorations:** NDSM, ASR, MUC, ICM-BS, GWOTSM

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Special Court-Martial Order Number 20 as described in previous paragraph 3c(1).

United States Army Court of Criminal Appeals Decision, 17 April 2007, affirmed the findings of guilty and the sentence.

United States Court of Appeals for the Armed Forces Decision, 10 October 2007, denied the petition to grant a review of the decision of the United State Army Court of Criminal Appeals.

Special Court-Martial Oder Number 197, 1 November 2007, ordered the Bad-Conduct Discharge to be executed.

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

j. Behavioral Health Condition(s):

(1) Applicant provided: Cumberland Hall Hospital Discharge Summary, 3 August 2004, reflects the applicant was being discharged on 3 August 2004, the summary reflects a diagnosis.

Cumberland Hall Hospital Discharge Summary, 12 August 2004, reflects the applicant was being discharged on 12 August 2004, the summary reflects a diagnosis.

Cumberland Hall Hospital Discharge Summary, 2 February 2005, reflects the applicant was being discharged on 5 February 2005, the summary reflects a diagnosis.

Health Care for the Homeless Letter, 28 November 2011, reflects the applicant was first seen for an intake appointment. The applicant was evaluated, the letter reflects a diagnosis.

Licensed Psychologist Letter, 21 January 2014, reflects the applicant was evaluated for current emotional state due to concerns which the applicant may be experiencing difficulties which were related to the applicant's past military service. The letter 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: DD Form 149; DD Form 214; DD Form 215; Health Care for the Homeless Letter; Letter from Licensed Psychologist; three Cumberland Hall Hospital Discharge Summaries; one third-party letter; Special Court-Martial Order Number 197; Special Court-Martial Order Number 20; ADRB Letter; ADRB CRD; three Army Board for Correction of Military Records Letter; fax cover sheet; counsel letter; Office of the Surgeon General letter; ARBA Advisory Opinion.

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), dated 25 September 2019, 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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's Army Military Human Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends suffering from PTSD due to military service and requests a review based on the new guidelines for PTSD. The applicant provided three Cumberland Hall Hospital Discharge Summaries, 3 and 12 August 2004 and 2 February 2005, each reflecting the applicant was treated and discharged on the same dates. Each reflected a diagnosis. A Health Care for the Homeless letter, 28 November 2011, reflects the applicant was first seen for an intake appointment, was evaluated and received a diagnosis. A Licensed Psychologist letter, 21 January 2014, reflects the applicant was evaluated for current emotional state due to concerns which the applicant may have been experiencing difficulties related to the applicant's past military service. The letter reflects a diagnosis. The AMHRR does not contain a mental status evaluation.

The third-party statement provided with the application from another Soldier who served with the applicant during a deployment to Iraq. The letter states the applicant was loyal, talented and

was a spectacular Soldier who possesses the personal, professional, and mental ability to serve in any setting.

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 and the applicant submitted and official medical and service records, the applicant has the following potentially-mitigating diagnoses/experiences: Major Depressive Disorder, Post Traumatic Stress Disorder.

(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 submitted and official medical and service records the applicant was diagnosed in service with Major Depressive Disorder and PTSD, and the VA has service connected both of these conditions.

(3) Does the condition or experience excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between Major Depressive Disorder, PTSD, and self-medicating with substances, the applicant's MDD and PTSD mitigate the marijuana and methamphetamine use. However, the applicant's MDD/PTSD do not mitigate the applicant's offense of dereliction for failing to provide a urine specimen during a urinalysis since neither condition interferes with the ability to comply with a requirement to provide a urine specimen.

(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 Major Depressive Disorder and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offense of failure to provide a urine specimen as this offense did not rise to a level to negate meritorious service.

b. Response to Contention(s): The applicant contends suffering from PTSD due to military service and requests a review based on the new guidelines for PTSD. The Board liberally considered this contention and determined that the applicant's Major Depressive Disorder and Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated offense of failure to provide a urine specimen as this offense did not rise to a level to negate meritorious service. Therefore, a discharge upgrade is warranted.

c. The Board determined that clemency is warranted because the applicant's Major Depressive Disorder and Post Traumatic Stress Disorder mitigated the applicant's illegal substance abuse offenses and outweighed the applicant's medically unmitigated offense of failure to provide a urine specimen as this offense did not rise to a level to negate meritorious service. 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. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Major Depressive Disorder and Post Traumatic Stress Disorder mitigated the applicant's illegal substance abuse offenses and outweighed the applicant's medically unmitigated offense of failure to provide a urine specimen as this offense did not rise to a level to negate meritorious service. 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.

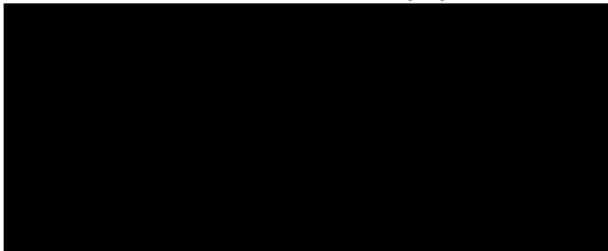
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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

Authenticating Official:

5/27/2024



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

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