

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, at the time of the discharge the applicant was suffering from PTSD and the only way the applicant knew to cope was through drugs and alcohol, which led to the applicant receiving an under other than honorable conditions discharge.

b. **Board Type and Decision:** In a records review conducted on 28 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD, Depression, and Unspecified Bipolar Disorder fully outweighing the applicant's AWOL, FTRs, and substance abuse basis of separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable per AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The reentry eligibility (RE) code was found proper and equitable due to the severity and totality of the behavioral health (BH) diagnoses.

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:** 27 September 2006

c. Separation Facts:

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 6 September 2006, the applicant was charged with:

Charge I: Violating Article 86, UCMJ:

Specification 1: On or about 18 August 2006, without authority, absent oneself from the unit and did remain so absent until on or about 21 August 2006.

Specification 2: On or about 26 July 2006, 1 August 2006, 9 August 2006 and 16 August 2006, without authority, failed to go to the time prescribed to the appointed place of duty.

Specification 3: On or about 18 August 2006 without authority, failed to go at the time prescribed to the appointed place of duty.

Charge II: Violating Article 112a, UCMJ:

Specification 1: Between on or about 3 June 2006 and on or about 5 June 2006, the applicant wrongfully used cocaine.

Specification 2: Between on or about 8 August 2006 and on or about 10 August 2006, the applicant wrongfully used cocaine.

Specification 3: Between on or about 16 August 2006 and on or about 18 August 2006, the applicant wrongfully used D-methamphetamine.

Specification 4: Between on or about 16 August 2006 and on or about 18 August 2006, the applicant wrongfully used cocaine.

Specification 5: Between on or about 20 July 2006 and on or about 18 August 2006, the applicant wrongfully used marijuana.

(2) Legal Consultation Date: 6 September 2006

(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: 12 September 2006 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 December 2004 / 4 years

b. Age at Enlistment / Education / GT Score: 24 / High School Graduate / 102

c. Highest Grade Achieved / MOS / Total Service: E-5 / 19D20, Calvary Scout / 4 years, 3 days

d. Prior Service / Characterizations: RA, 18 September 2002 – 9 December 2004 / HD

e. Overseas Service / Combat Service: SWA / Iraq (3 March 2005 – 17 February 2006)

f. Awards and Decorations: PH, ARCOM-3, AGCM, NDSM, GWOTEM, GWOTSM, ICM, ASR

g. Performance Ratings: October 2005 – July 2006 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 14 June 2006, reflects the applicant tested positive for COC (cocaine) 12222, during a Probable Cause (PO) urinalysis testing, conducted on 5 June 2006.

FG Article 15, 10 August 2006, for wrongfully using cocaine (between on or about 2 June 2006 and 5 June 2006); wrongfully introduce some amount of cocaine onto a vessel, aircraft vehicle, or installation used by the armed forces or under the control of the armed forces on or about 2 June 2006; and wrongfully solicit PV1 A. C. to break restriction and purchase cocaine for the applicant on or about 2 June 2006. The punishment consisted of a reduction to E-4; forfeiture of \$921 pay per month for two months; and extra duty and restriction for 45 days.

Two Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 18 August 2006; and,

From AWOL to PDY, effective 21 August 2006.

Electronic Copy of DD Form 2624, 21 August 2006, reflects the applicant tested positive for COC (cocaine) 166256, during a Probable Cause (PO) urinalysis testing, conducted on 10 August 2006.

Electronic Copy of DD Form 2624, 24 August 2006, reflects the applicant tested positive for COC (cocaine) 117115, DAMP (D-Amphetamine) 4322, DMETH(D-Methamphetamine) 15036, and THC (marijuana) 33, during a Probable Cause (PO) urinalysis testing, conducted on 18 August 2006.

Several Developmental Counseling Forms, for various acts of misconduct.

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

i. Lost Time / Mode of Return: 5 days:

AWOL, 19 August 2006 – 21 August 2006 / Returned to Military Control

Pretrial Confinement, 24 August 2006 – 27 August 2006 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Cedar Spring Hospital Psychiatric Admission Assessment and Work Up, 9 September 2006, reflects two diagnoses.

Cedar Springs Behavioral Health System Discharge Summary, undated, reflects two diagnoses.

(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; Cedar Springs Behavioral Health System Discharge Summary; Cedar Spring Hospital Psychiatric Admission Assessment and Work Up; Cedar Spring Behavioral Health System, Inc Initial Treatment Plan.

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 is normally 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 applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends suffering from PTSD at the time of the discharge and the only way the applicant knew to cope was through drugs and alcohol. The applicant provided a Cedar Spring Hospital Psychiatric Admission Assessment and Work Up, 9 September 2006, which reflects two diagnoses. A Cedar Springs Behavioral Health System Discharge Summary, undated, also reflects two diagnoses. The applicant's AMHRR contains no documentation of PTSD diagnosis. 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Depression, PTSD, and Unspecified Bipolar Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, Depression, and PTSD. The VA has also service connected the applicant for PTSD and Unspecified Bipolar Disorder. Service connection establishes that the applicant's Unspecified Bipolar Disorder also 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 there is evidence of BH conditions that mitigate the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder, Depression, and PTSD. The VA has also service connected the applicant for PTSD and Unspecified Bipolar Disorder. Given the nexus between PTSD, Depression, Unspecified Bipolar Disorder, avoidance, and self-medicating with substances, the AWOL, FTRs, and substance use that led to the applicant's separation are mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's BH conditions outweighed the AWOL, FTRs, and substance abuse that served as the basis of separation.

b. Response to Contention(s): The applicant contends suffering from PTSD at the time of the discharge and the only way the applicant knew to cope was through drugs and alcohol. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD, Depression, and Unspecified Bipolar Disorder fully outweighing the applicant's AWOL, FTRs, and substance abuse basis of separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD, Depression, and Unspecified Bipolar Disorder fully outweighing the applicant's AWOL, FTRs, and substance abuse basis of separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable per AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions)

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with a corresponding separation code of JKN. The reentry eligibility (RE) code was found proper and equitable due to severity and totality of the BH conditions. However, the applicant may request a personal appearance hearing to address further issues before a Board. 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, Depression, and Unspecified Bipolar Disorder mitigated the applicant's misconduct of AWOL, FTRs, and substance abuse. 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.

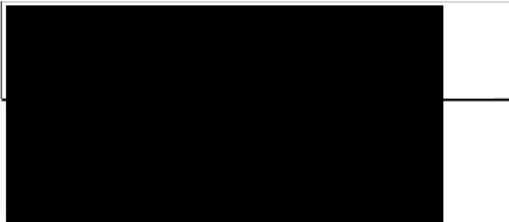
(3) The RE code of 4 was found proper and equitable due to applicant's BH diagnoses, particularly given the severity of an Unspecified Bipolar Disorder.

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, paragraph 14-12a

Authenticating Official:

5/18/2024



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