

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, falling and hurting their back while stationed in Korea in 2007. The applicant began receiving pain medicine off and on until the applicant deployed to Iraq in 2008. While deployed, the applicant suffered a seizure and received a spinal tap. The applicant noticed an unusual amount of pain in the days following. The doctor conducted tests, X-rays and magnetic resonance imaging (MRIs). The results showed the applicant had considerably lower back problems besides the injury the applicant received at age 15 because of a motor vehicle accident. The applicant received these injuries because of the duties while serving in the Army. The applicant was prescribed pain medication for the duration of the applicant's time in the Army. The applicant was placed on pain management and physical therapy when the applicant returned to Fort Hood, and continued the medications until the applicant was discharged in 2009 because of failed urinalysis. The applicant used marijuana to self-medicate for pain. The applicant realized it was ignorant and irresponsible. The applicant should have sought help but did not realize what the applicant was doing. After failing the urinalysis, the applicant did not receive the treatment from the Army the applicant believed they should have.

After the discharge, the applicant returned home and began treatment through the local Department of Veterans Affairs (VA). The doctor immediately reduced the applicant's medication by half. The applicant discussed a possible solution with the doctor, but to no avail. The applicant sought medication on the street. The applicant was caught and arrested in 2010 and 2011 for possession of narcotics. The applicant believes the events would not have happened if the applicant would had received the proper health treatment and medication. The applicant accepts responsibility because the applicant should have requested help, but the applicant did not realize it was an addiction. The applicant is back on track with treatment and proper medication thanks to an amazing team at the VA.

b. Board Type and Decision: In a records review conducted on 14 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and the applicant's PTSD diagnosis outweighing the applicant's three positive UAs and AWOL basis for separation. 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, and the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service. *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 (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 23 June 2009

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 19 May 2009

(2) Basis for Separation: The applicant was informed of the following reasons:

The applicant received two Article 15s for misconduct and illegal drug use;

The applicant failed urinalyses on 11 February 2008, 12 March 2008, and 5 January 2009; and

The applicant went absent without leave from 14 to 24 March 2008.

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

(4) Legal Consultation Date: 26 May 2009

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 5 June 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 July 2006 / 3 years, 17 weeks

b. Age at Enlistment / Education / GT Score: 18 / GED / 92

c. Highest Grade Achieved / MOS / Total Service: E-3 / 21B1P, Combat Engineer / 2 years, 11 months, 9 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea / None / The applicant's AMHRR contains MEDAVAC orders from Landstuhl, Germany, which mentions reporting information to Kuwait; however, the record does not contain any information to verify deployment to Iraq.

f. Awards and Decorations: AAM, NDSM, GWOTSM, KDSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 21 February 2008, reflects the applicant tested positive for THC > LOL (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 11 February 2008.

Personnel Action form, 24 March 2008, reflect the applicant's duty status changed from Absent Without Leave (AWOL) to Present for Duty (PDY), effective 24 March 2008.

Duty Status Listing, 9 April 2008, reflects the applicant was AWOL on 14 March 2008.

Field Grade Article 15, 10 April 2008, for on two occasions, wrongfully using marijuana (between 11 January and 11 February 2008 and 11 February and 12 March 2008); and being AWOL (from 14 to 24 March 2008). The punishment consisted of a reduction to E-1; forfeiture of \$623 pay per month for two months; and extra duty and restriction for 45 days.

Orders A-11-823123, 14 November 2008, from Landstuhl, Germany, reflect the applicant was reassigned to USA MEDDAC, Fort Hood, for the purpose of medical evacuation, military / commercial airlift, for continued medical care. The applicant was instructed to report the applicant's status by email to the 1st PERSOM, Kuwait Casualty Cell.

Electronic Copy of DD Form 2624, 8 January 2009, reflects the applicant tested positive for THC 44 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 5 January 2009.

Background Check – Specimen Data and Background Check, 9 January 2009, reflects the applicant tested positive for oxycodone and oxymorphone during an Inspection Random, conducted on 17 August 2007; however, the medical review officer determined the use was authorized. The document indicated the applicant's Patient Intake / Screening Record (PIR), 27 February 2008, reflected the enrollment decision was not to enroll.

NG Levels Query, 9 January 2009, reflects the applicant submitted a sample for drug testing on 11 February 2008, 12 March 2008, 31 March 2008, and 5 January 2009, and tested positive for marijuana for each sample.

Field Grade Article 15, 18 February 2009, for wrongfully using marijuana (between 7 December 2008 and 5 January 2009). The punishment consisted of a reduction to E-1; forfeiture of \$700 pay (suspended); and extra for 15 days.

Army Substance Abuse Program (ASAP) Enrollment form, 20 February 2009, reflects the applicant was command-referred in the ASAP because of improper use of drugs.

Two Developmental Counseling Forms, for failing the Army Urinalysis Tests on 11 February 2008 and 5 January 2009.

i. **Lost Time / Mode of Return:** 10 days (AWOL, 14 March 2008 – 23 March 2008) / NIF

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

(1) **Applicant provided:** Department of Veterans Affairs Medical Record Progress Notes, between 23 October and 14 November 2014, reflecting the applicant was diagnosed with opioid use disorder; cannabis abuse; anxiety disorder, not otherwise specified (NOS); and rule out post-traumatic stress disorder (PTSD); adjustment disorder, and generalized anxiety disorder (GAD). The applicant's medical history includes seizures, back pain, and opioid dependence. The applicant was rated 0 percent service-connected disability.

(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; self-authored statement; and VA medical records.

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 prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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 an injury and an addiction to drugs affected behavior which led to the discharge. The applicant submitted VA medical documents reflecting the applicant was diagnosed with various medical conditions. The applicant was rated 0 percent service-connected disability. The applicant's AMHRR reflects the applicant tested positive for drugs in which the medical review officer determined the applicant was authorized to use. The applicant's AMHRR is void of a mental status evaluation or medical examination.

The applicant contends improper medical treatment contributed to the discharge. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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: Adjustment Disorder, PTSD.

(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, and the VA medical record reveals a strong likelihood of combat-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder, and the VA medical record reveals a strong likelihood of combat-related PTSD. Given the nexus between PTSD and self-medicating with substances, the applicant's PTSD provides partial mitigation for the basis of separation to include the one positive UA that occurred after the applicant was in Iraq. The applicant's two prior positive UAs and the AWOL are not mitigated because this misconduct occurred prior to the applicant's exposure to combat, which is the trauma index for the PTSD. The applicant's PTSD did not exist at the time of the first two positive UAs or the AWOL and therefore, was not contributory. The applicant's Adjustment Disorder was also diagnosed several months after the unmitigated misconduct. There is no evidence that the applicant's Adjustment Disorder existed at the time of the 2008 positive UAs or AWOL, and furthermore, an Adjustment Disorder is a transient reaction to stress that does not have a nexus with substance use or avoidance in the absence of a more severe BH condition.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder and PTSD outweighed the two UAs and AWOL prior to deployment basis for applicant's separation. However, the applicant's PTSD did mitigate the remaining UA, which occurred on 5 January 2009.

b. Response to Contention(s):

(1) The applicant contends an injury and an addiction to drugs affected behavior which led to the discharge. The Board considered this contention but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, and the applicant's PTSD diagnosis outweighing the applicant's three positive UAs and AWOL basis for separation.

(2) The applicant contends improper medical treatment contributed to the discharge. The Board considered this contention and determined there is insufficient evidence in the file to support the applicant receiving improper medical treatment contributed to applicant's discharge. Ultimately the Board voted to upgrade the discharge to Honorable based on the applicant's length and quality of service, to include combat service, and the applicant's PTSD diagnosis outweighing the applicant's three positive UAs and AWOL basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and the applicant's PTSD diagnosis outweighing the applicant's three positive UAs and AWOL basis for separation. 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, and the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service. However, the applicant may request a personal appearance hearing to address further issues before the 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 length and quality of service, to include combat service, and the applicant's PTSD diagnosis outweighed the applicant's misconduct of three positive UAs and AWOL. 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 due to applicant's PTSD diagnosis warranting consideration prior to reentry of military service.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

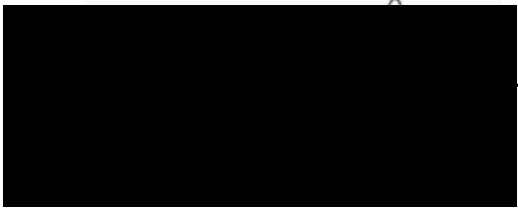
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10. BOARD ACTION DIRECTED:

- 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:** No Change
- e. **Change Authority to:** AR 635-200, paragraph 14-12a

Authenticating Official:

5/3/2024



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