

**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 honorable. The applicant will be considered for a change to the narrative reason for separation and reentry eligibility code.

The applicant did not present any issues of propriety or equity for the Board's consideration.

b. **Board Type and Decision:** In a records review conducted on 25 April 2024, and by a 5-0 vote, the Board, based on the applicant's Post Traumatic Stress Disorder and Major Depression outweighing the applicant's illegal substance abuse and FTR offenses, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Honorable

b. **Date of Discharge:** 5 May 2008

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 15 April 2008

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

Between on or about 16 January and on or about 15 February 2008 the applicant wrongfully used marijuana;

On or about 14 February 2008, the applicant without authority, failed to go at the time prescribed to the appointed place of duty;

On or about 15 February 2008, the applicant without authority, failed to go at the time prescribed to the appointed place of duty;

On or about 21 February 2008, the applicant, without authority, failed to go at the time prescribed to the appointed place of duty; and,

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On or about 28 February 2008, the applicant, without authority, failed to go at the time prescribed to the appointed place of duty.

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

**(4) Legal Consultation Date:** 15 April 2008

**(5) Administrative Separation Board:** On 15 April 2008, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

**(6) Separation Decision Date / Characterization:** 21 April 2008 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 9 January 2006 / 6 years / The Commanders Report reflects the applicant reenlisted on 9 January 2006, the AMHRR does not contain a DD Form 4 for this period.

**b. Age at Enlistment / Education / GT Score:** 23 / High School Letter / 103

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 88H10, Cargo Specialist / 6 years, 2 months, 25 days

**d. Prior Service / Characterizations:** RA, 12 February 2002 – 8 January 2006 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (20 October 2005 – 1 May 2006); Kuwait (21 April 2003 – 9 April 2004)

**f. Awards and Decorations:** ARCOM-2, AGCM, NDSM, GWOTEM, GWOTSM, ICM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 15 February 2008, reflects the applicant tested positive for THC 177 (marijuana), during a Rehabilitation Testing (RO) urinalysis testing, conducted on 15 February 2008.

FG Article 15, 26 March 2008, for wrongfully using marijuana (between on or about 16 January 2008 and on or about 15 February 2008). The punishment consisted of a reduction to E-1; forfeiture of \$673 pay per month for two months; and extra duty and restriction for 45 days.

Results by SSN document shows a positive result for DAMP (D-Amphetamine) obtained during an Inspection Random (IR) urinalysis testing, conducted on 4 December 2007.

Five Developmental Counseling Forms, for failure to be at appointed place of duty on four occasions and positive result on urinalysis.

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

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

**(1) Applicant provided:** Fort Eustis Community Mental Health letter, 7 April 2008, reflects the applicant had been in treatment and received a diagnosis.

VA Rating Decision, 12 March 2012, reflects the applicant was granted 100 percent disability.

**(2) AMHRR Listed:** Report of Medical History, 1 April 2008, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation, 4 April 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. The form does not reflect a diagnosis.

*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; Fort Eustis Community Mental Health letter; VA Rating Decision; ARBA letter.

**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 600-85 (The Army Substance Abuse Program), paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes: A Soldier's self-referral to BH for SUD treatment; Admissions and other information concerning alcohol or other drug abuse or possession of drugs incidental to personal use occurring prior to the date of initial referral to treatment and provided by Soldiers as part of their initial entry into SUD treatment; Drug or alcohol test results, if the Soldier voluntarily submits to a DoD or Army SUD treatment before the Soldier has received an order to submit for a lawful drug or alcohol test; and, the results of a drug or alcohol test administered solely as a required part of a DoD or Army SUD treatment program.

e. 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 14-12c 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.

f. 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).

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

The applicant did not present any issues of propriety or equity for the Board's consideration. The AMHRR reflects the government introduced into the discharge packet results of a urinalysis conduct on 15 February 2008, which was coded RO (Rehabilitation). The inclusion of the RO urinalysis in the separation file was a violation of the limited use policy and required a characterization of service of honorable.

**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, Major Depression, Panic Disorder. The applicant holds an honorable characterization of service but will be considered for a change to the narrative reason for separation and reentry eligibility code.

(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 PTSD, Major Depression, and Panic Disorder. The VA has also service connected the applicant's PTSD and Depressive Disorder.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with PTSD, Major Depression, and Panic Disorder. The VA has also service connected the applicant's PTSD and Depressive Disorder. Given the nexus between PTSD, Major Depression, self-medicating with substances, and avoidance, the applicant's wrongful use of marijuana and FTR's are mitigated.

(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 and Major Depression outweighed the applicant's illegal substance abuse and FTR offenses.

b. Response to Contention(s): The applicant did not present any issues of propriety or equity for the Board's consideration. The AMHRR reflects the government introduced into the discharge packet results of a urinalysis conduct on 15 February 2008, which was coded RO (Rehabilitation). The inclusion of the RO urinalysis in the separation file was a violation of the limited use policy and required an upgrade to honorable.

c. The Board, based on the applicant's Post Traumatic Stress Disorder and Major Depression outweighing the applicant's illegal substance abuse and FTR offenses, determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because a prior ADRB upgraded the applicant to Honorable and no further relief is available.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) based on the applicant's Post Traumatic Stress Disorder and Major Depression outweighing the illegal substance abuse and FTR offenses, 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.

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**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- 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:**

5/16/2024



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