

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, the misconduct issues were caused by being under a tremendous amount of stress upon returning from Afghanistan. The applicant's Post Traumatic Stress Disorder (PTSD) led to self-defeating behaviors, which led to the divorce. During the deployment, the applicant had no misconduct issues. Misconduct occurred after returning to the States. While deployed, the applicant served honorably as a Soldier in Afghanistan. Upon redeployment, the applicant did not have the necessary and needed assistance. The applicant did not know how to obtain the assistance. The applicant recognizes the behavior was unbecoming of a servicemember and believes, because of the trauma endured while serving the country, the applicant should be allowed to access veterans' benefits.

b. **Board Type and Decision:** In a records review conducted on 8 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's prior periods of honorable service, the length and quality of total service (including combat service), and post-service accomplishments outweighing the applicant's medically unmitigated DUI offense. 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. Accordingly, the narrative reason for separation changed 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 27 February 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 November 2011

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

On 25 February 2007, and 7 March and 1 October 2011, the applicant drove while under the influence of alcohol.

The applicant wrongfully used marijuana between 28 February and 30 March 2011.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 17 November 2011

(5) Administrative Separation Board: On 17 November 2011, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than an honorable discharge.

On 16 December 2011, the applicant's conditional waiver was denied.

On 3 and 19 January 2012 the applicant was notified to appear before an administrative separation board and advised of rights.

On 26 January 2012, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the four reasons listed in the notification memorandum were supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of Under Other Than Honorable Conditions.

(6) Separation Decision Date / Characterization: 14 February 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 October 2008 / 4 years according to ERB, 7 November 2011

b. Age at Enlistment / Education / GT Score: 24 / GED / 109

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 5 years, 8 months, 6 days

d. Prior Service / Characterizations: RA, 22 June 2006 – 22 October 2008 / HD

e. Overseas Service / Combat Service: SWA / Iraq (15 September 2007 – 29 October 2008); Afghanistan (29 March 2010 – 9 February 2011)

f. Awards and Decorations: ARCOM-2, NDSM, ACM-2CS, GWOTSM, ICM-CS, ASR, OSR-2, NATOMDL, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Three Developmental Counseling Forms for reenlistment bonus being recouped, being recommended for separation for commission of a serious offense and testing positive on a unit urinalysis test.

General Officer Memorandum of Reprimand, 26 March 2010, reflects the applicant was driving while impaired. After being stopped on 7 March 2010, the applicant refused to take a lawfully requested intoximeter test in the State of Tennessee.

DD Form 2624, undated, reflects the applicant tested positive for THC (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 30 March 2011.

FG Article 15, 14 July 2011, for wrongfully using marijuana (between 28 February and 30 March 2011). The punishment consisted of a reduction to E-2; forfeiture of \$822 pay per month for two months (suspended); extra duty and restriction for 45 days; and an oral reprimand.

General Officer Memorandum Of Reprimand, 21 October 2011, reflects after hitting a mailbox and fences on 11 October 2011, the applicant left the scene of an accident and when the applicant was found in a residence, the applicant admitted to the arresting officer of being in an accident and drinking alcohol.

Report of Proceedings by Investigating Officer/Board of Officers with Summary of Proceedings as described in previous paragraph 3c(5).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Blanchfield Army Community Hospital, Department of Behavioral Health letter, 3 October 2011, reflects the applicant was being treated with medication for an Adjustment Disorder with depressed mood, and the symptoms had become progressively more severe with each new deployment.

Cumberland Hall Psychiatric Evaluation, 14 January 2012, reflects the applicant while admitted was diagnosed with Axis I, Mood Disorder, NOS and Alcohol Abuse, and was admitted for being danger to self and others. The applicant was discharged on 7 February 2012.

Arbor Circle, 6 and 25 March 2014, reflect the applicant was assessed with severe, acute, chronic disorders of Anxiety, Depression, substance use, and trauma, and Axis I clinical disorders of polysubstance dependence, posttraumatic stress disorder, anxiety disorder NOS, and cocaine dependence, and the Individual Progress Notes reflect the applicant was receiving biweekly therapy sessions.

(2) AMHRR Listed: Report of Mental Status Evaluation, 5 May 2011, reflects the applicant was psychiatrically cleared for Chapter 14-12c consideration per 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 applicant had been screened for PTSD and mTBI with negative results. The applicant was diagnosed with: Substance Abuse.

Report of Medical History, 15 August 2011, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Nervous and panic attacks in public has improved; received inpatient treatment at Cumber Hall; insomnia worst immediately following deployment is improving with time; and being separated because of marijuana use.

Report of Medical Assessment, 15 August 2011, the applicant indicated taking medication for sleep and depression.

Centennial Medical Center After Care Instructions, 22 January 2012, reflects the applicant had been treated for PTSD.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored statement; DD Form 214; four third-party letters; and Profession of Faith certificate. Additional Evidence: Medical records, 26 June 2006 – 20 November 2015, from: Cumberland Hospital; Centennial Medical Center; Cherry Street Health Center; Blanchfield Army Medical Center; and Abor Circle Medical.

6. POST SERVICE ACCOMPLISHMENTS: The third-party letters indicate the applicant has obtained employment with the Notions Marketing Corporation and the Matthew's House Ministry, while attending school to further the education.

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 waivable and nonwaivable 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 waivable. 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 contends suffering from PTSD caused by deployments, which led to behavioral issues and a divorce. The applicant provided several medical documents indicating diagnoses of adjustment disorder with depressed mood, and chronic disorders of PTSD, anxiety disorder, depression, and substance abuse. The applicant's AMHRR contains documentation which supports diagnoses of in-service depression and insomnia. The record shows the applicant underwent a mental status evaluation (MSE) on 5 May 2011, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

The applicant contends serving honorably during deployments and having no misconduct issues. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends not receiving the needed support upon redeployment. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment.

The applicant contends because of the trauma endured while serving, the applicant should be allowed the veterans' benefits. Eligibility for veterans' benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The third-party statements provided with the application reflect the applicant's character and performances were with accountability, focused effort, diligent efficiency, excellent reliability, and hardworking with a compassionate heart.

The third-party statements address the applicant's employment, exemplary reputation, and school attendance. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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 with Anxiety, and 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, Depression with Anxiety, and Mood Disorder NOS. The applicant is also diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions partially mitigate the applicant's misconduct. Given the nexus between PTSD, Depression, and self-medicating with substances, the 2 latter DUIs and wrongful use of marijuana are mitigated. The DUI that occurred in February 2007 is not mitigated by any of the applicant's BH conditions. This was prior to the applicant serving in combat, which is the trauma index for the PTSD. Also, there is no evidence that the applicant's Adjustment Disorder, Depression with Anxiety, or Mood Disorder NOS existed in 2007 since these conditions were diagnosed beginning in February 2011. There is no evidence to support that any of the applicant's BH conditions contributed to the DUI in February 2007.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression with Anxiety, and PTSD outweighed the medically unmitigated DUI in February 2007.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD caused by deployments, which led to behavioral issues and a divorce. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression with Anxiety, and PTSD outweighed the medically unmitigated DUI from February 2007. However, the Board found that the applicant's length and quality of service, to include combat tours in Iraq and Afghanistan, outweighed the applicant's one medically unmitigated DUI offense. Therefore, a discharge upgrade is warranted.

(2) The applicant contends serving honorably during deployments and having no misconduct issues. The Board considered this contention and credited the applicant's good service in its decision to upgrade the applicant's discharge.

(3) The applicant contends not receiving the needed support upon redeployment. The Board considered this contention during proceedings, but ultimately did not address it due to an upgrade being granted as discussed above in 9b(1).

(4) The applicant contends because of the trauma endured while serving, the applicant should be allowed the veterans' benefits. The Board considered this contention and determined that eligibility for Veteran's benefits do not fall within the purview of the Army Discharge Review

Board. Accordingly, the applicant should contact a local Department of Veterans Affairs office for further assistance.

c. The Board determined the discharge is inequitable based on the applicant's prior periods of honorable service, the length and quality of total service (including combat service), and post-service accomplishments outweighing the applicant's DUI offense. 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. Accordingly, the narrative reason for separation changed 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 prior periods of honorable service, the length and quality of total service (including combat service), and post-service accomplishments outweighed the applicant's medically unmitigated 2007 DUI offense. 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.

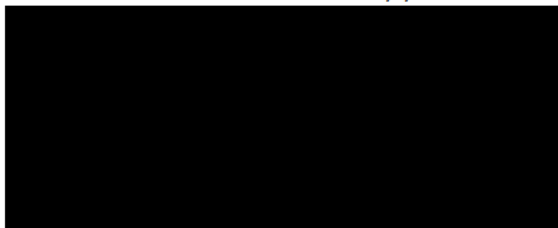
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

3/8/2024



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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001312

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury

UNC – Uncharacterized
Discharge

UOTHC – Under Other Than
Honorable Conditions

VA – Department of Veterans
Affairs