

**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, being treated for stress after their return from a combat deployment to Afghanistan. The applicant states they were in the middle of a medical review board process and was pursuing a reenlistment to continue the process. During this time, the applicant found one of their closest friends dead in their room. The applicant found it difficult to cope with their friend's death and turned to self-medicating with cannabis. The applicant tested positive for drug use and was put on extra duty for 45 days. During extra duty, the applicant was unable to continue receiving mental health care and prescription drugs to address the stress and worsening mental health conditions while on extra duty. During this time, the applicant received treatment for panic attacks three times in the emergency department. The applicant contends an upgrade would allow them to support their family.

b. **Board Type and Decision:** In a records review conducted on 25 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder (PTSD) outweighing the applicant's offenses of illegal drug abuse and assault (pushing an NCO). 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 and reentry code of 3.

*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 (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 28 April 2014

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 8 January 2014

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant used marijuana between 20 September and 21 October 2013. The applicant assaulted SGT E., a noncommissioned officer, on 5 December 2013.

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

(4) **Legal Consultation Date:** 11 January 2014

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 4 April 2014 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 18 January 2011 / 3 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 21 / one semester of college / 108

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 3 years, 3 months, 11 days

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

e. **Overseas Service / Combat Service:** SWA / Afghanistan (27 March 2012 – 23 November 2012)

f. **Awards and Decorations:** ACM-CS, NDSM, GWOTSM, ASR, NATOMDL, CIB / The applicant's AMHRR reflects award of the OSR, however, the award is not reflected on the DD Form 214.

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 30 October 2013, reflects the applicant tested positive for THC 65 (marijuana), during an Inspection Random(IR) urinalysis testing, conducted on 22 October 2013.

FG Article 15, 13 November 2013, for wrongfully using marijuana (between 20 September and 21 October 2013). The punishment consisted of a reduction to E-2; forfeiture of \$849 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Record Of Supplementary Action Under Article 15, UCMJ, 21 December 2013, reflects the suspended portion of the punishment imposed on 27 November 2013, was vacated for: Article 91, on or about 5 December 2013, assault SGT E., a superior noncommissioned officer, then known to the applicant to be a superior noncommissioned officer who was in the execution of their office, by pushing them in the chest with the applicant's hands.

Three Developmental Counseling Forms, for disrespect, wrongful possession, and positive UA.

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

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

(1) **Applicant provided:** Discharge Summary, 11 September 2014, reflects a diagnostic impression of PTSD and cannabis use disorder and panic disorder.

**(2) AMHRR Listed:** Report of Medical History, 4 November 2013, the examining medical physician noted in the comments section under the care of behavioral health.

Report of Mental Status Evaluation, 5 November 2013, 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 applicant had a significant mental health history and most likely requires an MEB, this will be determined by the provider. The applicant had been screened for PTSD and mTBI with positive results. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Anxiety Disorder NOS; Major Depression Recurrent. The applicant should have enrolled in ASAP, although the applicant had been in CATEP, the applicant had not been to ASAP. There is evidence of mental defect emotional illness or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. The applicant was not psychiatrically cleared for any administrative action deemed appropriate by command.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD form 293; self-authored statement; medical records.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has received treatment at a VA Medical Center for service-connected PTSD and TBI and pursued a college degree.

**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(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

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 "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (drug abuse).

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 tested positive for drug use and was put on extra duty for 45 days. During extra duty, the applicant was unable to continue receiving mental health care and prescription drugs to address the stress and worsening mental health conditions while on extra duty. During this time, the applicant received treatment for panic attacks three times in the emergency department. The applicant provided a Discharge Summary, 11 September 2014, reflecting a diagnostic impression of PTSD and cannabis use disorder and panic disorder. The AMHRR includes a Report of Mental Status Evaluation, 5 November 2013, reflecting 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 applicant had a significant mental health history and most likely required an MEB, which would be determined by the provider. The applicant had been screened for PTSD and mTBI with positive results. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Anxiety Disorder NOS; Major Depression Recurrent. The applicant should have enrolled in ASAP, although the applicant had been in CATEP, the applicant had not been to ASAP. There was evidence of mental defect emotional illness or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. The applicant was not psychiatrically cleared for any administrative action deemed appropriate by command. A Report of Medical History, 4 November 2013, shows

the examining medical physician provided notes in the comments section indicating behavioral health care. The MSE and medical history were considered by the separation authority.

The applicant contends they were in the middle of a medical review board process and pursuing a reenlistment to continue the process. During this time, the applicant found one of their closest friends dead in their room and found it difficult to cope, thus self-medicating with cannabis. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended. The Physical Evaluation Board case remains in suspense pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct, the medical process is stopped and the board report is filed in the member's medical record.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends seeking treatment at a VA Medical Center for service-connected PTSD and TBI and pursued a college degree. The Board considered these factors. However, 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Anxiety Disorder NOS, Major Depression, 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, Anxiety Disorder NOS, and Major Depression. 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? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD mitigates the applicant's misconduct. Given the nexus between PTSD, Major Depression, and self-medicating with substances, the applicant's marijuana use is mitigated. And while PTSD does not normally mitigate assault, review of the incident reveals that it was an incident of disrespect towards an NCO that escalated after the NCO insisted that the applicant not walk away as the applicant had begun to do. The applicant pushed the NCO and stated, "get out of my f\*\*\*ing face". Given the nexus between PTSD and difficulty with authority, the applicant's

PTSD likely contributed to the disrespect, including the pushing of the NCO, so this misconduct is also 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 PTSD outweighed the applicant's offenses (illegal drug abuse and assault (pushing an NCO after being questioned about the status of a physical profile)).

**b. Response to Contention(s):**

(1) The applicant tested positive for drug use and was put on extra duty for 45 days. During extra duty, the applicant was unable to continue receiving mental health care and prescription drugs to address the stress and worsening mental health conditions while on extra duty. During this time, the applicant received treatment for panic attacks three times in the emergency department. The Board liberally considered this contention and determined that the applicant's PTSD outweighed the applicant's illegal drug abuse and assault (pushing an NCO).

(2) The applicant contends being in the middle of a medical review board process and pursuing reenlistment to continue the process. During this time, the applicant found one of their closest friends dead in their room. The applicant found it difficult to cope with the death and turned to self-medicating with cannabis. The Board considered this contention during proceedings, but ultimately did not address it due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's illegal drug abuse and assault (pushing an NCO).

(3) The applicant contends an upgrade of the discharge will facilitate better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(4) The applicant contends seeking treatment at a VA Medical Center for service-connected PTSD and TBI and pursuing a college degree. The Board considered this contention during proceedings, but ultimately did not address it due to an upgrade being granted based on the applicant's PTSD outweighing the illegal drug abuse and assault (pushing an NCO).

**c.** The Board determined the discharge is inequitable based on the applicant's PTSD outweighing the applicant's illegal drug abuse and assault (pushing an NCO). 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 and reentry code of 3.

**d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD outweighed the basis of separation (illegal drug abuse and assault (pushing an NCO)). 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. Therefore, 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 change to RE-3.

**10. BOARD ACTION DIRECTED:**

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001339**

- 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: RE-3
- e. Change Authority to: AR 635-200

**Authenticating Official:**

2/13/2024



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