

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** N/A

**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 a combat-decorated paratrooper/veteran with VA certified service-connected disabilities, which suffers from PTSD. During the second combat tour in Afghanistan, the applicant was a forward observer, who always took pride in protecting the platoon from enemy fire by conducting fire missions. The applicant saw plenty of combat action but in June 2012, they received a break from the action at a Joint Security Station (JSS) with the Afghan Army. It was difficult to relax as they knew they would be going back on more patrols soon. Hashish was available at this location, and smoked it, but the applicant did not realize it at the time they were suffering from stress and insomnia. Hashish was a way Soldiers numb their senses and the applicant tried the hashish along with other Soldiers. Hashish smoke leaves a distinctive smell, and it was detected by one or more of the leaders. Later, the entire platoon was assembled to confront the Soldiers which had smoked. In the platoon meeting sworn statements were handed out to each member of the platoon. The sworn statement asked the platoon to come forward if they had partaken in smoking hashish and if they knew of anyone else who had smoked. The applicant wanted to tell the truth as a way of taking responsibility for their actions. The applicant also wanted to make the superiors aware of certain issues which drove the applicant to smoke hashish. The applicant was comfortable coming forward with the sworn statement as they were assured the position within the platoon would not be jeopardized. Other Soldiers did not self-admit and were discovered through other means. The applicant continued to conduct missions at the JSS as promised by the command. Three weeks later, the applicant was called back for an investigation in regard to the sworn statement. The applicant had waived their rights to an attorney and shared further information about the incident which occurred at the JSS through sworn statements. It was decided the applicant would go through a Summary Court-Martial to determine the punishment. The punishment was 45 days of hard labor and a reduction in rank from E-4 to E-3. Other Soldiers which did not self-admit were also court-martialed and reduced to E-1. The applicant believes they served their punishment while still engaged in a combat zone. Upon returning stateside, the applicant spent the next half-year continuing to serve honorably. When the applicant was discharged on 8 June 2013, the DD Form 214 was issued with an honorable characterization of service. The applicant signed this form as indicated by the e-signature. The applicant left North Carolina and returned to New Jersey, and later was sent a reissued DD Form 214 which changed the discharge to general (under honorable conditions) and the narrative reason Misconduct for Drug Abuse it also states member "Not Available to Sign". The applicant continued to suffer from stress and insomnia and after multiple evaluations it was proven the applicant suffers from PTSD. The applicant believes the irresponsible actions of smoking hashish was a result of combat stress which was described in the applicant's sworn statement.

b. **Board Type and Decision:** In a records review conducted on 1 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse. Therefore, the

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

**AR20210001346**

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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-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:** 8 June 2013

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 22 April 2013

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully used Marijuana in a hashish form between on or about 6 May 2012 and 15 June 2012, while deployed to Afghanistan.

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

**(4) Legal Consultation Date:** 30 April 2013

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

**(6) Separation Decision Date / Characterization:** 16 May 2013 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 13 January 2009 / 4 years, 21 weeks

**b. Age at Enlistment / Education / GT Score:** 20 / High School Graduate / 104

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 13F1P L7, Fire Support Specialist / 4 years, 3 months, 23 days

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

**e. Overseas Service / Combat Service:** SWA / Afghanistan (18 March 2012 – 11 September 2012); Iraq (21 March 2010 – 12 July 2010)

**f. Awards and Decorations:** ACM-CS, ARCOM, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR, NATOMDL, CAB

**g. Performance Ratings:** NA

**Disciplinary Action(s) / Evidentiary Record:** Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 20 July 2012. The applicant was charged with one

specification. Violation of Article 112a, UCMJ. The Specification: On or about 15 June 2012, the applicant wrongfully used Marijuana in hashish form while receiving special pay under 37 U.S.C. § 310. Plea: Guilty Finding: Guilty. Sentence: Reduction to E-3; Forfeiture \$1,321 pay per month for one month, and hard labor for 45 days.

One Personnel Action Form, reflect the applicant's duty status changed from "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 6 May 2013.

Memorandum for Record, Revocation of DD 214, 17 May 2013, reflects a request for the DD Form 214 be revoked. The applicant was flagged on 22 April 2013 pending separation under CH 14-12c, commission of a serious offense. The applicant cleared transition on 3 May 2013 using false documents which were withheld from the chain of command. The applicant began clearing post on 2 February 2013. The chapter was initiated on 22 April 2013. As of 7 May 2013, the applicant's duty status was AWOL. The applicant signed out of the Battalion on 6 May 2013 using a voided leave form. The DD Form 214 reflected the applicant had completed the first full term of service; and was discharged under the authority of AR 635-200, chapter 4, with a narrative reason of Completion of Required Active Service. The DD Form 214 was authenticated with the applicant's electronic signature.

**h. Lost Time / Mode of Return:** 33 days (AWOL, 6 May 2013 – 8 June 2013) / NIF

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

**(1) Applicant provided:** Health Record, 14 July 2012, reflects the applicant was diagnosed with adjustment disorder.

VA Rating Decision Letter, 7 July 2014, reflects the applicant was granted 30 percent service-connected disability for PTSD.

MH & BS document, Mental Health Note, 16 June 2014, reflects the applicant was diagnosed with PTSD and depression.

MH & BS document, Mental Health Note, 2 March 2015, reflects the applicant was diagnosed with PTSD.

Advisory opinion from the Office of the Surgeon General, 15 July 2016, reflects there was no documentation to indicate the applicant met criteria for PTSD at the time of separation or was unable to perform the military duties. Therefore, it was unlikely the separation was related to PTSD.

VA Benefits Summary letter, 16 July 2022, reflects the applicant was granted 80 percent combined service-connected disability; however, the letter does not state the nature of the disability.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 149; self-authored statement; Department of Veterans Affairs letter; two DD Forms 214; Health Record; DD Form 2329; DA Form 4430; Summary Court-Martial Proceedings letter; DA Form 5111; Receipt of Notification letter; Separation Documents; Advisory Opinion; ARBA letter; Attorney Authorization letter.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant states working a full-time job, going to college, and getting good grades.

**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 non-waiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a non-waiverable 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 contends good service, including two combat tours. The applicant served their punishment while in a combat zone and served honorably when they returned from deployment.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends smoking hashish as a form of coping with combat stress, PTSD, and insomnia. The applicant provided a Health Record, 14 July 2012, which reflects the applicant was diagnosed with adjustment disorder. A VA Rating Decision letter, 7 July 2014, reflects the applicant was granted 30 percent service-connected disability for PTSD. A MH & BS document, Mental Health Note, 16 June 2014, reflects the applicant was diagnosed with PTSD and depression. A MH & BS document, Mental Health Note, 2 March 2015, reflects the applicant was diagnosed with PTSD. An advisory opinion from the Office of the Surgeon General, 15 July 2016, reflects there was no documentation to indicate the applicant met criteria for PTSD at the time of separation or was unable to perform the military duties. It was unlikely the separation was related to PTSD. A VA Benefits Summary letter, 16 July 2022, reflects the applicant was granted 80 percent combined service-connected disability; however, the letter does not state the nature of the disability. The AMHRR does not contain a Mental Status Evaluation.

The applicant contends signing a DD Form 214 which indicated the applicant received an honorable discharge and after being discharged receiving a DD Form 214 with a general (under honorable conditions) discharge. The applicant provided a signed DD Form 214 which was dated 29 April 2013 with an honorable characterization of service. The AMHRR reflects the applicant signed the Acknowledgment of Receipt of Separation Notice on 22 April 2013. The AMHRR also contains Memorandum for Record, Revocation of DD Form 214, 17 May 2013, which reflects a request for the DD Form 214 be revoked. The applicant was flagged on 22 April 2013 pending separation under CH 14-12c, commission of a serious offense. The applicant cleared transition on 3 May 2013 using false documents which were withheld from the chain of command. The applicant began clearing post on 2 February 2013. The chapter was initiated on 22 April 2013. As of 7 May 2013, the applicant's duty status was AWOL. The applicant signed out of the Battalion on 6 May 2013 using a voided leave form. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends working a full-time job, going to college, and getting good grades. 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Post Traumatic Stress Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder. 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 actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that, given the nexus between PTSD and self-medicating with substances, the applicant's wrongful use of marijuana is 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 outweighed the applicant's illegal substance abuse.

b. Response to Contention(s):

(1) The applicant contends smoking hashish as a form of coping with combat stress, PTSD, and insomnia. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse.

(2) The applicant contends good service, including two combat tours. The applicant served their punishment while in a combat zone and served honorably when they returned from deployment. The Board considered the totality of the applicant's service record during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's illegal substance abuse.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered the totality of the applicant's service record during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's illegal substance abuse.

(4) The applicant contends signing a DD Form 214 which indicated the applicant received an honorable discharge and after being discharged receiving a DD Form 214 with a general (under honorable conditions) discharge. The Board considered the totality of the applicant's service record during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's illegal substance abuse.

(5) The applicant contends working a full-time job, going to college, and getting good grades. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD outweighing the applicant's illegal substance abuse.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse. 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

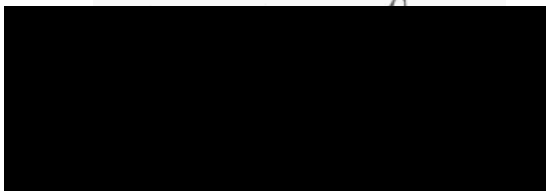
(3) The RE code will change to RE-3 based on the need for the applicant's PTSD to be evaluated prior to any re-entry into military service.

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

Authenticating Official:

4/1/2024



Legend:

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