

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]
[REDACTED]
[REDACTED]**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 separated for a violation of an Army regulation/order which prohibited the applicant from taking/using prescription medication which was issued to the applicant more than six months after the applicant was lawfully and validly prescribed said prescription. The regulation was an update to a previous regulation which allowed the member to use the prescription for 12 months after initial prescription. The applicant's initial prescription was for pain from medical treatment provided by the US Army; the medical treatment was necessary due to issues arising out of service and in the line of duty. The applicant was given the pain medication then sent to a combat unit in Afghanistan. While serving in Afghanistan the Army altered the preexisting regulation to prohibit members from using prescription medication after six months of initial prescription. The Army did not promulgate these regulations to combat units in Afghanistan. The applicant used properly prescribed medications less than seven months after their initial prescription and then turned up positive for the primary component of the pain killer. The Army then surprised the applicant by alleging the applicant to be a drug user, and then discharged the applicant for using these medications under the new, unpromulgated regulation. This discharge was patently unfair and violative of the general notions of fair play and substantial justice. The applicant was a recipient of the EIB and CIB as well as, the Army Commendation Medal. The applicant had a perfectly clean record and not even a parking ticket on the record. The current discharge designation harms the applicant permanently in the ability to get the full array of Veterans Benefits to which the applicant would otherwise be entitled. The member was discharged as the result of a mean-spirited application of regulations which were not made known to the applicant. The applicant was in a combat zone providing freedoms and liberties to the very people who then questioned how the applicant provided them and caused the applicant to suffer economic harm. The applicant is a decorated warrior who paid a huge price as demonstrated by the PTSD and hearing issues the applicant suffered in combat.

b. Board Type and Decision: In a records review conducted on 23 May 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 medically mitigated 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.
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: 7 February 2014

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 26 November 2013

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully used Oxymorphone between on or about 20 August 2013 and on or about 4 September 2013.

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

(4) Legal Consultation Date: On 11 December 2013, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

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

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 February 2011 / 3 years, 16 weeks

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 96

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 2 years, 11 month, 15 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (7 November 2012 – 10 June 2013)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 18 September 2013, reflects the applicant tested positive for OXMOR 113, during an Inspection Unit (IU) urinalysis testing, conducted on 4 September 2013.

DAMIS, 18 September 2013, reflects there was a previous prescription found in the available medical record which would explain this result. However, the prescription which was found was over six months old. The applicant would be given the opportunity to see the MRO and to provide a recent prescription which would explain the result. The applicant may have also just returned from deployment and may have received prescriptions during deployment.

ASAP Education and/or Enrollment and Rehabilitation in the ASAP Clinical Treatment Program, 29 October 2013, reflects the applicant was recommended for ADAPT: Prime for Life.

FG Article 15, 14 November 2013, for wrongfully using Oxymorphone a schedule II controlled substance between on or about 20 August and 2013, and on or about 4 September 2013. The punishment consisted of a reduction to E-2 (suspended); forfeiture of \$849 pay per month for two months (suspended); extra duty and restriction for 45 days; and an oral reprimand.

Developmental Counseling Form, for positive urinalysis for Oxymorphone.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Adolescent and Family Health Center, 15 April 2015, reflects the applicant was being treated since February 2015. The applicant had been seen four times for medication management and psychosocial support.

(2) AMHRR Listed: Report of Mental Status Evaluation, 22 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; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with negative results. The mental status evaluation contains a diagnosis.

Report of Medical History, 10 December 2013, the examining medical physician noted in the comments section: Seen and recently released by behavioral health with significant improvement.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; two certificates; DA Form 638; obituary; DD Form 214; two ARBA emails; third party letter; Adolescent and Family Health Center letter; ARBA letter; VA Disability Rating; Soldier Deployment History Outprocessing Report.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo]).

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of

acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c(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.

g. Department of Defense Instruction (DODI) 1010.16, provides a medical review process (MRP) to review all drug positive results that could be the result of licit or illicit prescription drug use. The MRP ensures that no adverse disciplinary action will be administered to those who possess a valid medical prescription for the drug for which the member tested positive. The Military Departments must have a procedure for transmitting the results of the MRP to the Defense Manpower Data Center (DMDC) within 90 days of the original FTDTL result report.

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 a combat tour. The applicant was a recipient of the EIB and CIB badges as well as, inter alia, the Army Commendation Medal.

The applicant contends using a prescription medication which was issued more than six months after being prescribed said prescription. The Army Regulation was updated from a previous regulation which allowed the applicant to use the prescription for 12 months after initial prescription. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's 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 applicant contends suffering from PTSD. The applicant provided a third-party letter from their parent which reflects when the applicant was in Afghanistan the parent could tell the applicant was shutting down. The applicant stopped communicating with loved ones and was doing everything they could to cope. After the applicant and spouse split up the applicant went to live with their parents and within the first month, the applicant was up with a flashlight looking for intruders in the home in the middle of the night. The applicant gets mad over small things and the applicant's parents could see the rage in the applicant's eyes. The applicant provide a Adolescent and Family Health Center letter, 15 April 2015, reflecting the applicant was being treated since February 2015. The applicant had been seen four times for medication management and psychosocial support. The AMHRR contains Report of Mental Status Evaluation (MSE), 22 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; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with negative results. The mental status evaluation contains a diagnosis. A Report of Medical History, 10 December 2013, the examining medical physician noted in the comments section: Seen and recently released by behavioral health with significant improvement. All the medical documents in the AMHRR were considered by the separation authority.

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 determined that, based on the Board Medical Advisor's opine resulting from a review of the applicant's official and provided medical and service records, the applicant has the following potentially-mitigating diagnoses/experiences: Anxiety Disorder NOS, PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined that, based on the Board Medical Advisor opine, the applicant was diagnosed in service with Anxiety Disorder NOS and is diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD also existed in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board applied liberal consideration and determined that, based on the Board Medical

Advisor opine, the applicant's PTSD mitigates the applicant's wrongful Oxymorphone use given the nexus between PTSD and self-medicating with substances.

(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 PTSD outweighed the applicant's medically mitigated wrongful Oxymorphone use.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention and determined that the applicant's PTSD outweighed the applicant's medically mitigated wrongful Oxymorphone use. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service, including a combat tour. The applicant was a recipient of the EIB and CIB badges as well as, the Army Commendation Medal. The Board considered the totality of the applicant's service record during proceedings but ultimately did not address this contention due to an upgrade being granted because the applicant's PTSD outweighed the applicant's medically mitigated wrongful Oxymorphone use.

(3) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do 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.

(4) The applicant contends using a prescription medication which was issued more than six months after being prescribed said prescription. The Army Regulation was updated from a previous regulation which allowed the applicant to use the prescription for 12 months after initial prescription. The Board considered the totality of the applicant's service record during proceedings but ultimately did not address this contention due to an upgrade being granted because the applicant's PTSD outweighed the applicant's medically mitigated wrongful Oxymorphone use.

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 PTSD 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.

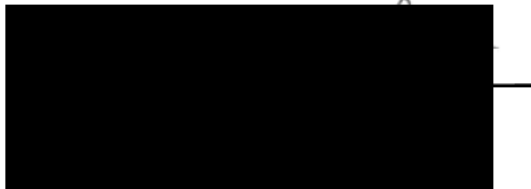
(3) The RE code will change to RE-3, based on the applicant's behavior conditions requiring review prior to re-entering military service.

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:

7/17/2024



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