

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 applicant was addicted to marijuana prior to the unit deploying and the applicant failed one drug test. The unit did not offer the applicant any help or counseling. The applicant was sent to do extra duty and shortly after was discharged. The applicant had night terrors and severe depression and wanted to seek help; however, the unit was not hearing the applicant and discharged the applicant for one mistake. The applicant has received help for the addiction from a VA clinic. It is hard for the applicant to obtain a job and take care of their children with this discharge. The applicant is sorry for the mistakes. There were other Soldiers in the unit which received help and stayed in the military which did worse things than the applicant; however, the applicant was punished worse.

b. **Board Type and Decision:** In a records review conducted on 16 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service, to include combat service, outweighing the applicant's illegal drug 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:** 23 April 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 6 January 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: Misconduct-abuse of illegal drugs. On 10 November 2009, the applicant tested positive for marijuana use.

(3) **Recommended Characterization:** The commander recommended the applicant be retained but if separated receive a General (Under Honorable Conditions)

(4) **Legal Consultation Date:** 24 March 2010

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

(6) **Separation Decision Date / Characterization:** 5 April 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 3 April 2008 / 4 years

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 84

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 25U10, Signal Support System Specialist / 2 years, 11 days

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

e. **Overseas Service / Combat Service:** SWA / Afghanistan (15 November 2009 – 16 November 2010) / The DD Form 214 reflects service in Iraq; however, the AMHRR reflects service in Afghanistan.

f. **Awards and Decorations:** NDSM, ACM-2CS, GWOTSM, ASR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 20 November 2009, reflects the applicant tested positive for THC 49 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 10 November 2009.

FG Article 15, 8 December 2009, for wrongfully using marijuana between on or about 11 October 2009 and on or about 10 November 2009. The punishment consisted of a reduction to E-1; forfeiture of \$699; extra duty for 45 days.

Report of Behavioral Health Evaluation (BHE), 17 December 2009, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. It was noted: The applicant has a good understanding of their behaviors which led to the administrative action against them and the legal consequences of those behaviors. The applicant does not have a mental health disorder which significantly impacted the behavior for which the applicant is being separated for. The applicant was young; thus immaturity and lack of awareness had played a significant part in the problematic behaviors while serving in the Army. The applicant exhibited genuine remorse for the problems the applicant had caused for the Army and the family. The applicant expressed a sincere interest in being able to redeem oneself and show the unit the applicant could be a good and trusted Soldier.

Developmental Counseling Form, undated, for positive urinalysis.

i. **Lost Time / Mode of Return:** 9 days (NIF, 14 April 2010 – 23 April 2010) / NIF

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293 and DD Form 214.

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 of 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 the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5c states that 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 suffering from night terrors and severe depression and wanted to seek help; however, the unit was not supportive and discharged the applicant. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR reflects a Report of Behavioral Health Evaluation (BHE), 17 December 2009, which reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. It was noted: The applicant had a good understanding of their behaviors which led to the administrative action against them and the legal consequences of those behaviors. The applicant did not have a mental health disorder which significantly impacted the behavior for which the applicant was being separated for. The applicant was young, thus immaturity and lack of awareness had played a significant part in the problematic behaviors while serving in the Army. The applicant exhibited genuine remorse for the problems the applicant had caused for the Army and the family. The applicant expressed a sincere interest in being able to redeem oneself and show the unit the applicant could be a good and trusted Soldier. The BHE was considered by the separation authority.

The applicant contends other Soldiers with similar offenses were allowed to stay in the Army. The DODI 1332.28 provides each case must be decided on its individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

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.

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: The applicant self-asserts Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that, for purposes of liberal consideration, the applicant's asserted depression occurred during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's asserted depression does not mitigate the applicant's wrongful drug use as there is insufficient evidence in the applicant's official record or provided by the applicant, other than the applicant's statement, that applicant was diagnosed or suffered symptoms associated with depression. Without additional medical evidence, the Board Medical Advisor determined the applicant's asserted depression does not excuse or mitigate the applicant's discharge.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration, including the Board Medical Advisor opine, the Board determined that the applicant's self-asserted Cannabis Addiction did not outweigh the applicant's medically unmitigated offense – wrongful use of marijuana.

b. Response to Contention(s):

(1) The applicant contends suffering from night terrors and severe depression and wanted to seek help; however, the unit was not supportive and discharged the applicant. The Board liberally considered this contention but found insufficient evidence of the applicant's asserted Depression to determine if the applicant's condition medically mitigates the applicant's wrongful substance abuse. However, the Board did vote to upgrade the applicant's discharge based on the applicant's length of service, to include combat service in Iraq and Afghanistan, outweighing the applicant's illegal substance abuse offense.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. 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 length of service, to include combat service in Iraq and Afghanistan, outweighing the applicant's illegal drug abuse offense.

(3) The applicant contends other Soldiers with similar offenses were allowed to stay in the Army. 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 length of service, to include combat service in Iraq and Afghanistan, outweighing the applicant's illegal drug abuse offense.

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

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c. The Board determined the discharge is inequitable based on the applicant's length of service, including combat service in Iraq and Afghanistan, outweighing the applicant's illegal drug 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 length of service, including combat service in Iraq and Afghanistan, outweighed the applicant's misconduct of illegal substance abuse. Thus, the prior characterization is no longer appropriate.

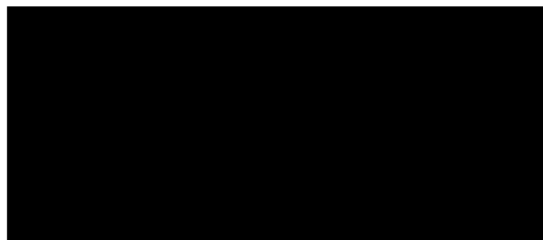
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The Board voted to change the applicant's RE code to RE-3.

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:



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