

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 wounded in Afghanistan twice and decided to redeploy both times, against doctor's recommendations. The applicant received the Purple Heart in May of 2011 and finished out the combat tour in 2012. The applicant was recognized for other actions during the deployment as well. Once the applicant returned to the United States, they had to undergo multiple additional surgeries to attempt to treat the wounds received in combat. Due to the surgeries, the applicant was prescribed Oxycodone multiple times. Shortly after one of the closest friends committed suicide, which led the applicant to a dark place, the applicant became addicted to the pills. The applicant made the mistake of smoking marijuana as a replacement for the pills because the applicant did not like who they were. This resulted in disciplinary action and the subsequent characterization of service. The applicant would like to receive help and further treatment for their injuries and emotional problems. Being able to go to school and gain employment would make a great impact on the applicant's ability to become a contributing part of society, and their own morale. The applicant is struggling to find employment and schooling. The applicant believes their accomplishment and sacrifices fully support restoration of earned veteran's benefits.

b. **Board Type and Decision:** In a records review conducted on 18 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, and quality, and PTSD outweighing the applicant's wrongful marijuana use, wrongfully forcing Soldiers to engage in harmful physical exercises, consuming excessive amounts of alcohol, and making a false official statement basis for separation. 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:** 19 September 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

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

Between on or about 2 June 2014 and on or about 2 July 2014, the applicant wrongfully used marijuana, a schedule I controlled substance.

Between on or about 6 December 2013 and on or about 6 January 2014, the applicant wrongfully used marijuana, a schedule I controlled substance.

On or about 29 June 2013, the applicant violated a lawful general regulation, to wit: paragraph 4-20, Army Regulation 600-20, 18 March 2008 (Rapid Action Revision 20 September 2012), by wrongfully forcing PFC A. S. to engage in cruel, abusive, oppressive, and harmful physical exercises.

On or about 29 June 2013, the applicant violated a lawful general regulation, to wit: paragraph 4-20, Army Regulation 600-20, 18 March 2008 (Rapid Action Revision 20 September 2012), by wrongfully forcing PFC J. W. to consume an excessive amount of alcohol, to wit: eight beers in 40 minutes.

On or about 2 July 2013, the applicant made an official statement with intent to deceive 1LT D. A. M., to wit: "I had no part in the smoking of PFC S.," or words to that effect, which statement was totally false.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: 10 September 2014 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 July 2010 / 6 years, 16 weeks

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 101

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 4 years, 9 months, 19 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Hawaii, SWA / Afghanistan (31 March 2011 – 1 April 2012)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: The applicant's DD Form 214, reflects the applicant had not completed the first full term of service. The applicant was discharged

under the authority of AR 635-200, paragraph 14-12c(2), with a narrative reason of Misconduct (Drug Abuse). The DD Form 214 was not authenticated with the applicant's electronic signature.

The applicant's Enlisted Record Brief (ERB), 22 September 2014, reflects the applicant was flagged for Involuntary Separation or Discharge (Field Initiated) (BA), effective 7 August 2014, was ineligible for reenlistment pending separation (9V). The applicant was reduced from E-4 to E-1 effective 11 June 2014.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Report of Medical History, 21 October 2010, the examining medical physician noted in the comments section: History of ADHD.

Physical Discharge Summary, 21 May 2011, reflects admission and discharge diagnoses: IED Blast Injuries and Moderate Traumatic Brain Injury.

Medical Record, 12 March 2014, reflects the following problems: Cannabis abuse – in remission, Opioid dependence, Antisocial Personality Disorder, Adjustment Disorder with disturbance of emotions and conduct, psychiatric diagnosis or condition deferred on Axis I, Anxiety Disorder, Post-Traumatic Stress Disorder, anxiety, sleep disturbances, history of concussion, insomnia, concussions with no loss of consciousness, and memory lapses or loss.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Two DD Forms 293; self-authored statement; two DD Forms 214; DA Form 638; two photos; Physician Discharge Summary; DD Form 2807-1; Medical Record; ARBA Letter; four third-party letters.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has applied to become a police officer in the state of Massachusetts and is now a top pick for Maiden, Massachusetts and is going through the beginning process to become an officer.

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) includes partial facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions).

The applicant contends good service, including a combat tour and receiving the Purple Heart. The third-party statements provided with the application reflect the applicant's good service while being deployed. One statement was from the battalion commander which stated the applicant served faithfully and courageously in a very tough fight in one of the most complex and kinetic areas of operation in Afghanistan. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends becoming addicted to the prescribed Oxycodone after one of the closest friends committed suicide and made the mistake of smoking marijuana as a replacement for the pills. The applicant provided Report of Medical History, 21 October 2010, the examining medical physician noted in the comments section: History of ADHD. Physical Discharge Summary, 21 May 2011, which reflects admission and discharge diagnoses: IED Blast Injuries and Moderate Traumatic Brain Injury. Medical Record, 12 March 2014, reflects the following problems: Cannabis abuse – in remission, Opioid dependence, Antisocial Personality Disorder, Adjustment Disorder with disturbance of emotions and conduct, psychiatric diagnosis or condition deferred on Axis I, anxiety disorder, Post-Traumatic Stress Disorder, anxiety, sleep disturbances, history of concussion, insomnia, concussions with no loss of consciousness, and memory lapses or loss. The AMHRR does not contain a Mental Status Evaluation. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

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 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 an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The third-party statements provided with the application reflect the applicant's good service while being deployed. One statement was from the battalion commander which stated the applicant served faithfully and courageously in a very tough fight in one of the most complex and kinetic areas of operation in Afghanistan.

The applicant has applied to become a police officer in the state of Massachusetts and is now a top pick for Maiden, Massachusetts and is going through the beginning process to become an officer. 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, Anxiety, TBI, 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, TBI, and PTSD. The VA has also service connected the applicant for the TBI and PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple BH conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder, Anxiety, TBI, and PTSD. The VA has also service connected the applicant for the TBI and PTSD. Given the nexus between TBI, PTSD, and self-medicating with substances, the applicant's wrongful uses of marijuana are mitigated. However, there is no natural sequela between TBI, PTSD, Anxiety, or an Adjustment Disorder and wrongfully forcing soldiers to engage in harmful physical exercises or consume excessive amounts of alcohol, or making a false official statement since none of these BH conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety, TBI, and PTSD outweighed the basis for applicant's separation – wrongfully forcing Soldiers to engage in harmful physical exercises, consuming excessive amounts of alcohol, and making a false official statement.

b. Response to Contention(s):

(1) The applicant contends good service, including a combat tour and receiving the Purple Heart. 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 and quality of service, to include combat service, and PTSD outweighing the applicant's wrongful marijuana use, wrongfully forcing Soldiers to engage in harmful physical exercises, consuming excessive amounts of alcohol, and making a false official statement basis for separation.

(2) The applicant contends becoming addicted to the prescribed Oxycodone after one of the closest friends committed suicide and made the mistake of smoking marijuana as a replacement for the pills. 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 and quality of service, to include combat service, and PTSD outweighing the applicant's wrongful marijuana use, wrongfully forcing Soldiers to engage in harmful physical exercises, consuming excessive amounts of alcohol, and making a false official statement basis for separation.

(3) The applicant contends an upgrade of the discharge would allow educational benefits through the GI Bill and 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 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.

(5) The applicant has applied to become a police officer in the state of Massachusetts and is now a top pick for Maiden, Massachusetts and is going through the beginning process to become an officer. 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 and quality of service, to include combat service, and PTSD outweighing the applicant's wrongful marijuana use, wrongfully forcing Soldiers to engage in harmful physical exercises, consuming excessive amounts of alcohol, and making a false official statement basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and PTSD outweighing the applicant's wrongful marijuana use, wrongfully forcing Soldiers to engage in harmful physical exercises, consuming excessive amounts of alcohol, and making a false official statement basis for separation. 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. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length and quality of service, to include combat service, and PTSD outweighed the applicant's misconduct of wrongful marijuana use, wrongfully forcing Soldiers to engage in harmful physical exercises, consuming excessive amounts of alcohol, and making a false official statement. 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 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, paragraph 14-12a

Authenticating Official:

4/30/2024

