

**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, suffering from untreated PTSD which caused the applicant to self-medicate after returning to Italy from a heavy combat year in the first deployment to Afghanistan in March 2005 to March 2006. The applicant still maintained their self professionally while at work, most of the time; however, when off duty the applicant would drink every night to stop the mental anguish. The applicant made E-5 in three years and was scoring 330 on the PT test. The applicant had received many achievements while in the Army and had a spotless military record until the applicant failed a UA for cocaine right before a second deployment. The applicant does not recall using cocaine and was just over the legal limit of how much can be in one's system and there was barely any in the applicant's system. The applicant was still deployed to Afghanistan and was asked to be retained by all the immediate chain of command; however, the Brigade Commander had other plans and wanted to make an example out of the applicant. The applicant was not given the chance to redeem oneself and the Army lost a great asset when they decided to kick the applicant out days before the four-year active-duty contract was up. One mistake should not make the service dishonorable. The VA believes the same way and the applicant is rated at 70 percent for PTSD.

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 PTSD mitigating applicant's wrongful cocaine use 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:** 24 August 2007

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 18 July 2007

**(2) Basis for Separation:** Under the provisions of AR 635-200, Chapter 14, Paragraph 14-12c Commission of a Serious Offense, the applicant was informed of the following reason: The applicant wrongfully used cocaine between on or about 22 and about 25 April 2007.

**(3) Recommended Characterization:** Under Other Than Honorable Conditions

**(4) Legal Consultation Date:** 21 July 2007

**(5) Administrative Separation Board:** On 21 July 2007 the applicant unconditionally waived consideration of the case before an administrative separation board.

**(6) Separation Decision Date / Characterization:** 30 July 2007 / Under Other Than Honorable Conditions / The Separation Authority approved the separation under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense.

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 2 September 2003 / 4 years

**b. Age at Enlistment / Education / GT Score:** 22 / High School Graduate / 104

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 13B20, Cannon Crewmember / 3 years, 11 months, 23 days

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

**e. Overseas Service / Combat Service:** Germany, Italy, SWA / Afghanistan (3 March 2005 – 3 March 2006; 10 May 2007 – 14 August 2007)

**f. Awards and Decorations:** ARCOM, AAM, AGCM, NDSM, ACM, GWOTSM, NCOPDR, ASR, OSR-2, NATOMDL, CAB

**g. Performance Ratings:** None

**h. Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 15 May 2007, reflects the applicant tested positive for COC, during an Inspection Random (IR) urinalysis testing, conducted on 25 April 2007.

Pretrial Agreement (Offer to Plead Guilty), 30 June 2007, reflects after consulting with the defense counsel, the applicant offered to plead guilty to the Charge and its Specification.

Charge Sheet, 6 July 2007, reflects the applicant was charged with: The Charge: Violation of Article 112a, UCMJ. The Specification: Between on or about 22 and 25 April 2007, the applicant wrongfully used cocaine.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 11 July 2007. The applicant was charged with: The Charge: Violation of Article 128, UCMJ. The Specification: Between on or about 22 April 2007 and 25 April 2007, wrongfully use cocaine. On 11 July 2007, guilty consistent with the plea. Sentence: Reduction to E-4; Forfeiture \$1,448; and restriction to the limits of place of duty, dining and medical facilities, chapel, gym, and MWR phone center for 60 days.

Report of Mental Status Evaluation, 17 July 2007, 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.

Three Developmental Counseling Forms, for UCMJ Recommendation for Illegal Drug Use; Recommend Soldier to be flagged; Recommend Retention; and Separation from Service.

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

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

**(1) Applicant provided:** VA Rating Decision letter, 19 March 2015, reflects the applicant was granted 70 percent service-connected disability for Anxiety Disorder, NOS (also diagnosed as other specified trauma and stressor related disorder) now with secondary alcohol use disorder, moderate (previously claimed as battle stress syndrome.)

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 214; Four Department of Veterans Affairs letters.

**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.

**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 suffering from untreated PTSD which caused them to self-medicate; and the VA has rated the applicant 70 percent for PTSD. The applicant provided VA Rating Decision letter, 19 March 2015, which reflects the applicant was granted 70 percent service-connected disability for Anxiety Disorder, NOS (also diagnosed as other specified trauma and stressor related disorder) now with secondary alcohol use disorder, moderate (previously claimed as battle stress syndrome). The record shows the applicant underwent a mental status evaluation (MSE) on 17 July 2007, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

The applicant contends good service, including two combat tours; making E-5 in three years; and scoring 330 on the PT test.

The applicant contends after failing a UA for cocaine, still deploying to Afghanistan, and was asked to be retained by all the immediate chain of command; however, the Brigade Commander wanted to make an example out of the applicant. The applicant was kicked out four days before the four-year active-duty contract was up. 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 the event which led to the discharge from the Army was an isolated incident. The applicant was not given the chance to redeem oneself. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

#### **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: PTSD, Anxiety Disorder NOS, Other Specified Trauma and Stressor Related Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed, and service connected by the VA for combat-related PTSD, which is a progression of previously service-connected Anxiety Disorder NOS/Other Specified Trauma and Stressor Related Disorder. Service connection establishes that the applicant's conditions 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 the applicant is diagnosed, and service connected by the VA for combat-related PTSD, which is a progression of previously service-connected Anxiety Disorder NOS/Other Specified Trauma and Stressor Related Disorder. Given the nexus between PTSD and self-medicating with substances, the cocaine use that led to the applicant's separation 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 PTSD outweighed the wrongful cocaine use basis for separation.

b. Response to Contention(s):

(1) The applicant contends suffering from untreated PTSD which caused them to self-medicate; and the VA has rated the applicant 70 percent for PTSD. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's wrongful cocaine use basis for separation.

(2) The applicant contends good service, including two combat tours; making E-5 in three years; and scoring 330 on the PT test. 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 fully outweighing the applicant's wrongful cocaine use basis for separation.

(3) The applicant contends after failing a UA for cocaine, still deploying to Afghanistan, and was asked to be retained by all the immediate chain of command; however, the Brigade Commander wanted to make an example out of the applicant. The applicant was kicked out four days before the four-year active-duty contract was up. 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 fully outweighing the applicant's wrongful cocaine use basis for separation.

(4) The applicant contends the event which led to the discharge from the Army was an isolated incident. The applicant was not given the chance to redeem oneself. 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 fully outweighing the applicant's wrongful cocaine use basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD mitigating applicant's wrongful cocaine use 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. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 PTSD mitigated the applicant's misconduct of wrongful cocaine use. 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.

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

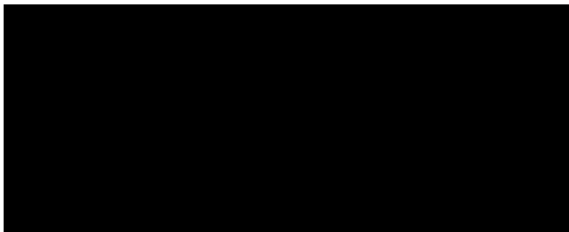
**AR20210001359**

**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:**

4/29/2024



AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs