

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 admitted to a psychiatric hospital for an alcohol related self-incident injury and was diagnosed with major depressive disorder, recurrent, severe. After being discharged from the psychiatric hospital, the applicant followed up with the Army Substance Abuse Program (ASAP). The applicant tried to self-enroll in the program; however, the 1SG told the counselor they did not have time for a Rehabilitation Team Meeting (RTM) until after returning from the field in one month. Several times after the 1SG returned from the field, the applicant inquired of the status of the RTM with the counselor and the 1SG told the applicant they would work on it. The applicant was never given the opportunity to receive help with their problems and subsequently failed a UA. Finally on 23 April 2013, the applicant was command referred to ASAP. The applicant believes if the command had addressed this issue seven months earlier when they requested help, the Army career would have had a different outcome.

b. **Board Type and Decision:** In a records review conducted on 1 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder, Major Depression, and Traumatic Brain Injury outweighing the applicant's illegal substance abuse offenses. 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:** 9 August 2013

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file.

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

(2) **Basis for Separation:** NIF

- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NIF
- (6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 5 January 2010 / 6 years, 19 weeks
- b. **Age at Enlistment / Education / GT Score:** 23 / High School Transcript / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 3 years, 7 months, 5 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Germany, SWA / Afghanistan (25 July 2010 – 19 May 2011)
- f. **Awards and Decorations:** ACM-CS, AAM, AGCM, NDSM, GWOTSM, ASR, OSR-2, NATOMDL, CIB
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 28 March 2013, reflects the applicant tested positive for COC and THC, during an Inspection Random (IR) urinalysis testing, conducted on 18 March 2013.

Orders 218-0012, 6 August 2013, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 9 August 2013 from the Regular Army.

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 authenticated with the applicant's electronic signature.

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

j. Behavioral Health Condition(s):

(1) **Applicant provided:** Mental Health Discharge Instructions, 28 September 2012, reflects the applicant was diagnosed with: Axis I: Alcohol Abuse; Axis III: R wrist lacerations; Axis IV: Martial (pending divorce), social (no friends due to recent PCS).

Health Record, 10 October 2012, reflects the applicant met with the ASAP therapist to complete intake and assessment. A full evaluation was conducted, and the applicant was informed of provisional diagnosis, RTM, process, and recommendations.

Memorandum for US Department of Veterans Affairs, 24 January 2013, reflects the Physical Evaluation Board (PEB) found the applicant physically unfit to continue military service for the following PEB referred unfitting condition: Major Depressive Disorder.

Report of Mental Status Evaluation, 23 April 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; the applicant was not cleared for chapter separation at the time of the evaluation. The applicant was diagnosed with: Axis I: Major Depression Recurrent, Severe.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; PEB Letter; Mental Health Discharge Instructions; Health Record; DA Form 3822; Electronic Copy of DD Form 2624; 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 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) is void of the specific 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 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 being hospitalized for an alcohol related self-incident injury and being diagnosed with major depressive disorder. The applicant provided Mental Health Discharge Instructions, 28 September 2012, which reflects the applicant was diagnosed with: Axis I: Alcohol Abuse; Axis III: R wrist lacerations; Axis IV: Martial (pending divorce), social (no friends due to recent PCS). Memorandum for US Department of Veterans Affairs, 24 January 2013, reflects the Physical Evaluation Board (PEB) found the applicant physically unfit to continue military service for the following PEB referred unfitting condition: Major Depressive Disorder. Report of Mental Status Evaluation, 23 April 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; the applicant was not cleared for chapter separation at the time of the evaluation. The applicant was diagnosed with: Axis I: Major Depression Recurrent, Severe.

The applicant contends realizing they needed help and wanted to self-enroll in ASAP; however, the 1SG told the counselor they did not have time for an RTM until after returning from the field in 30 days. After returning from the field the applicant asked the 1SG several times on the status of the RTM and was told the 1SG was working on it. After failing a UA, the applicant was command referred to ASAP. The applicant believes if the command had addressed this issue

seven months earlier when the applicant requested help the Army career would have had a different outcome. The applicant provided a copy of Health Record, 10 October 2012, which reflects the applicant and therapist met to complete intake and assessment. A full ASAP evaluation was conducted and informed the applicant of a provisional diagnosis, RTM process, and recommendations. The 1SG was contacted to schedule RTM. The 1SG stated they would not have time for the RTM until after they returned from the field on 16 November 2012. The 1SG stated they would contact the therapist upon return in order to schedule an RTM date. The applicant was informed of this and was instructed to make contact with the command in order to find out the status of the appointment. The applicant was advised only the Commander or 1SG can cancel or reschedule appointments. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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, Major Depression, TBI, Panic Disorder, Anxiety, 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, Major Depression, TBI, Panic Disorder and Anxiety. The applicant is also service connected by the VA for PTSD and Depression. Service connection establishes that the applicant's PTSD also 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's BH conditions provide mitigation for the drug use that led to the applicant's separation. Given the nexus between PTSD, Major Depression, TBI, and self-medicating with substances, the applicant's BH conditions likely contributed to the drug use that led to the separation.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder, Major Depression, and Traumatic Brain Injury outweighed the applicant's illegal substance abuse offenses.

b. Response to Contention(s):

(1) The applicant contends being hospitalized for an alcohol related self-incident injury and being diagnosed with major depressive disorder. The Board liberally considered this contention determined that the applicant's Post Traumatic Stress Disorder, Major Depression, and Traumatic Brain Injury outweighed the applicant's illegal substance abuse offenses.

(2) The applicant contends realizing the applicant needed help and wanted to self-enroll in ASAP; however, the 1SG told the counselor the applicant did not have time for an RTM until after returning from the field in 30 days. After returning from the field the applicant asked the 1SG several times on the status of the RTM and was told the 1SG was working on it. After failing a UA, the applicant was command referred to ASAP. The applicant believes if the command had addressed this issue seven months earlier when the applicant requested help the

Army career would have had a different outcome. 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 Post Traumatic Stress Disorder, Major Depression, and Traumatic Brain Injury outweighed the applicant's illegal substance abuse offenses.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder, Major Depression, and Traumatic Brain Injury outweighing the applicant's illegal substance abuse offenses. The Board voted 5-0 and concurred the basis of separation was wrongful use of COC and THC. The Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder, Major Depression, and Traumatic Brain Injury outweighed the applicant's illegal substance abuse offenses. 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.

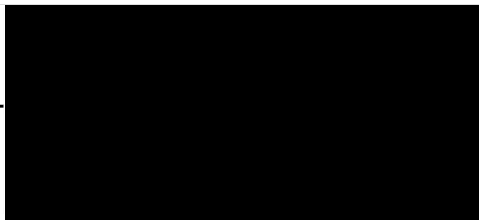
(3) The RE code will change to RE-3 due to continuing service connected BH issues requiring review prior to any reentry into military service.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** RE-3
- e. **Change Authority to:** AR 635-200

Authenticating Official:

4/2/2024



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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001360

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury

UNC – Uncharacterized
Discharge

UOTHC – Under Other Than
Honorable Conditions

VA – Department of Veterans
Affairs