

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, using bad judgment resulting in a discharge of general (under honorable conditions) as opposed to an honorable discharge. At the time of the error in judgement, the applicant had just found out their children were being abused by the spouse. The applicant practically lived as a single parent, as they became totally responsible for raising not only the applicant's two children, but also the spouse's two children. It was a stressful period in the applicant's life, which affected everything the applicant worked so hard for. The applicant served four years and during the time this was the only error in judgement. The applicant completed the Army Substance Abuse Program (ASAP) course and has done many things since then to better oneself. Except for the one and only incident, which led to the discharge, their military career was honorable. Due to the discharge, the applicant has also lost their medical retirement.

b. **Board Type and Decision:** In a records review conducted on 15 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Depression outweighing the applicant's offenses of illegal substance abuse. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 7 June 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 13 February 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: Action was dually processed for the separation through the medical disability process in accordance with AR 635-200, paragraph 1-33, and under the provisions of AR 635-200, Chapter 14-12c(2), Commission of a Serious Offense – Abuse of Illegal Drugs. The applicant wrongfully used marijuana.

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

(4) **Legal Consultation Date:** 30 April 2013

(5) **Administrative Separation Board:** On 27 February 2013, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable.

On 9 April 2013, the applicant's conditional waiver was denied.

On 30 April 2013, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions).

(6) **Separation Decision Date / Characterization:** 17 May 2013 / General (Under Honorable Conditions) / The Separation Authority after reviewing the separation packet, the documents pertaining to the medical evaluation board, physical evaluation board, and any submission from the Soldier, directed the case be processed under chapter 14 provisions because the Soldier's medical condition was not a direct or substantial contributing cause of the misconduct and there were no other circumstances which warranted continued PEB processing.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 18 November 2010 / 6 years

b. **Age at Enlistment / Education / GT Score:** 35 / High School Graduate / 101

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 88M10, Motor Transport Operator / 12 years, 4 months, 29 days

d. **Prior Service / Characterizations:** USAF, April 1009 – December 1996 / HD
(Dates are illegible)
(Break in Service)

RA, 7 January 2009 – 17 November 2010 / HD

e. **Overseas Service / Combat Service:** SWA / Afghanistan (6 December 2009 – 5 December 2010)

f. **Awards and Decorations:** ARCOM, NATOMDL, MUC, AFOUA-V, AGCM, NDSM-BS, NDSM, ACM-2CS, ASR, OSR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Memorandum for Record, 9 October 2012, reflects the Commander ordered a probable cause urinalysis on the applicant because the commander received phone calls from both the CMTC (1 October) and the New Options Program (9 October) requesting the Commander to do so as they suspect Methamphetamines and or Marijuana. They also wanted to test the applicant's prescribed medication use. The Commander ordered the applicant to submit a urinalysis and breathalyzer.

Electronic Copy of DD Form 2624, 24 October 2012, reflects the applicant tested positive for THC 86 (marijuana), during a Probable Cause (PO) urinalysis testing, conducted on

9 October 2012.

FG Article 15, 5 November 2012, for wrongfully using marijuana (between on or about 19 September 2012 and on or about 9 October 2012). The punishment consisted of a reduction to E-3; forfeiture of \$990 pay per month for two months (suspended); and restriction for 60 days.

Numerous Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Disability Evaluation System Proposed Rating, 23 October 2012, reflects the applicant was rated 50 percent service-connected disability for PTSD with Major Depressive Disorder.

(2) AMHRR Listed: Medical Evaluation Board Proceedings, 26 June 2012, reflect the following diagnosis: PTSD.

Report of Mental Status Evaluation, 13 November 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with positive results for PTSD. The applicant was diagnosed with: Axis I: PTSD, ADHD Predominantly Inattentive Type, per medical record.

Report of Medical Examination, 6 December 2012, the examining medical physician noted in the comments section: Long standing adjustment disorder with anxiety, depression, polypharmacy sleep apnea.

Informal Physical Evaluation Board (PEB) Proceedings, 7 January 2013, reflects the Board finds the applicant was physical unfit and recommended a rating of 80 percent and the applicant's disposition be placed on TDRL and with a reexamination during October 2013. The applicant was rated 50 percent for PTSD. It was determined the disability did result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD form 214; DA Form 3349; 11 certificates; Disability Evaluation System Proposed Rating.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has done many things since being discharged to better oneself.

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 good service, including a combat tour.

The applicant contends family issues affected behavior and ultimately caused the discharge. 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 the event which led to the discharge from the Army was an isolated incident. 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.

The applicant contends using bad judgment which resulted in being discharged with a general (under honorable conditions). The applicant used marijuana to cope with family issues. The applicant provided Disability Evaluation System Proposed Rating, 23 October 2012, which reflects the applicant was rated 50 percent service-connected disability for PTSD with Major Depressive Disorder. The AMHRR reflects Medical Evaluation Board Proceedings, 26 June 2012, reflect the following diagnosis: PTSD. Report of Mental Status Evaluation, 13 November 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with positive results for PTSD. The applicant was diagnosed with: Axis I: PTSD, ADHD Predominantly Inattentive Type, per medical record. Report of Medical Examination, 6 December 2012, the examining medical physician noted in the comments section: Long standing adjustment disorder with anxiety, depression, polypharmacy sleep apnea. Informal Physical Evaluation Board (PEB) Proceedings, 7 January 2013, reflects the Board found the applicant was physical unfit and recommended a rating of 80 percent and the applicant's disposition be placed on TDRL and with a reexamination during October 2013. The applicant was rated 50 percent for PTSD. It was determined the disability did result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.

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 has done many things since being discharged to better oneself. 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 Disorder NOS, Panic Disorder, Depression, Post Traumatic Stress Disorder.

(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 Disorder NOS, Panic Disorder, Depression, and PTSD. The PTSD has also been service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between PTSD, Depression, and self-medicating with substances, the marijuana 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 Post Traumatic Stress Disorder and Depression outweighed the applicant's offenses of illegal substance abuse.

b. Response to Contention(s):

(1) The applicant contends using bad judgment which resulted in being discharged with a general (under honorable conditions). The applicant used marijuana to cope with family issues. The Board liberally considered this contention and the applicant's behavioral health circumstances. The Board determined that the applicant's Post Traumatic Stress Disorder and Depression outweighed the applicant's offenses of illegal substance abuse. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service, including a combat tour. 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 and Depression outweighing the applicant's offenses of illegal substance abuse.

(3) The applicant contends family issues affected behavior and ultimately caused the discharge. 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 and Depression outweighing the applicant's offenses of illegal substance abuse.

(4) 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 Post Traumatic Stress Disorder and Depression outweighing the applicant's offenses of illegal substance abuse.

(5) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(6) The applicant has done many things since being discharged to better 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 Post Traumatic Stress Disorder and Depression outweighing the applicant's offenses of illegal substance abuse.

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

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder and Depression outweighed the applicant's offenses 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.

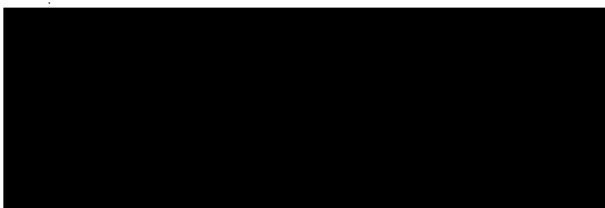
(3) The RE code will change to RE-3 due to the applicant's behavioral health conditions needing to be reviewed prior to any reentry into military service.

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:

4/5/2024



Legend:

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

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

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

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