

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was for using marijuana before the deployment to Afghanistan while the applicant was on leave. While deployed, the applicant served without any disciplinary action. A few months after returning from the deployment, the applicant was discharged. Because the applicant honorably served during two deployments (one in Iraq and one in Afghanistan) the applicant believes an upgrade is appropriate. The applicant had no other disciplinary issues in their record. As a combat veteran suffering from severe post-traumatic stress disorder (PTSD), the applicant would appreciate any consideration for an upgrade.

b. **Board Type and Decision:** In a records review conducted on 7 December 2023, the Board carefully considered the applicant's request, supporting documents, evidentiary record, medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. By a 5-0 vote, the Board determined the discharge narrative reason and SPD are inequitable based on the applicant's PTSD mitigating the misconduct that led to the separation (drug use). The applicant already has an Honorable discharge characterization, but the Board voted to change the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding SPD of JKN. The current RE-Code of 3 remains proper and equitable.

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 (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / Honorable

b. **Date of Discharge:** 13 December 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 9 November 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully used a controlled substance (marijuana).

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

(4) **Legal Consultation Date:** 9 November 2011

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

(6) **Separation Decision Date / Characterization:** 30 November 2011 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 7 August 2007 / 5 years, 18 weeks

b. **Age at Enlistment / Education / GT Score:** 25 / 1 Year College / 105

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 13F10, Fire Support Specialist /
4 years, 4 months, 7 days

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

e. **Overseas Service / Combat Service:** SWA / Afghanistan (9 August 2010 – 15 June
2011); Iraq (9 March 2008 – 9 March 2009)

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

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 9 July
2010, reflects the applicant tested positive for THC 42 (marijuana) during an Inspection Unit (IU)
urinalysis testing conducted on 16 June 2010.

Field Grade Article 15, 10 October 2010, for wrongfully using marijuana (between 18 May and
16 June 2010). The punishment consisted of a reduction to E-3 (suspended); forfeiture of \$962
pay per month for two months (suspended); and extra duty for 45 days.

Report of Mental Status Evaluation, 15 September 2011, reflects the applicant was cleared for
any administrative actions deemed appropriate by the command. The applicant met medical
retention requirements. The applicant had been screened for post-traumatic stress disorder
(PTSD) and mild traumatic brain injury (mTBI) with negative results. The conditions were either
not present or did not meet AR 40-501 criteria for a medical evaluation board. The command
was advised to consider the influence of these conditions.

Twenty Developmental Counseling Forms, for testing positive for marijuana, being
recommended for AR 635-200, Chapter 14-12c, and numerous positive performance and
professional growth counseling.

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

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

(1) **Applicant provided:** Department of Veterans Affairs (VA) Rating Decision,
10 December 2014, reflecting the VA rated the applicant 70 percent service-connected disabled
for PTSD, with alcohol dependence.

(2) AMHRR Listed: Report of Medical History, 7 September 2011, the examining medical physician noted in the comments section: The applicant had anxiety in the past but reported the problem was resolved and sleeping issues had improved.

Report of Medical Examination, 15 September 2011, the examining medical physician noted in the summary of defects and diagnoses section: Alcohol Abuse; Adjustment Disorder.

5. APPLICANT-PROVIDED EVIDENCE: DD Forms 214 (copies Member 1 and 4); DD Form 293; VA letter; VA Rating Decision; Army Review Boards Agency, Case Management Division letter; and self-authored letter.

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) 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.

(4) 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.

(5) Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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 current characterization of service for the period under review is honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends suffering from PTSD. The applicant provided medical documents reflecting the VA rated the applicant 70 percent service-connected disabled for PTSD, with alcohol dependence. The applicant's AMHRR shows on 15 September 2011, the applicant underwent a medical examination, which indicates, the examining medical physician noted a diagnosis of alcohol abuse and an adjustment disorder. The applicant underwent a mental status evaluation (MSE), which indicates the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had been screened for PTSD and mTBI with negative results. The MSE does not indicate any diagnosis. The medical examination and MSE were considered by the separation authority.

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 good service, including a two combat tours. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD, Adjustment Disorder, Obsessive Compulsive Disorder, and Social Phobia.

(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, Obsessive Compulsive Disorder, and Social Phobia. The applicant is diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder, Obsessive Compulsive Disorder, and Social Phobia. The applicant is diagnosed and service connected by the VA for PTSD. Given the nexus between PTSD 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's opine, the Board determined that the applicant's PTSD outweighed the basis of separation (wrongful use of marijuana).

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board determined that this contention was valid and voted to upgrade the characterization of service due to the PTSD mitigating the applicant's wrongful use of marijuana basis of separation.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's wrongful use of marijuana basis for separation.

(3) The applicant contends good service, including two combat tours. 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 use of marijuana basis for separation.

The Board determined the discharge narrative reason and SPD are inequitable based on the applicant's PTSD mitigating the misconduct that led to the separation (drug use). The applicant already has an Honorable discharge characterization, but the Board voted to change the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding SPD of JKN. The current RE-Code of 3 remains proper and equitable based on the diagnosed behavioral health conditions and the new narrative reason/SPD.

c. 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 wrongful use of marijuana. Thus, the prior characterization is no longer appropriate.

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001365

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

12/15/2023



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