

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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge does not accurately reflect the applicant's time in service. The applicant was a great Soldier who is paying for the few mistakes they encountered. The applicant believes if given the chance and the proper medical treatment, they could have corrected the behavior. Since leaving the service, the applicant has been diagnosed with post-traumatic stress disorder (PTSD) and bipolar disorder because of incidents which occurred while deployed. The applicant plays football for a minor professional football league, where the applicant volunteers time at elementary schools, churches, food kitchens, and anti-drug rallies. These activities have greatly impacted the applicant's life and if the applicant helps even one person better themselves, the applicant has succeeded. The applicant does not want others to go through what the applicant did and believes success is possible with the right tools.

b. **Board Type and Decision:** In a records review conducted on 4 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on medical mitigation of the applicant's illegal substance abuse, disrespect of an NCO, and failure to obey a lawful order offenses. The Board found that the applicant's service record and post-service accomplishments outweighed the applicant's medically unmitigated assault offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General and changed to 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 separation code of JKN and reentry code of 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, Paragraph 14-12c (2) / JKK / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 9 January 2007

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 3 October 2006

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was convicted by summary court-martial for:

The applicant disobeyed a lawful order from a noncommissioned officer (NCO);

The applicant disrespected a senior NCO;

The applicant violated a general order by wrongfully possessing marijuana while receiving special pay under 37 U.S.C. section 310; and

The applicant committed an assault.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: On 3 October 2006, the applicant waived legal counsel.

(5) Administrative Separation Board: On 3 October 2006, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 16 October 2006 / Under Other Than Honorable Conditions / On 16 October 2006, the separation authority approved the applicant's separation under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 May 2006 / 5 years

b. Age at Enlistment / Education / GT Score: 20 / NIF / 117

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 2 years, 9 months, 15 days

d. Prior Service / Characterizations: RA, 25 March 2004 – 15 May 2006 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (3 February 2006 – 19 November 2006)

f. Awards and Decorations: NDSM, ACM, GWOTSM, ASR, OSR / The applicant's AMHRR reflects award of the CIB; however, the award is not reflected on the applicant's DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Memorandum, subject: Command Directed Health and Welfare Inspection for [Applicant], 10 June 2006, reflects the applicant's immediate commander ordered a health and welfare inspection of the applicant's living area because First Lieutenant R., observed a bag of marijuana in the applicant's assault pack during combat operations.

Military Police Report, 4 July 2006, reflects the applicant was apprehended for: assault consummated by battery and disobeying a noncommissioned officer (NCO) or Police Officer (on post). Investigation revealed the applicant struck V. with an open hand and kicked V. in the chest. A senior noncommissioned officer ordered the applicant to go to the company command

post (CP) and the applicant refused to obey the order. The applicant complied with the order after ordered to do so by M.

Pretrial Agreement, Offer to Plead Guilty, 3 September 2006, reflects the applicant offered to plead guilty to Charge I and its Specifications, and Charge IV and its Specification; to be tried by Summary Court-Martial; and to unconditionally waive the right to an administrative separation board, under AR 635-200. The offer was contingent upon the convening authority not approving any sentence in excess of any lawful punishments empowered to a Summary Court-Martial and would withdraw the charges from the referral to a Special Court-Martial, empowered to adjudge a bad conduct discharge, and refer to a Summary Court-Martial.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 22 September 2006. The applicant was charged with five specifications. The summary of offenses, pleas, and findings:

Violation of Article 91, UCMJ:

On 4 July 2006, disobey a lawful order from Sergeant First Class (SFC) E. D.; guilty consistent with the plea; and

On 4 July 2006, disrespectful language toward SFC E. D.; guilty, consistent with the plea.

Violation of Article 92, UCMJ: On 10 June 2006, wrongfully violate a lawful general order by wrongfully possessing marijuana; guilty, inconsistent with the plea.

Violation of Article 112a, UCMJ: On 10 June 2006, wrongfully possess an unknown amount of marijuana; guilty, inconsistent with the plea.

Violation of Article 128, UCMJ: On 4 July 2006, assault Specialist J. V., with the hand and foot: guilty, consistent with the plea.

Sentence: Reduction to E-1 and forfeiture of \$915 pay.

Record of Trial by Summary Court-Martial, 22 September 2006, reflects the sentence was approved.

Two Developmental Counseling Forms, for disobeying a direct order, disrespecting a noncommissioned officer, and wrongfully using and possessing a controlled substance.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Social Security Administration (SSA) Disability Determination and Transmittal, 29 January 2015, reflecting the applicant was diagnosed with affective/mood disorders. The related documents reflect the applicant applied for benefits because of PTSD and bipolar disorder. The SSA requested the applicant's medical records to make a determination regarding the claim. The claim forms contain third party statements supporting the applicant's mental health issues.

Emergence Health Network letter, 16 March 2015, reflecting the applicant was receiving treatment between 18 July 2014 and 23 September 2014, for bipolar disorder.

(2) AMHRR Listed: Report of Mental Status Evaluation, 14 August 2006, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant previously was diagnosed with intermittent explosive disorder by Brigade Mental Health Service and attended anger management classes at Fort Drum. It was noted the applicant presented traits of antisocial personality disorder; however, no diagnosis was given at the time because of insufficient data.

Report of Mental Status Evaluation, 14 December 2006, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant was diagnosed with occupational problems and familial stressors.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; Emergence Health Network letter; two third party character references; seven photos (unclear); medical records; SSA claim documents; Army Review Boards Agency Army Case Management Tracking System Responsibility page.

6. POST SERVICE ACCOMPLISHMENTS: The applicant plays football for a minor professional football league, where the applicant volunteers the time at elementary schools, churches, food kitchens, and anti-drug rallies.

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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) 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.

(6) 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.

(7) 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), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends PTSD and bipolar disorder affected behavior, which led to the discharge. The applicant provided several medical documents indicating a diagnosis of affective/mood disorders and bipolar disorder. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 14 August 2006, which indicates the applicant was mentally responsible and recognized right from wrong. The applicant previously was diagnosed with intermittent explosive disorder by the Brigade Mental Health Service and attended anger management classes at Fort Drum. It was noted the applicant presented traits of antisocial personality disorder; however, no diagnosis was given at the time because of insufficient data. The applicant underwent an MSE on 14 December 2006, which indicates the applicant was cleared for separation and diagnosed with occupational problems and familial stressors. The MSEs were considered by the separation authority.

The applicant contends if given the chance and the proper medical treatment, the applicant could have corrected the behavior. Army Regulation 600-85, paragraph 7-3 entitled voluntary (self) identification and referral, states voluntary (self) ID is the most desirable method of identifying substance use disorder. The individual whose performance, social conduct, interpersonal relations, or health becomes impaired because of these problems has the personal obligation to seek help. Soldiers seeking self-referral for problematic substance use may access services through BH services for a SUD evaluation. The Limited Use Policy exists to encourage Soldiers to proactively seek help. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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

The applicant contends playing football for a minor professional football league, where the applicant volunteers the time at elementary schools, churches, food kitchens, and anti-drug rallies. 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.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good conduct after leaving the Army. The Board will consider all information in the evidentiary record.

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: Adjustment Disorder. Additionally, the applicant asserts PTSD and Bipolar Disorder, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(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. The applicant self-asserted having PTSD and Bipolar Disorder at the time of military service. Post service, the VA has diagnosed the applicant with combat-related PTSD, and the applicant submitted medical documentation revealing a post-service diagnosis of Bipolar Disorder.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD partially mitigates the applicant's misconduct. Given the nexus between PTSD, difficulty with authority, and self-medicating with substances, the disobeying a lawful order, disrespect, and possession marijuana offenses are mitigated. The assault is not mitigated by any of the applicant's BH conditions. There is no natural sequela between an Adjustment Disorder or PTSD and assault. While assault can be associated with the manic phase of Bipolar Disorder,

there is no evidence that the applicant's Bipolar Disorder contributed to the assault. Further, the medical record reveals an extensive history of physical altercations, which more likely than not were associated with the applicant's antisocial personality traits. However, this is not a medically mitigating condition.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, or self-asserted Bipolar Disorder outweighed the applicant's medically unmitigated assault offense.

b. Response to Contention(s):

(1) The applicant contends PTSD and bipolar disorder affected behavior, which led to the discharge. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, or self-asserted Bipolar Disorder outweighed the applicant's medically unmitigated assault offense. However, the Board did conclude that the applicant's PTSD mitigated the illegal substance abuse, disrespect of an NCO, and disobeying a lawful order offenses.

(2) The applicant contends if given the chance and the proper medical treatment, the applicant could have corrected the behavior. The Board considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, PTSD, or self-asserted Bipolar Disorder outweighed the applicant's medically unmitigated assault offense. The Board found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant was not provided proper medical treatment.

(3) The applicant contends good service, including a combat tour. The Board considered the applicant's five years of service, including combat service in Afghanistan, and determined that the applicant's record, combined with medical mitigation of most of the applicant's misconduct, did warrant a discharge upgrade.

(4) The applicant contends playing football for a minor professional football league and volunteers time at elementary schools, churches, food kitchens, and anti-drug rallies. The Board considered the applicant's post-service accomplishments and credited the applicant for them in the decision to upgrade the discharge.

c. The Board determined the discharge is inequitable based on (1) medical mitigation of the illegal substance abuse, disrespect of an NCO, and failure to obey a lawful order offenses, and (2) the applicant's service record and post-service accomplishments outweighing the medically unmitigated assault offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN and reentry code of 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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001376

(1) The Board voted to change the applicant's characterization of service to General because the applicant's service record and post-service accomplishments outweighed the medically unmitigated assault offense. The Board found that a characterization of General is proper and equitable as the applicant's overall conduct (even considering medical mitigation, service record, and post-service accomplishments) fell below that level of meritorious service warranted for a full characterization upgrade to Honorable.

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

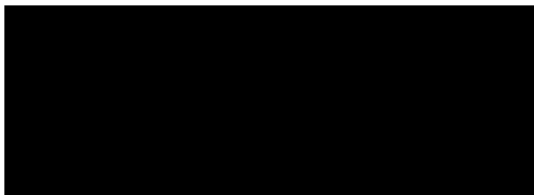
(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General
- 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:

2/1/2024



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