

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 diagnosed with Multiple Sclerosis and was going through a medical board when the acting command derailed the applicant while the unit was in Iraq. The applicant was demoted two weeks before the unit went to Iraq and the battalion commander and sergeant major wanted the applicant to go to rehab for marijuana, which the applicant did, and then go to Iraq when the applicant was well. The applicant was an excellent noncommissioned officer; however, made a mistake. The applicant made the mistake of not living up to the Army standards by doing the drug; however, the command singled the applicant out and did anything to discharge the applicant. The applicant became depressed with their treatment and was going through the med board process. While the applicant was still going to rehab sessions, the applicant continued to smoke pot because of being picked on. Since being discharged, the applicant has earned a college degree, is a substitute teacher, coached Junior Varsity football and pays child support.

b. **Board Type and Decision:** In a records review conducted on 28 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's chronic adjustment disorder mitigating the applicant's Failure to Report (FTR) and marijuana use basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, 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. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's physical health and BH diagnoses warranting consideration prior to reentry of military service. *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:** 13 May 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 17 March 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: Between on or about 19 October 2008 and 19 November 2008, the applicant wrongfully used marijuana, and

on or about 11 February and 19 February 2009, the applicant failed to be at the appointed place of duty.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 23 March 2009

(5) Administrative Separation Board: On 23 March 2009, 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) discharge.

(6) Separation Decision Date / Characterization: 30 April 2009 / General (Under Honorable Conditions) / The separation authority reviewed both the administrative separation packet and the medical evaluation board proceedings and determined the applicant's medical condition was not a direct or a substantial contributing cause of the conduct which led to the recommendation for administrative elimination. The separation authority also determined there were no other circumstances in this case which would warrant disability processing instead of further processing for administrative separation.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 6 March 2008 / 3 years

b. **Age at Enlistment / Education / GT Score:** 26 / High School Graduate / 106

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 21B20, Combat Engineer / 8 years, 10 months, 22 days

d. **Prior Service / Characterizations:** USAR, 22 June 2000 – 17 April 2002 / HD
IADT, 19 July 2000 – 14 November 2000 / UNC
(Concurrent Service)
RA, 18 April 2002 – 17 April 2006 / HD

e. **Overseas Service / Combat Service:** Hawaii / None

f. **Awards and Decorations:** AAM-2, NDSM, GWOTSM, NCOPDR, ASR, OSR, ARCOTR

g. **Performance Ratings:** None during the period under review.

h. **Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 15 December 2008, for on or about 19 October and 19 November 2008, wrongfully using marijuana. The punishment consisted of a reduction to E-4; forfeiture of \$1,067 pay per month for two months, one month pay suspended; and extra duty and restriction for 45 days, 25 days suspended.

Record Of Supplementary Action Under Article 15, UCMJ, 17 February 2009, reflects the suspended portion of the punishment imposed on 15 December 2008, was vacated for: Article 86, failure to report for final formation.

Medical Evaluation Board Proceedings, 11 March 2009, reflects a diagnosis, and was referred to a Physical Evaluation Board. The findings and recommendations of the Board were approved on 11 March 2009, and the applicant agreed with the Board on 23 March 2009.

Developmental Counseling Form, for being late for duty.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Medical History, 18 February 2009, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation (MSE), 24 February 2009, 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 possesses sufficient mental capacity to understand and participate in any administrative or judicial proceedings; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. Any positive symptoms have been clinically evaluated, treated, when requested or if symptoms are medically significant, do not warrant disposition through medical channels, and do not directly contribute to the factors leading to the separation. The MSE does not contain a diagnosis.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293 and DD Form 214.

6. **POST SERVICE ACCOMPLISHMENTS:** The applicant has a college degree, is a substitute teacher, and coaches Junior Varsity football, and pays child support.

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

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends good service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the command singled the applicant out and did anything to discharge the applicant. The discharge should have been for medical reasons. The applicant became depressed with their treatment and was going through the med board process. While the applicant was still going to rehab sessions, the applicant continued to smoke pot because of being picked on. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant has a college degree, is a substitute teacher, coaches Junior Varsity football, and pays child support. 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: Chronic Adjustment Disorder, Depressive Disorder, Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 Service Connected (SC) for Chronic Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that a review of the records shows the applicant 70 SC with Adjustment Disorder Chronic with onset during applicant's 2003 – 2006 enlistment secondary to reported harassment and intimidation from NCO and other higher-ranking individuals. This was exacerbated during applicant's 2008 – 2009 period of service, secondary to medical issues that were eventually determined to be MS. The applicant reported beginning to smoke marijuana to address anxiety and depressive symptoms secondary to learning of a potential medical condition and continued using to address symptoms of anxiety and depression after learning applicant had MS. As there is an association between Chronic Adjustment Disorder (manifested as anxiety and depression), and comorbid substance abuse, there is a nexus between the applicant's misconduct characterized by wrongful use of marijuana. Further, given the nexus between the Chronic Adjustment Disorder and avoidance, misconduct characterized by FTR is also 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 chronic adjustment disorder outweighed the FTR and marijuana use basis for separation.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs to be changed as the discharge should have been for medical reasons. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization. Ultimately, the Board voted to upgrade the applicant's narrative reason for discharge to Misconduct (Minor Infractions).

(2) The applicant contends good service. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record, but ultimately did not address the contention due to an upgrade being granted based on the applicant's chronic adjustment disorder mitigating the applicant's FTR and marijuana use basis for separation.

(3) The applicant contends the command singled the applicant out and did anything to discharge the applicant. The applicant became depressed with their treatment and was going through the med board process. While the applicant was still going to rehab sessions, the applicant continued to smoke pot because of being picked on. 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 chronic adjustment disorder mitigating the applicant's FTR and marijuana use basis for separation.

(4) The applicant has a college degree, is a substitute teacher, coaches Junior Varsity football, and pays child support. 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 chronic adjustment disorder mitigating the applicant's FTR and marijuana use basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's chronic adjustment disorder mitigating the applicant's FTR and marijuana use basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, 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. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's physical health and BH diagnoses warranting consideration prior to reentry of military service. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's chronic adjustment disorder mitigated the applicant's misconduct of FTR and marijuana use. Thus, the prior characterization is no longer appropriate.

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

(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of 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: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

8/26/2024



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