

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, hearing voices, and being diagnosed with bipolar disorder and PTSD. The applicant provided letters of support from people who knew them before and after their military service.

b. **Board Type and Decision:** In a records review conducted on 4 January 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD outweighing the applicant's AWOL, disrespect, and illegal drug abuse offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 23 April 2010

c. Separation Facts:

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 26 February 2010, the applicant was charged with:

Charge I: Violating Article 86, UCMJ, for being AWOL:

Specification 1: On or about 12 September 2009, without authority absent oneself from their unit and did remain so until on or about 1 October 2009.

Specification 2: On or about 6 October 2009, without authority absent oneself from their unit and did remain so until on or about 14 October 2009.

Specification 3: On or about 19 October 2009, without authority absent oneself from their unit and did remain so until on or about 20 October 2009.

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Specification 4 On or about 20 October 2009, without authority absent oneself from their unit and did remain so until on or about 18 February 2010.

Charge II: Violating Article 112a, UCMJ:

Specification 1: On or about 2 July 2009 and on or about 9 July 2009, wrongful use of cocaine.

Specification 2: On or about 1 September 2009 and on or about 1 October 2009 wrongful use of marijuana.

Specification 3: On or about 1 October 2009 and on or about 14 October 2009 wrongful use of marijuana.

Specification 4: On or about 14 October 2009 and on or about 20 October 2009 wrongful use of marijuana.

Charge III: Violating Article 91, UCMJ, for On or about 20 October disobeyed a lawful order from a noncommission officer.

(2) Legal Consultation Date: NIF

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, per the separation authority's decision memorandum.

(4) Recommended Characterization: NIF

(5) Separation Decision Date / Characterization: 15 April 2010 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 December 2008 / 6 years

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

c. Highest Grade Achieved / MOS / Total Service: E-4 / 91B10, Wheeled Vehicle Mechanic / 2 years, 6 months, 6 days

d. Prior Service / Characterizations: RA, 23 March 2007 – 9 December 2008 / HD

e. Overseas Service / Combat Service: SWA / Iraq (14 November 2007 – 3 February 2009)

f. Awards and Decorations: ICM-2CS, ARCOM, AAM, MUC, NDSM, GWOTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Charge sheet as described in previous paragraph 3c.

12 Personnel Action forms, reflect the applicant's duty status changed as follows:

- From "PDY" to "AWOL," effective 12 September 2009;
- From "AWOL" to "PDY," effective 1 October 2009;
- From "PDY" to "AWOL," effective 6 October 2009;
- From "AWOL" to "PDY," effective 14 October 2009;
- From "PDY" to "AWOL," effective 19 October 2009;
- From "PDY" to "AWOL," effective 20 October 2009;
- From "AWOL" to "PDY," effective 20 October 2009;
- From "AWOL" to "DFR," effective 23 November 2009;
- From " DFR" to "CMA" effective 18 February 2010;
- From " CMA" to "PDY" effective 25 February 2010;
- From "PDY" to "CMA" effective 25 February 2010; and
- From "CMA" to "PDY" effective 12 April 2010.

i. Lost Time / Mode of Return: 6 months, 3 weeks, 2 days:

- AWOL, 12 September – 1 October 2009 / Return to Military Control
- AWOL, 6 October 2009 – 14 October 2009 / Return to Military Control
- AWOL, 20 October 2009 – 20 October 2009 / Return to Military Control
- AWOL, 21 October 2009 – 24 February 2010 / Apprehended by Civil Authorities
- CMA, 25 February 2010 – 15 April 2010 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Medical extract from the Behavioral Health Clinic of Central Louisiana, 26 January 2012, reflects a diagnosis of Cannabis Abuse; History of Dependence and Alcohol Abuse; Mood Disorder and Post Traumatic Stress Disorder.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; medical records; letters of support; letter from the Social Security Administration; Certificate of Live birth; copy of Social Security Card.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of

acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(5) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(7) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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's Army Military Human Resources Record (AMHRR) includes partial facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge

from Active Duty), which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of general (under honorable conditions). The applicant's AMHRR includes a charge sheet reflecting the applicant was charged with four specifications of AWOL; one specification of cocaine use; three specifications of marijuana use and one specification of disobeying a lawful order. The AMHRR also includes the separation authority's decision memorandum reflecting the applicant, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. However, the applicant's actual request for discharge in lieu of trial by court-martial is void from the record. In this request, the applicant would have admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends hearing voices and being diagnosed with bipolar disorder and PTSD. The applicant provided a medical extract from the Behavioral Health Clinic of Central Louisiana, 26 January 2012, reflecting a diagnosis of Cannabis Abuse; History of Dependence and Alcohol Abuse; Mood Disorder and Post Traumatic Stress Disorder. The AMHRR is void of a mental status report.

The third-party statements provided with the application reflect the applicant's struggles after leaving the military.

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, Unspecified Anxiety Disorder, and PTSD. Additionally, the applicant asserts a 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 is service connected by the VA for Unspecified Anxiety Disorder, and the VA has diagnosed the applicant with combat-related PTSD as asserted by the applicant.

(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. The applicant is service connected by the VA for Unspecified Anxiety Disorder, and the VA has diagnosed the applicant with combat-related PTSD. All the misconduct that led to the applicant's separation is mitigated by the applicant's PTSD given the nexus with PTSD, avoidance, self-medicating with substances, and difficulty with authority. The applicant also self-asserted Bipolar Disorder, which was diagnosed post-service, but is inconsequential given the full mitigation for PTSD.

(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 applicant's AWOL, disrespect, and illegal drug abuse offenses.

b. Response to Contention(s): The applicant contends hearing voices and being diagnosed with bipolar disorder and PTSD. The Board liberally considered this contention and determined that the applicant's PTSD outweighed the applicant's AWOL, disrespect, and illegal drug abuse offenses. Therefore, a discharge upgrade is warranted.

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

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD outweighed the applicant's AWOL, disrespect, and illegal drug abuse offenses. Therefore, 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. 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.

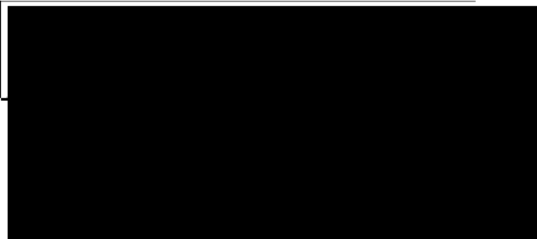
10. BOARD ACTION DIRECTED:

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

Change Authority to: AR 635-200

Authenticating Official: _____

1/10/2024



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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