

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, during the service, the applicant sustained injuries which required surgeries. The applicant was granted a 90 percent service-connected disability rating. The applicant was also being treated for depression and alcoholism because of the medical issues, and treatment failure was also a medical issue. The applicant should have received an honorable discharge because of the physical condition. However, despite being eligible for an honorable medical discharge, the applicant was informed of not being able to be medically discharged for the physical disabilities because the unit was forced to separate the applicant for misconduct. The command repeatedly misled the applicant about seeing a medical review board, and the situation was not addressed appropriately. It was wrong for the command to restrict the applicant from accessing a medical review board. The applicant was upset about having nowhere to turn to after destroying the body while serving. An upgrade would alleviate the burden on the applicant's conscience and allow the applicant to use the GI Bill to complete law school.

b. Board Type and Decision: In a records review conducted on 2 November 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Anxiety, Depression and Episodic Mood Disorder mitigating applicant's 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 and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 31 May 2007**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 1 May 2007

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant tested positive for THC (marijuana) on 1 and 21 February 2007; however, the results indicate the positive was residual from the first test.

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

(4) Legal Consultation Date: On 1 May 2007, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: On 10 May 2007, the separation authority approved the applicant's separation under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense). / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 31 March 2004 / 4 years

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 116

c. Highest Grade Achieved / MOS / Total Service: E-4 / 74D1P, Chemical Operations Specialist / 3 years, 2 months

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Six Developmental Counseling Forms for various acts of misconduct.

CG Article 15, 14 March 2005, for being disrespectful in language towards an NCO on 19 February 2005. The punishment consisted of a reduction to E-1 (suspended); forfeiture of \$323 pay (suspended); and extra duty for 7 days.

Record Of Supplementary Action Under Article 15, UCMJ, 7 April 2005, reflects the suspended portion of the punishment imposed on 14 March 2005, was vacated for violation of Article 92, UCMJ, violating a lawful general regulation by wrongfully having a blood alcohol level of .05 percent during mission cycle on 19 March 2005.

CG Article 15, 14 April 2005, for violating a lawful general regulation by wrongfully having a blood alcohol level of .05 percent during mission cycle on 19 March 2005 and (continuation sheet NIF). The punishment consisted of a reduction to E-1 (suspended); forfeiture of \$288 pay (suspended); and extra duty 14 days.

Electronic Copy of DD Form 2624, 7 February 2007, reflects the applicant tested positive for THC 196 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 1 February 1007.

FG Article 15, 22 February 2007, for wrongfully using marijuana (between 1 January and 1 February 2007). The punishment consisted of a reduction to E-1; forfeiture of \$605 pay per month for two months (suspended); and extra duty for 45 days.

Electronic Copy of DD Form 2624, 1 March 2007, reflects the applicant tested positive for THC 44 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 21 February 2007.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: VA certification letter, 17 August 2010, reflects the applicant has a rating of 50 percent service-connected disability for Anxiety disorder.

(2) AMHRR Listed: Memorandum, 19 March 2007, Report of Mental Status Evaluation, reflects a finding the applicant did have psychiatric conditions of such severity which would warrant disposition through Chapter 13 (sic). The applicant was psychiatrically cleared for whatever administrative action was deemed appropriate by the command. The applicant had the mental capacity to participate in the proceedings and was mentally responsible to distinguish between right and wrong. Although there were physical problems, the emotional difficulties were primary. The condition meets the criteria of AR 635-200, Paragraph 5-13, administrative separation as the Soldier's condition would not respond to efforts at rehabilitation and continued military service would keep the applicant at risk because of the inability to maintain safety rules and basic Army standards. The "Axis I" diagnosis was "Anxiety Disorder NOS: and "Axis II" was "Borderline Personality Disorder."

Report of Medical History, 21 March 2007, the applicant noted behavioral health issues and the examining medical physician's notes in the comments section are illegible.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Additional Evidence: VA Certifying letter and VISTA Electronic Medical records.

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 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 discharge should have been for medical reasons because of multiple injuries and having a 90 percent service-connected disability rating. Army Regulation 635-200, in pertinent part, 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 contends being treated for depression and alcoholism. The applicant provided a VA certifying letter, 17 August 2010, reflecting the applicant was rated 50 percent service-connected disabled for Anxiety disorder. The applicant's AMHRR contains documentation which supports a diagnosis of in-service anxiety disorder NOS. A mental status evaluation (MSE) conducted on 19 March 2007, indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

The applicant contends the command misled the applicant about seeing a medical review board and the situation was not addressed appropriately. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade would allow educational benefits to complete law school through the GI Bill. Eligibility for veterans' benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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: Anxiety Disorder NOS, Episodic Mood Disorder. Additionally, the applicant asserts Depression, 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 Anxiety and Episodic Mood Disorder, and the VA has service connected the applicant's Anxiety. In addition, the applicant self-asserts Depression, which is supported by documentation from the time of service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple mitigating BH conditions. The applicant was diagnosed in service with Anxiety and Episodic Mood Disorder, and the VA has service connected the applicant's Anxiety. In addition, the applicant self-asserts Depression, which is supported by documentation from the time of service. Given the nexus between Anxiety, Depression, and Episodic Mood Disorder and self-medicating with substances, the marijuana use that led to the applicant's separation is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Anxiety Disorder NOS, Episodic Mood Disorder, and depression outweighed the marijuana use basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends the discharge should have been for medical reasons because of multiple injuries and having a 90 percent service-connected disability rating. 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.

(2) The applicant contends being treated for depression and alcoholism. The Board determined that this contention was valid and voted to upgrade the characterization of service due to Anxiety, Depression, and Episodic Mood Disorder mitigating the applicant's marijuana use basis for separation.

(3) The applicant contends the command misled the applicant about seeing a medical review board and the situation was not addressed appropriately. 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 Anxiety, Depression, and Episodic Mood Disorder fully outweighing the applicant's marijuana drug use basis for separation.

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

c. The Board determined the discharge is inequitable based on the applicant's Anxiety, Depression and Episodic Mood Disorder mitigating applicant's 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 and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3. 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 Anxiety, Depression and Episodic Mood Disorder mitigated the applicant's misconduct of 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 Board voted to change the RE code to RE-3.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

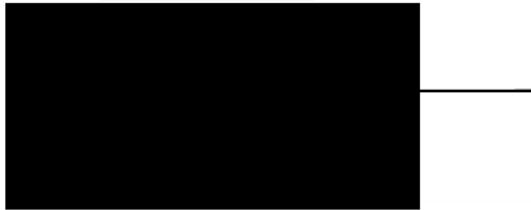
AR20210001491

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

1/26/2024



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