

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

**a. Applicant's Requests and Issues:** The current characterization of service for the period under review is honorable. The applicant requests a narrative reason change.

The applicant seeks relief contending, in effect, being a capable and experienced Infantry combat veteran with no prior history of discipline when they began experiencing sleep/anxiety problems while deployed to Mosul, Iraq, in 2004. Instead of seeking treatment/medication from military medical sources, the applicant made a serious error in judgment and obtained Valium (Diazepam) a medication which was available without prescription in Iraq from a non-military source. The applicant compounded this error by making the medication available to other members of the unit who were suffering similar symptoms. While the applicant acknowledges these errors in judgment, the applicant notes the substance involved was not a "recreational drug" taken for pleasure, but was instead a legitimate, legally manufactured medication taken for legitimate medical condition (sleep deprivation/anxiety) related to the stress of serving in a war zone. The applicant continues to suffer these symptoms, and now receives medication for the same problem through a prescription from the treating physician. Considering the applicant's good prior service, the nature of the offenses involved, and the applicant's exemplary post-service life, the applicant respectfully requests the discharge be upgraded.

**b. Board Type and Decision:** In a records review conducted on 24 October 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and applicant's PTSD outweighing applicant's wrongful use of Valium, possession, and attempted distribution of Valium 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. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's PTSD diagnosis and drug use. *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 / Honorable

**b. Date of Discharge:** 26 January 2004**c. Separation Facts:**

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** On 27 November 2003, the applicant was charged with:

Charge I: Violating Article 80, UCMJ:

Specification 1: On or about 1 September 2003 and on or about 1 October 2003, attempt to distribute Valium to SSG H. while receiving special pay under Title 37, United States Code, Section 310.

Specification 2: On or about 1 September 2003 and on or about 1 October 2003, attempt to distribute Valium to SGT T. K. while receiving special pay under Title 37, United States Code, Section 310.

Specification 3: On or about 1 September 2003 and on or about 1 October 2003, attempt to distribute Valium to SGT J. D. while receiving special pay under Title 37, United States Code, Section 310.

Charge II: Violating Article 112a, UCMJ:

Specification 1: On or about 1 September 2003 and on or about 1 October 2003, possess about 300 tablets of Valium, a controlled substance.

Specification 2: On or about 1 September 2003 and on or about 1 October 2003, use Valium, a controlled substance, while receiving special pay under Title 37, United States Code, Section 310.

**(2) Legal Consultation Date:** 24 December 2003

**(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.

**(4) Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** 4 January 2003 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 5 September 2001 / 4 years

**b. Age at Enlistment / Education / GT Score:** 23 / High School Graduate / 125

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 2 years, 4 months, 22 days

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

**e. Overseas Service / Combat Service:** SWA / Kuwait / Iraq (5 March 2003 – 16 January 2004)

**f. Awards and Decorations:** NDSM, ASR, OSR, CIB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Charge Sheet as described in paragraph 3c (1).

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

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

**(1) Applicant provided:** South Point Family Practice Letter, 10 April 2015, reflects the applicant was a patient and had been diagnosed with insomnia and taking daily medication to sleep.

Eastridge Family Medicine Letter, 28 October 2016, reflects the applicant had been diagnosed with insomnia and was treated with Zolpidem 10 mg. It was requested the applicant minimize the use of this medication.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 293; Veteran Services letter; self-authored statement; East Ridge Family Medicine letter; 13 third-party letters; DD Form 214; five certificates; birth certificate; marriage license; credit union statements; earning statements; tax returns; credit report.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is happily remarried and has a career in Outside Sales with WD Lee & Co. for five years. The applicant has purchased the applicant's first home, joined a church, and has become a member of the security team. The applicant coaches for the child's fast pitch softball team and has supported the spouse by participating in the 2013 "Out of the Darkness Community Walk" for the American Foundation for Suicide Prevention.

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

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

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

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

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

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

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

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

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Chapter 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.

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

(5) 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.)

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 a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant 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 honorable discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 10, AR 635-200, with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8, Separation Processing and Documents, governs the 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, including a combat tour.

The applicant contends experiencing sleep/anxiety problems while being deployed to Iraq and instead of seeking treatment/medication from military medical sources, made the mistake of obtaining medication which was available without a prescription in Iraq from a non-military source. The applicant compounded the error by making the medication available to other members in the unit. The applicant provided a South Point Family Practice letter, 10 April 2015, which reflects the applicant was a patient and had been diagnosed with insomnia and taking daily medication to sleep. A Eastridge Family Medicine letter, 28 October 2016, reflects the applicant was diagnosed with insomnia and was treated with Zolpidem 10 mg. It was requested the applicant minimize the use of this medication. Army Regulation 635-200, Paragraph 10-6 stipulates a medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8. The applicant's AMHRR does not contain a mental status evaluation and there is no evidence the applicant requested one.

The third-party statements provided with the application speak highly of the applicant and recognize the applicant's good conduct after leaving the Army.

The applicant is happily remarried and has a career in Outside Sales with WD Lee & Co. for five years. The applicant has purchased their first home, joined a church, and has become a member of the security team. The applicant coaches for the child's fast pitch softball team and has supported the spouse by participating in the 2013 "Out of the Darkness Community Walk" for the American Foundation for Suicide Prevention. 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 found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD and Anxiety Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant PTSD and Anxiety Disorder existed during the applicant's service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD and Anxiety Disorder mitigates the applicant's comorbid substance use as there is a nexus between the applicant behavioral health conditions and the applicant's wrongful use of Valium. However, the applicant's behavioral health conditions do not mitigate the applicant's possession and attempted distribution of Valium as there is no natural sequela of PTSD or Anxiety Disorder and this offense.

(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 PTSD/Anxiety Disorder outweighed the applicant's medically unmitigated offense of possession and attempted distribution of Valium.

**b. Response to Contention(s):**

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined the applicant's narrative reason for discharge was inequitable based on applicant's PTSD, length, and quality of service, to include combat, outweighing applicant's misconduct of wrongful use of Valium, possession, and attempted distribution of Valium.

(2) The applicant contends good service, including a combat tour. 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.

(3) The applicant contends experiencing sleep/anxiety problems while being deployed to Iraq and instead of seeking treatment/medication from military medical sources, made the mistake of obtaining medication which was available without a prescription in Iraq from a non-military source. The applicant compounded the error by making the medication available to other members in the unit. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD, length, and quality of service, to include combat, outweighing applicant's misconduct of wrongful use of Valium, possession, and attempted distribution of Valium.

(4) The applicant is happily remarried and has a career in Outside Sales with WD Lee & Co. for five years. The applicant has purchased their first home, joined a church, and has become a member of the security team. The applicant coaches for the child's fast pitch softball team and has supported the spouse by participating in the 2013 "Out of the Darkness Community Walk" for the American Foundation for Suicide Prevention. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD, length, and quality of service, to include combat, outweighing applicant's misconduct of wrongful use of Valium, possession, and attempted distribution of Valium.

**c.** The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, and applicant's PTSD outweighing applicant's wrongful use of Valium, possession, and attempted distribution of Valium 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. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's PTSD diagnosis and drug use.

**d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's wrongful use of Valium, possession, and attempted distribution of Valium basis for separation. Thus, the prior characterization is no longer appropriate.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001554**

(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.

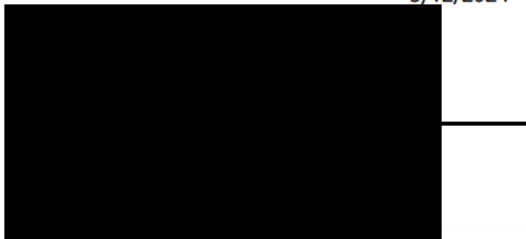
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

**Authenticating Official:**

3/12/2024



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