

**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, a narrative reason change is requested for employment application purposes. Documentary evidence shows the applicant was aware of the issues and was addressing them through the VA. The VA has awarded the applicant a rating of 100 percent disability.

**b. Board Type and Decision:** In a records review conducted on 12 September 2023, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's PTSD mitigating the misconduct of marijuana use, AWOL and DUI. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable based on the misconduct and medical diagnosis and voted not to change them.

*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 (Minor Disciplinary Infractions) / AR 635-200, Chapter 14-12a / JKN / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 1 April 2010

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 16 December 2009

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive for marijuana on 25 August 2009.

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

**(4) Legal Consultation Date:** 16 December 2009

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 11 March 2010 / General (Under Honorable Conditions) The separation authority determined the applicant's medical condition was not the direct and substantial contributing cause of the underlying recommendation for an

administration separation and approved the applicant's separation under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense).

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 21 February 2006 / 4 years, 16 weeks

**b. Age at Enlistment / Education / GT Score:** 23 / High School Graduate / 92

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 4 years, 7 days

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

**e. Overseas Service / Combat Service:** SWA / Iraq (7 April 2007 – 14 May 2007)

**f. Awards and Decorations:** PH, NDSM, GWOTSM, ICM-CS, ASR, OSR, CIB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 16 September 2009, for wrongfully absenting oneself from the unit on 16 July 2009, and remained absent until 14 August 2009. The punishment consisted of a reduction to E-1, and extra duty and restriction for 45 days.

Military Police Report, 17 September 2009, reflects the applicant was investigated for a civil charge of driving while under the influence of alcohol (off post) on 15 July 2009.

General Officer Memorandum Of Reprimand, 16 October 2009, reflects the applicant was driving under the influence of alcohol. After being apprehended for suspicion of driving under the influence on 15 July 2009, the applicant was arrested and transported to the Fort Lewis Military Police Station, where a breath test resulted in a finding of .157 grams of alcohol per 210 liters of breath.

FG Article 15, 16 November 2009, for wrongfully using marijuana (between 25 July and 25 August 2009). The punishment consisted of a forfeiture of \$699 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Mental Status Evaluation, 8 September 2009, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible, can distinguish right from wrong, and has sufficient mental capacity to participate in any administrative proceedings with a clear-thinking process.

**i. Lost Time / Mode of Return:** 35 days (AWOL, 21 July 2009 – 24 August 2009 / The applicant surrendered to military authorities.

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

**(1) Applicant provided:** VA Progress Notes, 9 July 2015, reflect the applicant was a resident in the Mental Health Residential Rehabilitation Treatment Program.

Veterans Administration Disability Rating Decision, 5 December 2011, reflecting the applicant was rated 70 percent disability for PTSD, 40 percent disability for TBI, and 30 percent for residuals shell fragment wound.

**(2) AMHRR Listed:** Medical Evaluation Board Proceedings, 2 February 2010, reflect the following diagnoses: Asymmetrical sensorineural hearing loss; chronic left shoulder instability and pain to lateral forces; chronic mild left forearm pain; left testalgia; Post-traumatic stress disorder; cannabis dependence; and mood disorder.

Report of Medical History, 2 September 2009, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Nightmares, trouble sleeping, having flashbacks, since being wounded, and currently sees a psychologist and nurse practitioner weekly and still having a significant amount of anxiety. The applicant was in ongoing counseling for depression, nightmares, and pain in the chest, shoulder, and knee since the mortar attack.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 214; VA Rating Decision; VA Progress Notes; and three Certificates of Completion (Intensive Outpatient Treatment, Integrative Medicine Treatment Track, and Intensive Addiction Treatment Track).

**6. POST SERVICE ACCOMPLISHMENTS:** Documentary evidence shows the applicant completed three separate intensive patient treatment programs with the VA.

**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 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 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (minor infractions).

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-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

**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 14-12a, AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Minor Infractions)," and the separation code is "JKN." Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation further stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the basis for the request is for employment application purposes. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant provided several medical documents indicating a diagnosis of PTSD and prescribed medication. The applicant's AMHRR contains documentation which supports a diagnosis of in-service PTSD. The record shows the applicant underwent a mental status evaluation (MSE) on 8 September 2009, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

**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: PTSD, TBI, mood disorder NOS, major depressive disorder, multiple adjustment disorder diagnoses, nightmare disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant has evidence of the potentially mitigating conditions PTSD, TBI, major depressive disorder, and mood disorder NOS relevant to his period of service. Nightmare disorder and the various adjustment disorder diagnoses can be subsumed under PTSD, which is the most noteworthy of his diagnoses present at the time of service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the presence of PTSD and depression mitigates the cannabis use noted in the basis of separation due to a nexus between both depression and PTSD and substance use to self-medicate psychiatric distress. PTSD and depression mitigate other substance misuse noted in the file to include the DUI incident which did not appear to result in injury or include other significant aggravating circumstances. The natural history of PTSD also includes avoidance behaviors and provides mitigation for the AWOL offense noted in the applicant's record.

(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 PTSD outweighed the marijuana use, AWOL and DUI basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends the basis for the request is for employment application purposes. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(2) The applicant provided several medical documents indicating a diagnosis of PTSD and prescribed medication. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's marijuana use, AWOL and DUI charges.

c. The Board determined that the characterization of service was inequitable based on the applicant's PTSD mitigating the misconduct of marijuana use, AWOL and DUI. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable based on the misconduct and medical diagnosis and voted not to change them.

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 misconduct of marijuana use, AWOL and DUI. Thus, the prior characterization is no longer appropriate.

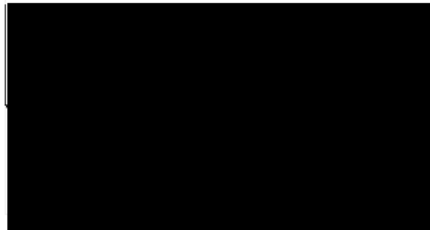
(2) The Board determined the applicant's reason for discharge or accompanying SPD code were proper and equitable and voted not to change them.

(3) The RE code will not change, as the Board determined the current code is proper and equitable based on the applicant's medical diagnosis.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

**Authenticating Official:**

1/16/2024  


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