

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, through counsel, requests a narrative reason change to "Secretarial Authority".

The applicant seeks relief contending, in effect, the separation followed two suicide attempts and several weeks of inpatient treatment for Substance Abuse and Post-Traumatic Stress Disorder (PTSD). The applicant served for nearly nine and a half years and deployed three times. The deployments included one tour in Iraq and two tours in Afghanistan. As a result of these deployments, the applicant demonstrated several classic symptoms of PTSD including depression, nightmares, and flashbacks. A result of a debilitating wrist injury, was the applicant became addicted to pain medication and this, in combination with the other symptoms, resulted in a cycle of illegal drug use which finally ended with hospitalization in December 2012. During these difficulties, the applicant tested positive for Oxycodone and Oxymorphone. Following treatment at two civilian treatment centers, the applicant was processed for separation. To ensure eligibility for VA medical treatment, the applicant waived their rights to an administrative separation board in return for a general (under honorable conditions) discharge. The treating psychiatrist noted the applicant demonstrated symptoms consistent with a previously unrecognized bipolar disorder in addition to the combat related PTSD. The untreated condition complicated the recovery from the addictive illnesses and resulted in highly impulsive behaviors.

b. Board Type and Decision: In a records review conducted on 31 August 2023, and by a 5-0 vote, Board determined, based on the applicant's Major Depression, PTSD, and Bipolar Disorder mitigating the oxycodone and oxymorphone use basis for separation, the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it. The Board determined the reentry eligibility (RE) code was proper and equitable based on the severity of applicant's BH conditions.

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 / Honorable

b. Date of Discharge: 7 August 2013**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 19 February 2013

(2) Basis for Separation: The applicant was informed of the following reasons:

The applicant tested positive for Oxycodone between on or about 4 October 2012 and on or about 11 October 2012; and,

The applicant tested positive of Oxymorphone between on or about 4 October 2012 and on or about 11 October 2012.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 2 July 2013

(5) Administrative Separation Board: On 2 July 2013, 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: 18 July 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 August 2007 / 6 years

b. Age at Enlistment / Education / GT Score: 30 / High School Graduate / 118

c. Highest Grade Achieved / MOS / Total Service: E-5 / 15H2P, Aircraft Pneudraulics Repairer / 9 years, 5 months, 20 days

d. Prior Service / Characterizations: RA, 18 February 2004 – 27 August 2007 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (5 May 2009 – 24 April 2010; 30 November 2011 – 22 September 2012); Iraq (3 July 2006 – 10 October 2007)

f. Awards and Decorations: ARCOM-2, AAM-2, MUC, AGCM-2, NDSM, ACM-2CS, GWOTSM, ICM-CS, ASR, OSR-3, NATOMDL

g. Performance Ratings: 1 September 2007 – 31 August 2010 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Commander's Report reflects the applicant received the following disciplinary action:

Soldier received a Field Grade Article 15 on 8 September 2011 for failing to report. Soldier was reduced to E-4.

Soldier received a Field Grade Article 15 on 5 December 2012 for testing positive for Oxycodone between on or about 7 October 2012 and on or about 11 October 2012 and Oxymorphone between on or about 7 October 2012 and on or about 11 October 2012. Soldier was reduced to E-1; forfeiture of \$745 pay for two months, suspended, and extra duty and restriction for 45 days.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Health Record, Chronological Record of Medical Care, 28 March 2013 reflects the applicant was being treated for history of concussion, adjustment insomnia, adjustment disorder with anxiety and depressed mood, alcohol abuse – in remission, opioid abuse – in remission, sleep disturbance, headache syndromes, moderate single episode major depression, chronic PTSD, opioid dependence in remission, anxiety, insomnia related to Axis I/II mental disorder, cocaine abuse, opioid dependence with episodic use, opioid dependence, opioid abuse, and depression.

Department of Veterans Affairs letter, 24 September 2014, reflects the treating psychiatrist noted, shortly after starting treatment, the applicant demonstrated symptoms consistent with a previously unrecognized bipolar disorder in addition to the combat related PTSD. This untreated condition complicated the recovery from the addictive illnesses and resulted in highly impulsive behaviors. The applicant successfully completed substance abuse treatment, PTSD treatment and had remained sober for over 12 months.

Department of Veterans Affairs letter, 17 November 2014, reflects the applicant was a patient of the North Florida/South Georgia Veterans Health System, PTSD Clinical Team from 6 December 2013 to 14 August 2014. The applicant was diagnosed with Post-Traumatic Stress Disorder and other mental health related issues by the VA. The provider consulted with other providers and reviewed the applicant's record. It was the provider's opinion the applicant likely experienced difficulties secondary to an untreated bipolar disorder in addition to the substance abuse issues and combat related PTSD during service.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; attorney brief with listed enclosures 1 through 8.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has actively participated in the treatment programs offered by the Veteran's Administration and has remained drug free, taking only those medications prescribed by medical providers, and has participated in substance abuse treatment and PTSD treatment. The applicant has gone to school and now has an FAA A&P Aviation license and is currently employed as an A&P aircraft mechanic.

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) 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.

(4) 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.

(5) 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 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 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 honorable 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, including three combat tours.

The applicant contends suffering from combat related PTSD and previously unrecognized bipolar disorder that significantly contributed to the applicant's misconduct. The applicant contends that the applicant's combat service combined with the applicant's medical history and undiagnosed and untreated bipolar disorder constitutes mitigating facts that give good reason for an honorable discharge. The untreated condition complicated the recovery from the addictive illnesses and resulted in highly impulsive behaviors. The applicant provided a copy of Health Record, Chronological Record of Medical Care, 28 March 2013 which reflects the applicant was being treated for history of concussion, adjustment insomnia, adjustment disorder with anxiety and depressed mood, alcohol abuse – in remission, opioid abuse – in remission, sleep disturbance, headache syndromes, moderate single episode major depression, chronic PTSD, opioid dependence in remission, anxiety, insomnia related to Axis I/II mental disorder, cocaine abuse, opioid dependence with episodic use, opioid dependence, opioid abuse, and depression. Department of Veterans Affairs Letter, 24 September 2014, reflects the treating psychiatrist noted, shortly after starting treatment, the applicant demonstrated symptoms consistent with a previously unrecognized bipolar disorder in addition to the combat related PTSD. This untreated condition complicated the recovery from the addictive illnesses and resulted in highly impulsive behaviors. The applicant successfully completed substance abuse treatment, PTSD treatment and had remained sober for over 12 months. Department of Veterans Affairs Letter, 17 November 2014, reflects the applicant was a patient of the North Florida/South Georgia Veterans Health System, PTSD Clinical Team from 6 December 2013 – 14 August 2014. The applicant was diagnosed with Post-Traumatic Stress Disorder and other mental health related issues by VA. The provider consulted with other providers and reviewed the applicant's record. It was the provider's opinion the applicant likely experienced difficulties secondary to an untreated bipolar disorder in addition to the substance abuse issues and combat relate PTSD during service. The AMHRR does not contain a mental status evaluation.

The third-party statements provided with the application speak of the applicant's diagnoses and treatment at the VA.

The applicant has actively participated in the treatment programs offered by the Veteran's Administration and has remained drug free, taking only those medications prescribed by medical providers, and has participated in substance abuse treatment and PTSD treatment. The applicant has gone to school and now has an FAA A&P Aviation license and is currently employed as an A&P aircraft mechanic. 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, after considering the Board Medical Advisor opine, found that applicant's PTSD, Major Depression, Chronic Pain Syndrome, and history of concussion mitigated, in part, outweighed the applicant's original basis of separation warranting a previous Board to upgrade the applicant's characterization of service to Honorable, and now warrants reconsideration of the applicant's discharge narrative, SPD and RE Code. The Board further determined, based on the Board Medical Advisor opine, that the applicant has a VA diagnosis of Bipolar Disorder that may be a potentially mitigating condition.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that, based on the Board Medical Advisor opine, the applicant's Adjustment Disorder, Major Depression, and Chronic PTSD, and Bipolar Disorder existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board applied liberal consideration and determined, based on the Board Medical Advisor opine, that the applicant's Adjustment Disorder, Major Depression, Chronic PTSD, and Bipolar Disorder mitigates the applicant's drug offenses given the nexus between these conditions and self-medicating with substances., applicant's BH conditions mitigate the drug use that led to separation.

(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 Adjustment Disorder, Major Depression, Chronic PTSD, and Bipolar Disorder outweighed the oxycodone and oxymorphone use basis for separation warranting a narrative reason change to Misconduct (Minor Infractions) and SPD code change to "JKN." The Board voted not to change the applicant's RE code based on the severity of the applicant's behavioral health conditions.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined the applicant's narrative reason for discharge warrants an upgrade. The Board voted to change the narrative reason for discharge to Misconduct (Minor Infractions) based on the applicant's Major Depression, PTSD, and Bipolar Disorder mitigating the oxycodone and oxymorphone use basis for separation.

(2) The applicant contends good service, including three combat tours. 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 suffering from combat related PTSD and previously unrecognized bipolar disorder that significantly contributed to the applicant's misconduct. The applicant contends that the applicant's combat service combined with the applicant's medical history and undiagnosed and untreated bipolar disorder constitutes mitigating facts that give good reason for an honorable discharge. The untreated condition complicated the recovery from the addictive illnesses and resulted in highly impulsive behaviors. The Board determined that this contention was valid and voted to upgrade the narrative reason for discharge due to Major Depression, PTSD, and Bipolar Disorder mitigating the applicant's oxycodone and oxymorphone use.

(4) The applicant has actively participated in the treatment programs offered by the Veteran's Administration and has remained drug free, taking only those medications prescribed by medical providers, and has participated in substance abuse treatment and PTSD treatment.

The applicant has gone to school and now has an FAA A&P Aviation license and is currently employed as an A&P aircraft mechanic. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on applicant's Major Depression, PTSD, and Bipolar Disorder mitigating the oxycodone and oxymorphone use basis for separation.

c. The Board determined, based on the applicant's Major Depression, PTSD, and Bipolar Disorder mitigating the oxycodone and oxymorphone use basis for separation, the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable and voted not to change it. The Board determined the reentry eligibility (RE) code was proper and equitable based on the severity of applicant's BH conditions. However, the applicant may request a personal appearance hearing to address further issues before the Board. 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 determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable, no further relief is available.

(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.

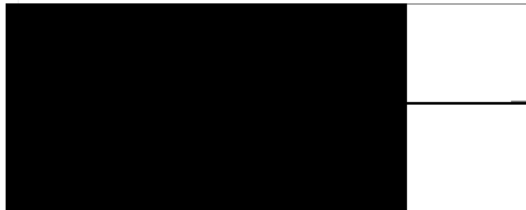
(3) The RE code will not change, due to the severity of applicant's Major Depression, PTSD, and Bipolar Disorder diagnoses.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- 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:

4/17/2024



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