

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, the incident leading to the discharge had occurred in September 2011, after returning from a deployment. The applicant was informed upon completing a rehabilitation program, the applicant would remain in the military but would have to perform extra service and be demoted in rank. Despite having completed the rehab program and extra duty with demotion, the applicant was discharged two years later, six months prior to the ETS date and prior to attending a court in Pennsylvania for the 2011 incident. The applicant regained the E-2 rank, but it was revoked because of a unit error. The commander had recognized the applicant's mental state and referred the applicant to behavioral health for assistance.

b. Board Type and Decision: In a records review conducted on 31 August 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD mitigates applicant's oxycodone and oxymorphone use, possession of heroin, DUI, possession of drug paraphernalia, and careless or reckless driving. 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: 23 April 2013**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 7 March 2013

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

The applicant wrongfully used oxycodone and oxymorphone, between 23 and 26 September 2011.

The applicant was also arrested for possession of heroin, driving under the influence of alcohol or controlled substance, possession of drug paraphernalia, and careless or reckless driving.

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

(4) Legal Consultation Date: On 3 March 2013 (sic), the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 4 April 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 9 June 2010 / 3 years, 19 weeks

b. Age at Enlistment / Education / GT Score: 21 / Honorable / 92

c. Highest Grade Achieved / MOS / Total Service: E-3 / 88M10, Motor Transport Operator / 2 years, 10 months, 15 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (17 May 2010 – 3 August 2011)

f. Awards and Decorations: NDSM, ACM-2CS, GWOTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Three Developmental Counseling Forms for debt avoidance, AER loan, being recommended for separation, and having a positive urinalysis.

Military Police Blotter with Magisterial District Judges Criminal Docket, 11 September 2011, reflect the applicant was cited/charged for: possession of Heroin; DUI of alcohol or controlled substance; possession of drug paraphernalia; and careless or reckless driving (off post).

Electronic Copy of DD Form 2624, 6 October 2011, reflects the applicant tested positive for OXCOD 206 (Oxycodone) and OXMOR 1777 (oxymorphone), during a Probable Cause (PO) urinalysis testing, conducted on 26 September 2011.

FG Article 15, 12 December 2011, for wrongfully using Oxycodone and Oxymorphone (between 23 and 26 September 2011). The punishment consisted of a reduction to E-1, and extra duty and restriction for 45 days.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 27 November 2012, the examining medical physician noted in the comments section: the behavioral health issues noted by the

applicant were related to mental health and drug abuse, use of illegal drugs, and was under trial for addiction.

Report of Mental Status Evaluation, 15 January 2013, reflects the applicant was psychiatrically cleared for any administrative separation. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The "AXIS I" diagnosis was "Opioid Dependence (early full remission).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; congressional correspondence; and DD Form 214.

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 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. Delete if NA

(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 having been informed upon completing a rehabilitation program, the applicant would remain in the military but would have to perform extra service and be demoted to E-2, and despite having completed the rehab program and extra duty and reduction to E-2, the applicant was discharged two years after the incident leading to the discharge, which was six months prior to the ETS date and prior to attending a court in Pennsylvania for the 2011 incident. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the commander had recognized the applicant's mental state and referred the applicant to behavioral health for assistance. The applicant did not provide any evidence to support the contention, other than the applicant's statement of having mental state issues. The applicant's AMHRR contains documentation which supports a diagnosis of Opioid Dependence (early full remission). The record shows the applicant underwent a mental status evaluation (MSE) on 15 January 2013, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority. The ARBA sent a letter to the applicant at the address in the application on 2 August 2021, requesting documentation to support a behavioral health diagnosis but received no response from the applicant.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found

that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, Anxiety, PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Anxiety. The VA has also diagnosed and service connected the applicant for combat-related PTSD. Service connection establishes that applicant's PTSD existed during military 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 there is evidence of multiple potentially mitigating BH conditions. The applicant was diagnosed in service with an Adjustment Disorder and Anxiety. The VA has also diagnosed, and service connected the applicant for combat-related PTSD. Applicant's PTSD fully mitigates the basis of separation given the nexus between PTSD and self-medicating with substances. It is more likely than not that applicant's PTSD contributed to the drug possession/use and DUI 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 PTSD outweighed the oxycodone and oxymorphone use, possession of heroin, DUI, possession of drug paraphernalia, and reckless driving basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends having been informed upon completing a rehabilitation program, the applicant would remain in the military but would have to perform extra service and be demoted to E-2, and despite having completed the rehab program and extra duty and reduction to E-2, the applicant was discharged two years after the incident leading to the discharge, which was six months prior to the ETS date and prior to attending a court in Pennsylvania for the 2011 incident. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on applicant's PTSD mitigating applicant's oxycodone and oxymorphone use, possession of heroin, DUI, possession of drug paraphernalia, and reckless driving basis for separation.

(2) The applicant contends the commander had recognized the applicant's mental state and referred the applicant to behavioral health for assistance. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on applicant's PTSD mitigating applicant's oxycodone and oxymorphone use, possession of heroin, DUI, possession of drug paraphernalia, and reckless driving basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD mitigates applicant's oxycodone and oxymorphone use, possession of heroin, DUI, possession of drug paraphernalia, and careless or reckless driving. 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. 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001715

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 oxycodone and oxymorphone use, possession of heroin, DUI, possession of drug paraphernalia, and careless or reckless driving. Thus, the prior characterization is no longer appropriate.

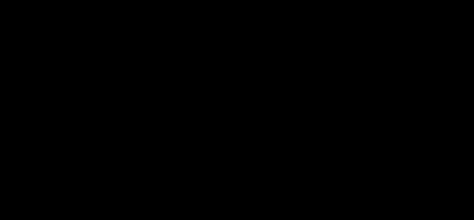
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The Board voted to change the RE code to RE-3.

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:

1/17/2024


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