

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 27 January 2021
- b. **Date Received:** 2 February 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 along with a separation program designator (SPD) code, reentry (RE) code and a narrative reason change.

The applicant seeks relief contending, in effect, the applicant was not allowed to receive help from the Army Substance Abuse Program (ASAP) prior to being discharged. The applicant was not aware of a mild traumatic brain injury (TBI) diagnosis in 2009. The applicant was having a hard time dealing with the alleged suicide of a battle buddy and going to see a psychiatrist was frowned upon and came with substantial mocking from peers. The applicant was untreated for both the mild TBI and drug abuse which could have been a contributing factor in the behavior which led to the separation.

b. **Board Type and Decision:** In a records review conducted on 17 January 2024, and by a 5-0 vote, the board members determined that the discharge is inequitable based on the applicant's diagnosis of Adjustment Disorder; Depression, VA service connection for PTSD and in-service factors (length, quality, and combat service) that mitigate the applicant's wrongful use of marijuana (2 counts). Therefore, the board voted to upgrade the characterization of service to Honorable and change 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. No change to the reentry code.

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:** 30 March 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 4 March 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully used marijuana between on or about 13 October 2009 and on or about 13 November 2009.

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

(4) **Legal Consultation Date:** 5 March 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: NIF / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 13 August 2007 / 4 years

b. Age at Enlistment / Education / GT Score: 22 / GED / 110

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M10, Motor Transport Operator / 3 years, 19 days.

d. Prior Service / Characterizations: RA, 12 March 2007 – 12 August 2009 / HD

e. Overseas Service / Combat Service: SWA / Iraq (14 June 2008 – 28 August 2009)

f. Awards and Decorations: ARCOM, AAM-3, NDSM, GWOTSM, ICM-CS, ASR, OSR-2, CAB, Driver, and Mechanic Badge-Mechanic

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 9 February 2010, reflects the applicant wrongfully used marijuana between on or about 13 October 2009 and on or about 13 November 2009. The punishment consisted of reduction to private/E-2; forfeiture of \$811 pay, suspended, to be automatically remitted if not vacated before 11 March 2010; extra duty and restriction for 21 days, and an oral reprimand.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant provides a letter from a Pulmonary and Sleep physician at the VA New York Harbor Healthcare System, 25 December 2020, which reflects, in part, the applicant was documented to have possible post-traumatic stress disorder (PTSD) with chronic adjustment disorder with depressed mood documented by A.U.MD attending psychiatrist on 21 December 2020.

(2) AMHRR Listed: Mental Status Evaluation (MSE), 22 February 2010, reflects the applicant's mental status was within normal limits. There was no evidence of severe anxiety, major depression, or thought disorder. The applicant was not suicidal, homicidal, or psychotic. The applicant was in a blast in Iraq, but did not have a concussion, and did not exhibit symptoms of traumatic brain injury (TBI). The applicant did not appear to have PTSD but was still troubled by some events from Iraq such as the suicide of a fellow soldier and had started treatment. The applicant knew using marijuana was wrong and appeared to be genuinely remorseful for the misconduct, The applicant appeared to be highly motivated and would not make the same mistake again, especially if the ASP program is completed. The applicant was cleared for any administrative action deemed appropriate by command.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, DD Form 214, college transcripts, personal statement, VA Health Care Network letter, Report of Medical Examination, Report of Medical History

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), dated 25 September 2019, 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 14-12c (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, paragraph 12c (2), 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-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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.

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 along with a RE code, SPD code and 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 requests the narrative reason for the discharge be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c (2), AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JJK." 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 listed in tables 2-2 or 2-2 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 requests the SPD and RE codes be changed. Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 14-12c (2), is "JJK." Army Regulation 635-8, Separation Documents, governs the preparation of the DD Form 214, and dictates the entry of the 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 SPD code to be entered under this regulation. 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. The applicant contends, in effect, the applicant was not allowed to receive help from ASAP prior to being discharged. Army Regulation 635-200, paragraph 1-17d (2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative

requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality, Soldier.

The applicant contends, in effect, the applicant was not aware of a TBI diagnosis in 2009. The applicant was having a hard time dealing with the alleged suicide of a battle buddy and going to see a psychiatrist was frowned upon and came with substantial mocking from peers. The applicant was untreated for both the mild TBI and drug abuse which could have been a contributing factor in the behavior which led to the separation. The applicant's AMHRR is void of mental health diagnosis. The applicant underwent a MSE on 22 February 2010, which reflects the applicant's mental status was within normal limits. There was no evidence of severe anxiety, major depression, or thought disorder. The applicant was not suicidal, homicidal, or psychotic. The applicant was in a blast in Iraq, but did not have a concussion, and did not exhibit symptoms of TBI. The applicant did not appear to have PTSD but was still troubled by some events from Iraq such as the suicide of a fellow soldier and had started treatment. The applicant knew using marijuana was wrong and appeared to be genuinely remorseful for the misconduct, The applicant appeared to be highly motivated and would not make the same mistake again, especially if the ASP program was completed. The applicant was cleared for any administrative action deemed appropriate by command.

The applicant provides a letter from a Pulmonary and Sleep physician at the VA New York Harbor Healthcare System, 25 December 2020, which reflects, in part, the applicant was documented to have possible post-traumatic stress disorder (PTSD) with chronic adjustment disorder with depressed mood documented by A.U.MD attending psychiatrist on 21 December 2020.

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 DO; Depression; PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the diagnoses of Adjustment DO and Depression were made while in military service. VA service connection for PTSD establishes it began or occurred 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 the applicant has a mitigating BH condition, PTSD. As there is an association between PTSD and use of illicit drugs to self-medicate emotional symptoms, there is a nexus between his diagnosis of PTSD and his wrongful use of THC. Of note, there is no indication that the applicant ever received ASAP treatment for either of his two positive urinalysis.

(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 DO, Depression, VA service connection for PTSD and in-service factors (length, quality, and combat service) outweighed the basis for separation - wrongfully used marijuana (2 counts) – for the aforementioned reasons.

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable along with a separation program designator (SPD) code, reentry (RE) code and a narrative reason change. The board considered this contention during proceedings and voted to grant an upgrade the applicant's characterization and narrative reason change because the applicant's PTSD Generalized Anxiety DO, quality and combat service outweighing the applicant's basis of separation; misconduct (drug abuse) - wrongfully used marijuana (2 counts) – for the aforementioned reasons. The board determined that the reentry code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

(2) The applicant contends the applicant was not allowed to receive help from ASAP prior to being discharged. The board considered this contention and the applicant's assertion of inequity however, the board determined that there is no evidence of said inequity in the available AMHRR and the applicant did not provide supporting documentation to overcome the presumption of regularity in the discharge process. Nevertheless, the board voted that relief was warranted based on other circumstances as outlined above in paragraphs 9a (3-4) and 9b (1).

(3) The applicant's Length/quality/combat. The applicant was having a hard time dealing with the alleged suicide of a battle buddy and going to see a psychiatrist was frowned upon and came with substantial mocking from peers. The applicant was untreated for both the mild TBI and drug abuse which could have been a contributing factor in the behavior which led to the separation. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted as detailed in paragraphs 9a (3-4) and 9b (1).

c. The Board determined the discharge is inequitable based on the applicant's diagnosis of Adjustment DO, Depression, VA service connection for PTSD and in-service factors (length, quality, and combat service) that mitigated the accepted basis for separation - drug abuse (wrongful use of marijuana). Thus, relief is warranted.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable because the applicant's PTSD, quality, and combat service mitigated the applicant's misconduct – drug abuse (wrongful use of marijuana (2 counts)). Thus, the prior characterization is no longer appropriate.

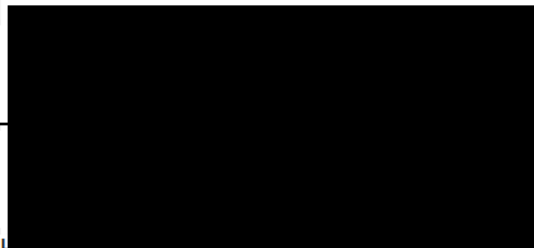
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The 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:



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