

1. Applicant's Name: ██████████

- a. **Application Date:** 28 November 2020
- b. **Date Received:** 7 December 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable and a change of their reentry code.

(2) The applicant requests relief stating when they went through their nonjudicial punishment under the provisions of Article 15, Uniform Code Military Justice (UCMJ) proceedings, there were a lot of errors, to include, the seal getting tamper with, and the wrong date was on the bottle. There was a prescription drug found in their system that they had no knowledge of taking.

(3) They have been serving as a correctional officer and a sheriff deputy for over 3 years now and as much as they love serving, it's not the same as serving in the military. They hope their reentry code can be changed so they can reenlist and service the country again in the military.

b. Board Type and Decision: In a records review conducted on 5 June 2024, and by a 5-0 vote, the Board, determined the discharge is inequitable based on the applicant's diagnosis of Post-Traumatic Stress Disorder and the applicant's length, quality and combat service mitigate the basis of separation (tested positive for Alpha Alprazolam, a Schedule IV controlled substance). Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and 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 reentry code was appropriate and voted not to change it.

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) / Army Regulations 635-200, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 5 February 2016

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 18 November 2015

(2) Basis for Separation: on 12 November 2014, during a unit urinalysis, tested positive for Alpha Alprazolam, a Schedule IV controlled substance.

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

(4) Legal Consultation Date: 23 December 2015

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 6 January 2016 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 15 October 2013 / 5 years

b. **Age at Enlistment / Education / GT Score:** 22 / HS Graduate / 94

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 14T10, Patriot Launching Station Enhanced Operator/Maintainer / 6 years, 3 days

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

e. **Overseas Service / Combat Service:** Korea, SWA / Bahrain (4 December 2012 – 21 November 2013)

f. **Awards and Decorations:** AAM-5, AGCM, NDSM, GWTEM, GWTSM, KDSM, NCODR, ASR, OSR-3

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 12 August 2015, reflects the applicant received nonjudicial punishment for, between on or about 11 November 2014 and on or about 12 November 2014, wrongfully used Alpha Alprazolam, a schedule IV-controlled substance, in violation of Article 112a, UCMJ. Their punishment consisted of a reduction from the rank/grade of sergeant/E-5 to specialist/E-4, forfeiture of \$1,175.00 pay per month for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(2) A DA Form 3822 (Record of Mental Status Evaluation) dated 3 November 2015, reflects the applicant fit for full duty, including deployment. Section IV (Diagnoses) reflects no behavioral health diagnoses. The behavioral health provider stated the applicant is mentally responsible, able to distinguish right from wrong, and has the mental capacity to understand and participate in administrative proceedings.

(3) A memorandum, Delta Battery, 5th Battalion, 7th Air Defense Artillery Regiment, subject: Separation under Army Regulation 635-200, Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 18 November 2015, reflects the applicant's notification of initiating actions to separate them for Misconduct-Abuse of Illegal drugs. The reason for the proposed actions is on 12 November 2014, during a unit wide urinalysis, tested positive for Alpha-Alprazolam, a Schedule IV controlled substance. The company commander

recommended the applicant's service be characterized as general (under honorable conditions). On the same date, the applicant acknowledged receipt of separation notice.

(4) A memorandum, Delta Battery, 5th Battalion, 7th Air Defense Artillery Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 18 November 2015, reflects the applicant's company commander recommended the applicant be retained. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant fails to show any rehabilitative abilities; therefore, it is in the best interest of the Soldier and the United States Military to administratively separate this member from the service. The applicant does not report suffering from either Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI) as a result of deployment overseas in support of a contingency operation within the last 24 months.

(5) In the applicant's memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 23 December 2015, the applicant states they have been advised by their consulting counsel of the basis of the contemplated action to separate them for Commission of a Serious Offense and its effects; of the rights available to them, and of the effect of any action taken by them in waiving their rights. They understood they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them. They further understand that as the result of issuance of a discharge that is less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected to submit statements in their behalf, two letters of character, attesting to their competency and character.

(6) A memorandum, 10th Army & Air Missile Defense Command, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 6 January 2016, the separation authority directed that the applicant be separated from the Army prior to the expiration of current term of service, and their service be characterized as General (Under Honorable Conditions). The separation authority states after reviewing the rehabilitative transfer requirements, they determined the requirements does not apply to this action.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 5 February 2016, with 6 years and 3 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Specialist
- item 4b (Pay Grade) – E-4
- item 12i (Effective Date of Pay Grade) – 24 September 2015
- item 18 (Remarks) – in part, MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKK
- item 27 (Reentry Code) - 4
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

i. Lost Time / Mode of Return: NA

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 249 (Application for Correction of Military Records under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) 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.

(2) 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.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; 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. 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.

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 DoD Instructions 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) 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.

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

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) dated 28 December 2012, provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army Values, the Warrior Ethos, and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldier who test positive for illicit drugs for the first time will be evaluated for dependency, disciplined, as appropriate, and processed for separation within 30 calendar days of the company commander receiving notification of the positive result from the ASAP. Retention should be reserved for Soldiers that show clear potential for both excellent future service in the Army and for remaining free from substance abuse. Soldiers diagnosed as drug dependent will be offered rehabilitation prior to separation.

h. Manual for Courts-Martial, United States (2012 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the

constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. The applicant's AMHRR reflects the applicant received nonjudicial punishment under the UCMJ for their misconduct (drug abuse) and was involuntarily discharged from the U.S. Army. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions). The applicant completed 4 years and 3 days of net active service. The applicant did complete their first full term of service; however, they did not complete their 3-year contractual reenlistment obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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: Post-Traumatic Stress Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that VA service connection of Post-Traumatic Stress Disorder (30% Service Connected) 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 Behavioral Health condition, Post-Traumatic Stress Disorder. As there is an

association between Post-Traumatic Stress Disorder and self-medication with alcohol and/or illicit substances, there is a nexus between the applicant's diagnosis of Post-Traumatic Stress Disorder and the applicant's wrongful use of alprazolam.

(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 Post-Traumatic Stress Disorder outweighed the basis for separation (tested positive for Alpha Alprazolam, a Schedule IV controlled substance).

c. Response to Contention(s):

(1) The applicant contends when they went through their nonjudicial punishment under the provisions of Article 15, Uniform Code Military Justice (UCMJ) proceedings, there were a lot of errors, to include, the seal getting tamper with, and the wrong date was on the bottle. There was a prescription drug found in their system that they had no knowledge of taking. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

(2) The applicant contends they have been serving as a correctional officer and a sheriff deputy for over 3 years now and as much as they love serving, it's not the same as serving in the military. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

(3) The applicant contends they hope their reentry code can be changed so they can reenlist and serve the country again in the military. The Board considered this contention during proceedings, however determined the reentry code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on the applicant's diagnosis of Post-Traumatic Stress Disorder and the applicant's length, quality, and combat service mitigate the basis for separation (tested positive for Alpha Alprazolam, a Schedule IV controlled substance). 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.

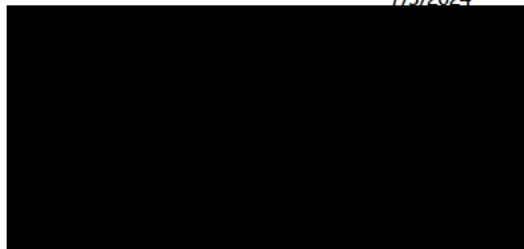
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: 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

Authenticating Official:

7/5/2024



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