

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 7 September 2020
- b. **Date Received:** 5 October 2020
- 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 did not present any issues of propriety or equity for the Board's consideration but states a second chance was not given because there were other parties involved. The applicant states, in effect, the applicant is seeking employment with the Department of Veterans Affairs. Prior to the misconduct which led to the discharge, the applicant had honorable service. The applicant ran a successful business and sold it for profit and has started another business. The applicant has obtained multiple technical school certificates. The applicant is meticulous, honest, and knowledgeable in many trade fields.

b. **Board Type and Decision:** In a records review conducted on 1 November 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the circumstances surrounding the discharge (Adjustment Disorder diagnosis), and post-service accomplishments. 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. The Board determined the RE code was proper and equitable 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) / AR 635-200 / Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 29 March 2011

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 11 January 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 24 September 2010, the applicant used cocaine. On 4 November 2010, the applicant received a Field Grade Article 15 for violation of UCMJ article 112a-Wrongful use, possession, etc. of controlled substances.

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

(4) **Legal Consultation Date:** The applicant waived the right to consult with counsel.

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

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

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 13 December 2008 / 4 years

b. **Age at Enlistment / Education / GT Score:** 25 / HS Graduate / 109

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 25U10, Signal Support System Specialist / 4 years, 5 months, 4 days

d. **Prior Service / Characterizations:** RA, 26 October 2006 – 12 December 2008 / HD

e. **Overseas Service / Combat Service:** SWA / Iraq (29 November 2007 – 5 January 2009)

f. **Awards and Decorations:** ARCOM, AAM, VUA, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CAB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD 2624, dated 22 September 2010, reflects the applicant tested positive for COC 1239 during an Inspection Unit (IU) urinalysis conducted on 7 September 2010.

FG Article, dated 4 November 2010, reflects the applicant wrongfully used cocaine on or about 1 September 2010 and 7 September 2010. The punishment consisted of reduction to specialist/E-4; extra duty and restriction for 45 days; and one-half month's pay for 2 months, suspended for 180 days.

The applicant was the subject of a CID Report of Investigation dated 30 September 2010, for wrongfully using cocaine.

The applicant as counseled on numerous occasions for various acts of misconduct.

The applicant was command referred to the Army Substance Abuse Program (ASAP) for treatment on 29 September 2010, which was unsuccessfully completed by the applicant.

i. **Lost Time / Mode of Return:** None

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Mental Status Evaluation (MSE), 7 February 2011, reflects the applicant had the mental capacity to understand and participate in the proceedings and was mentally responsible. The applicant was diagnosed with Cocaine Abuse and Adjustment Disorder with mixed Anxiety and Depressed Mood.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293, documents pertaining to applicant's post-service business and accomplishments.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant ran a successful business and sold it for profit and has started another business. The applicant obtained multiple technical school certificates.

**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.

**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, in effect, the applicant is seeking employment with the Department of Veterans Affairs. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends, in effect, prior to the misconduct which led to the discharge, the applicant had honorable service. The Board will consider the applicant service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends, in effect, the applicant ran a successful business and sold it for profit and has started another business. The applicant has obtained multiple technical school certificates. 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'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 diagnosis: the applicant held an in-service diagnosis of Adjustment Disorder. Post-service, he is service connected for the same.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that although the applicant did not have a mental defect at the time of the misconduct and still responsible, per medical instruction an Adjustment Disorder is mitigating as the related anxiety and depressive symptoms could have contributed to drug use.

(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 outweighed the wrongful use of cocaine basis for separation for the aforementioned reason.

**b. Response to Contention(s):**

(1) The applicant contends, in effect, prior to the misconduct which led to the discharge, the applicant had honorable service. The Board considered the applicant's 4 years of service, including one combat tours in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's wrongful cocaine use.

(2) The applicant contends, in effect, the applicant ran a successful business and sold it for profit and has started another business. The applicant has obtained multiple technical school certificates. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Adjustment Disorder fully outweighing the applicant's wrongful cocaine use basis for separation.

(3) The applicant contends, in effect, the applicant is seeking employment with the Department of Veterans Affairs. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Adjustment Disorder fully outweighing the applicant's wrongful cocaine use basis for separation.

**c.** The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the circumstances surrounding the discharge (Adjustment Disorder diagnoses), and post-service accomplishments. 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. The Board determined the RE code was proper and equitable and voted not to change it.

**a. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Adjustment Disorder mitigated the applicant's misconduct of wrongful cocaine use. 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.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210007075**

**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**

**Authenticating Official:**

1/12/2024



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