

1. Applicant's Name: [REDACTED]**a. Application Date:** 1 March 2021**b. Date Received:** 16 March 2021**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

b. Counsel states. The applicant seeks relief contending, their drug use was a direct result of their undiagnosed, at the time, Posttraumatic Stress Disorder (PTSD) from their deployment to Afghanistan in 2010 – 2011. Their drug use started in the beginning of 2012, about six months following their redeployment and it lasted a little over a year. They no longer use any drugs other than what is prescribed to them by the VA. They did it because they were desperate to turn off the nonstop bad thoughts and horrific nightmares about war, that they were having. The applicant had never done drugs prior to their deployment, nor experienced any sort of mental illness before.

(1) At 18 years old, the applicant decided to serve their country and loved this country so much, that they not only wanted to serve, but also wanted to fight for it. In no way could they have been prepared for what was to come. The applicant was in their first firefight less than a year out of high school, and it would only be a few months later, when the applicant would have to take someone's life. They could not escape those experiences and to this day, 10 years later, they still haunt them. They went from going 100 mph during deployment, to a dead stop when the applicant came back home.

(2) This was the first time the applicant has really ever had time to think about what they had experienced. The applicant felt they should be punished for the things that they have done because nobody forced them to join the Infantry. It was their decision to enlist that led to the experiences, which would change their life forever. Knowing what they know, now that they are receiving treatment, the applicant would have sought mental health treatment back then.

c. Board Type and Decision: In a records review conducted on 7 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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 reentry code is proper and equitable and voted not to change it.

Please see Section 9 of this document for more detail regarding the Board's decision.

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: 10 May 2013

c. Separation Facts:

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

(2) Basis for Separation: Failed to report on several occasions and for wrongful use of hydrocodone (HYCOD/HYMOR) twice

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

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 24 April 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 February 2010 / 4 years, 19 weeks

b. Age at Enlistment / Education / GT Score: 17 / High School Diploma / 112

c. Highest Grade Achieved / MOS / Total Service: E-3 (PFC) / 11B10 Infantryman / 3 years, 3 months, 1 day

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (4 May 2010 – 3 May 2011)

f. Awards and Decorations: ACM-CS, ARCOM, AGCM, NDSM, GWOTSM, ASR, OSR, NATOMDL, CIB, PB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 10 February 2010, the applicant enlisted in the Regular Army for 4 years and 19 weeks as a PVT. The Enlisted Record Brief provides the applicant deployed to Afghanistan (Operation Enduring Freedom) for one year (4 May 2010 – 4 May 2011), promoted to PV2 (10 August 2010), PFC (1 January 2011), and has been awarded an Army Commendation Medal, an Army Good Conduct Medal, and their Combat Infantry Badge.

(2) On 20 July 2011 and 27 November 2012, the applicant was flagged, Suspend Favorable Personnel Actions (FLAG), for drug abuse adverse action (UA) and field-initiated involuntary separation (BA).

(3) On 11 September 2011, the applicant accepted nonjudicial punishment in violation of Article 92, UCMJ, for having willfully disobeyed a lawful order from their noncommissioned officer (NCO), SGT O., to return back to company after escorting PFC B. to their appointment. They did not appeal. The punishment imposed a reduction to PV2 (E-2), suspended, to be automatically remitted if not vacated before 12 March 2012; forfeiture of \$383.00 pay; extra duty for 14 days; and restriction for 14 days.

(4) On 16 November 2012, The Army Substance Abuse Program (ASAP) Manager, informed the command of the applicant's positive urinalysis for Hydrocodone (HYCOD)/Hydromorphone (HYMOR) on 20 September and provided the required actions IAW AR 600-85, such as notifying local CID, refer the Soldier to Behavioral Health for evaluation/assessment within five duty days; initiating their FLAG; and to comply with regulatory guidance AR 635-200.

(5) On 20 December 2012, a Medical Evaluation Board Proceedings provides their diagnoses for Keloids (right shoulder, left shoulder, upper chest) medically unacceptable IAW AR 40-501, Chapter 3-38); and PTSD, reported as Anxiety Disorder NOS by VA, medically unacceptable IAW AR 40-501, Chapter 3-33b/c. Their case was referred to a Physical Evaluation Board (PEB), the findings approved, and the applicant agreed with the recommendation. Two character letters from the applicant's mother and their significant other, a physician letter as an impartial medical review, and the MEB physician letter were submitted in support of their case.

(6) On 22 and 24 January 2013, the applicant completed their medical assessment, history, and medical examination (MHE) for separation at Lapointe Health Clinic, Fort Campbell, KY, which indicates their overall health is worse since their last physical, providing:

- 10: Been diagnosed with PTSD and the past few months [their] depression and anxiety have worsen and find it hard to cope with what [they are] going through mentally.
- 13: Cold weather injury.
- 16: TMJ.
- 18: Right foot, TMJ, PTSD, Tinnitus, hearing loss, groin pain

(b) Their medical history, block 29 lists the following explanations of "yes" answers:

- 11f: [The applicant] have worn contacts before stopped wearing glasses as well.
- 14b: Lost close to 30lbs coming back from deployment. Started in 2011 and is ongoing.
- 17a: Diagnosed with PTSD have had panic attacks before. Diagnosed in December 2012.
- 17c: Have a terrible memory, have trouble remembering to do everyday ongoing activities.
- 17d: Trouble sleeping 2-3 hours per night at most. Ongoing since late 2011.
- 17e: Enrolled in ABH seeking off-post counseling. Still enrolled been going for 3 months.
- 17f: Constantly depressed or in a bad mood. Ongoing since late 2011.
- 17g: PTSD. Ongoing seeking treatment diagnosed December 2012.

- 17i: Have used prescription pain killers to help [them] cope with [their] mental issues. Have used pain killers on and off since spring/summer of 2012 and recently stopped using them.

(c) Their medical history, block 30a, provides the examiner's notes:

- 11f: Contacts/glasses 9th grade but hasn't worn any in past 2 years. Has new pair on order.
- 14b: Lost 25-30lbs in past 18 months.
- 17a/c/d/e/f/g: Diagnosed PTSD in December 2012. Has had some panic attacks, poor sleep for 15 months. ABH treated for past 3 months and is seeing off post counselor.
- 17i: Abused prescription pain meds over past 6 months currently enrolled in ASAP
- 13g: Keloids diagnosed 2010 – back, shoulders/upper back and mid chest

(d) Their medical examination disqualified them for service and separation. The provider noted their medical diagnoses as Anxiety, Keloid skin condition, and opioid dependency; the provider also recommended the applicant to continue with MEB process and the ASAP.

(7) On 30 January 2013, The Army Substance Abuse Program (ASAP) Manager, informed the command of the applicant's positive urinalysis for Hydrocodone (HYCOD)/Hydromorphone (HYMOR) on 28 November 2012 and provided the required actions IAW AR 600-85, such as notifying local CID, refer the Soldier to Behavioral Health for evaluation/assessment within five duty days; initiating their FLAG; and to comply with regulatory guidance AR 635-200.

(8) The applicant received six developmental counseling forms for failing to report, issuance of a no contact order, and restriction. They disagreed with two counseling's received on 5 and 6 February 2013 for failing to report, although the applicant did not provide any remarks.

(9) On 1 March 2013, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), for having failed to report on divers occasions and for having failed a urinalysis twice. They recommended an General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of their separation notice.

(10) On 6 March 2013, the applicant provides in a self-authored statement, the following be considered prior to taking final action on their administrative separation:

(a) They joined the Army straight out of high school, with the hopes of fighting for their country as an airborne Infantryman in the United States Army. Their father is a Vietnam veteran and the applicant hoped to deploy and serve their country just as he did, with honor and enthusiasm.

(b) The applicant completed basic training and airborne training at Fort Benning, Georgia before being assigned to Rear Detachment 21327 at Fort Campbell, Kentucky. A few weeks later, they were deployed to Afghanistan and assigned to Bravo

Company 21327, in the Kunar Province. Here, [their unit] experienced firefights, often many times a day; they were ambushed on multiple patrols, and on one, the applicant was witness to a close friend having been shot in their leg. On several occasions the applicant honestly did not think they would make it back home, because of the close and immediate violence, and the accurate enemy fire. In Afghanistan, they witnessed devastation and death in ways that the applicant had not expected and saw death and dead bodies for the first time in their life. While they were in Afghanistan, the applicant contributed everything they could and had extreme pride for their unit, the Army, and America as a whole.

(c) The applicant did not expect their experience in war to affect them the way it did and had an extremely hard time adjusting when the applicant returned to the United States. The applicant could not relate to the people they loved, had horrifying nightmares, cried unexpectedly, and experienced other symptoms that were not themselves. The applicant was diagnosed with PTSD and Anxiety with depression, and the multiple medications the applicant was prescribed, offered no help with their symptoms, and the applicant could not sleep. During their long stretch back at Fort Campbell, the applicant felt isolated and depressed, and witnessed more death when their friend Gilliland died in the barracks.

(d) They turned to painkillers when a friend and fellow Soldier gave them one and told them that it would actually help with their symptoms and insomnia. Soon, the applicant was addicted and found themselves "needing" to use prescription drugs to help them cope with their obsessive thoughts about war, hyper vigilance, and nightmares. It also helped them sleep. Even while using drugs, the applicant went to Behavioral Health and sought help for their PTSD, feeling shameful about their drug use. It was not until the applicant was removed from the barracks (a constant reminder) for an extended period of time that they were able to quit, with some physical and mental side effects. The applicant still smoked marijuana occasionally, which also helped with their symptoms, and their cravings for the painkillers. The applicant felt the marijuana worked better and is healthier than the painkillers or their prescribed alternatives. Their family is extremely supportive, and since they found out about the extent of their troubles, have really helped the applicant feel better about themselves, and their future. The applicant had no history of drug use and looking back they cannot believe that they ended up in that situation or addicted in the way that they were.

(e) This whole experience has given the applicant the ability to better understand what other people are going through and gave them a new outlook on life in general. The applicant knows firsthand how hard trauma can be and how drugs can destroy lives and relationships. They look back on their drug use with regret and thank God that they were able to make it through, when so many others do not. They will never use drugs again and plans to share their experience with drugs and PTSD, hopefully to persuade others not to make the same mistake they did. While the applicant is proud of their experience in Afghanistan, they are excited to get out of the Army and move on with their life. They dream of going to school and getting their degree in business and hope to spend their life as a good citizen, working to help society in any way possible. They have been through so much and met so many diverse people in the Army, that the applicant can relate to and influence people's lives from every walk of life. They desire an Honorable discharge in order to use their GI Bill and start school immediately. The applicant would also like to go on with their life without having to take the time to petition VA.

(f) Teddy Roosevelt said, "A man who is good enough to shed his blood for his country is good enough to be given a square deal afterwards." The applicant states they served with honor and pride, and in Afghanistan they would have given their life for their country. They do not want mistakes that the applicant made during the most difficult time in their life to haunt the applicant for any longer. Please, take this request into consideration and allow them to move on with their life in a positive and productive way.

(11) On 12 March 2013, the battalion and the brigade commanders concurred with the company commander's recommendation.

(12) On 2 April 2013, an Informal Physical Evaluation Board (PEB) proceeding, provides the applicant had two medical conditions determined to be unfitting, Anxiety Disorder with comorbid Depression and Keloids on the right shoulder, left shoulder, and upper chest. Other diagnoses found not to be unfitting are finding caries, existing restoration, and missing teeth; left temporomandibular joint within normal limits; left temporomandibular joint not within normal limits; acne face, mid back; bilateral tinnitus; mTBI; chronic groin pain; cold weather injury, bilateral foot/toes; bilateral ankle condition; and hard palpitations); rated as 50%.

(a) This case was adjudicated as part of the Integrated Disability Evaluation System (IDES) under the 19 December 2011 Policy and Procedure Directive-type Memorandum (DTM) 11-015.

(b) The specific VASRD codes to describe the Soldier's condition and the disability percentage was determined by the Department of Veterans Affairs (DVA) and is documented in DVA memorandum dated 5 March 2013. The disposition recommendation was determined by the PEB based on the DVA disability rating proposed and applicable statutes and regulations for the Physical Disability Evaluation System (PDES).

(c) The applicant concurred and waived a formal hearing of their case and did not request reconsideration of their VA ratings.

(13) On 24 April 2013, the separation approval authority directed the applicant be discharged, with a General (Under Honorable Conditions) characterization of service.

(14) On 7 May 2013, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 10 May 2013, with 4 years, 2 months, and 4 days of total service. The applicant provided an electronic signature and has not completed their first full term of service.

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

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

(1) **Applicant provided:**

(a) Through counsel, the applicant provided a VA Rating Decision, dated 3 March 2020, which indicates their service-connected disability, increased from 70% to 100% disabling, for PTSD with Major Depressive Disorder. This was based on

symptoms to include but not limited to: impairment of short- and long-term memory; difficulty in establishing and maintaining effective work and social relationships; suspiciousness; depressed mood; suicidal ideation; mild memory loss; chronic sleep impairment; panic attacks more than once a week, and total occupational and social impairment.

(b) The applicant provided, through counsel, a letter from a Licensed Clinical Social Worker (LCSW), Rock Hill VA Clinic, SC, dated 13 May 2020, indicating the applicant is being seen for their diagnosed PTSD and Depression. Since the applicant's involvement with VA, they have demonstrated regular compliance with their treatment and has gained some insight about how their history of PTSD may have impacted their ability to cope with their traumatic experiences, which led to the applicant's use of illicit substances to cope. Many veterans' struggle with coping with trauma experiences- especially combat and will find themselves abusing alcohol in other substances as a way to cope with their painful experiences. This veteran is continuing to learn more about better coping and defining their new purpose in life. The applicant has support and is open to engaging in other strategies to extend social support and mitigate symptoms of trauma. One of their discussions has focused on veteran enrolling in school. As their therapist, they believe this avenue would prove to only improve the applicant's self-esteem and sense of purpose. Since that time, they have learned that they are ineligible for the GI Bill secondary to their discharge from the military. The therapist's purpose in writing this letter, is to request reconsideration of veteran's discharge to allow them eligibility for the GI Bill.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

a. DD Form 293 (Application for the Review of Discharge); DD Form 214 (Certificate of Release or Discharge from Active Duty); VA Counselor's Letter; VA Disability Rating Decision; Self-Authored Statement

b. Through counsel, their father contends, this letter is to express the changes they saw in the applicant, from having known them before and after they were deployed. Ever since the applicant was young, they wanted to be a Soldier. When they turned 17, they asked their mother and father to sign off on them joining the Army, in which they did. Back then the applicant was younger and very active, had lots of friends and was always smiling. The applicant used to get in trouble in school at times for smiling because they could not help it. Upon their return from Afghanistan, the father almost did not recognize them. The applicant no longer had the face of a young [person] but that of a grown [adult]. Their father could see this empty look in the applicant's eyes, as they quite often stared off into the distance. The smile the applicant once had was no longer there. Their father would try to get their attention or try and talk to the applicant but it was like they were in another world. They can remember one night, about a month after the applicant returned home from their yearlong deployment, they were on leave visiting, when the applicant slammed the door to their room, ran downstairs, threw themselves on the floor and was shouting for someone to "just kill [them]." A few years later, the applicant told their father why that happened, which was because of a dream they could not stop having. The [child] that had left and went to fight in Afghanistan was not the same one that returned home.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this 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, which provides the authorized types of characterization of service or description of separation.

(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 and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(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. 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. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or

the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 14-12c (2), Misconduct (Drub 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 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)) provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. 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 and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

(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. 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.

(2) 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.

(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 Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

h. Manual for Courts-Martial (2008 Edition), United States, states 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 orders and discipline in the Armed Forces.

(1) Article 92 (failure to obey a lawful general order) states in the subparagraph, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for two years.

(2) Article 112a (wrongful use of a schedule II controlled substance, hydrocodone) states in the subparagraph, the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement for five years.

i. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered, medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. 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.

b. A review of the available evidence provides the applicant enlisted in the RA, promoted up to PFC, deployed to Afghanistan for one year, and served for 2 years, 9 months, and 17 days prior to having been flagged for involuntary separation.

(1) The applicant received NJP for disobeying a lawful order, given by their NCO, as a result, their imposed reduction was suspended for six months. Over four months post redeployment, the applicant tested positive for hydrocodone/hydromorphone twice over a two month period. As a result, separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), with a General (Under Honorable Conditions) characterization of service. Their election of rights for their separation proceedings are missing from the record.

(2) They went through a MEB for PTSD (reported as anxiety disorder NOS) and Keloids (right and left shoulder, upper chest) and was referred to a PEB. The PEB found the applicant to be physically unfit and recommended a rating of 50% and that their disposition be a permanent disability retirement. Their mental status evaluation indicated an opioid dependence, which was in remission; and anxiety disorder NOS.

(3) Through counsel, the applicant provided a VA Rating Decision, which indicates their service-connected disability, increased from 70% to 100% disabling, for PTSD with Major Depressive Disorder. This was based on symptoms to include but not limited to: impairment of short- and long-term memory; difficulty in establishing and maintaining effective work and social relationships; suspiciousness; depressed mood; suicidal ideation; mild memory loss; chronic sleep impairment; panic attacks more than once a week, and total occupational and social impairment.

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: The applicant was diagnosed in-service with Adjustment Disorder and Anxiety Disorder. He is service connected for PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed in-service with Adjustment Disorder and Anxiety Disorder. He is service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor determined that the medical condition is mitigating. The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma and substance use, the applicant's PTSD mitigates the basis for separation.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition outweighed the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant, through counsel, seeks relief contending, their drug use was a direct result of their undiagnosed, at the time, Posttraumatic Stress Disorder (PTSD) from their deployment to Afghanistan in 2010 – 2011. Their drug use started in the beginning of 2012, about six months following their redeployment and it lasted a little over a year. They no longer use any drugs other than what is prescribed to them by the VA. They did it because they were desperate to turn off the nonstop bad thoughts and horrific nightmares about war, that they were having. The applicant had never done drugs prior to their deployment, nor experienced any sort of mental illness before. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's drug abuse and FTR charges.

(2) Through counsel, the applicant contends, at 18 years old, the applicant decided to serve their country and loved this country so much, that they not only wanted to serve, but also wanted to fight for it. In no way could they have been prepared for what was to come. The applicant was in their first firefight less than a year out of high school, and it would only be a few months later, when the applicant would have to take someone's life. They could not escape those experiences and to this day, 10 years later, they still haunt them. They went from going 100 mph during deployment, to a dead stop when the applicant came back home. The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's drug abuse and FTR charges.

(3) The applicant, through counsel, contends, this was the first time the applicant has really ever had time to think about what they had experienced. The applicant felt they should be punished for the things that they have done because nobody forced them to join the Infantry. It was their decision to enlist that led to the experiences, which would change their life forever. Knowing what they know, now that they are receiving treatment, the applicant would have sought mental health treatment back then.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's drug abuse and FTR charges.

(4) Their father contends, through counsel, this letter is to express the changes they saw in the applicant, from having known them before and after they were deployed. Ever since the applicant was young, they wanted to be a Soldier. When they turned 17, they asked their mother and father to sign off on them joining the Army, in which they did. Back then the applicant was younger and very active, had lots of friends and was always smiling. The applicant used to get in trouble in school at times for smiling because they could not help it. Upon their return from Afghanistan, the father almost did not recognize them. The applicant no longer had the face of a young [person] but that of a grown [adult]. Their father could see this empty look in the applicant's eyes, as they quite often stared off into the distance. The smile the applicant once had was no longer there. Their father would try to get their attention or try and talk to the applicant but it was like they were in another world. They can remember one night, about a month after the applicant returned home from their yearlong deployment, they were on leave visiting, when the applicant slammed the door to their room, ran downstairs, threw themselves on the floor and was shouting for someone to "just kill [them]." A few years later, the applicant told their father why that happened, which was because of a dream they could not stop having. The [child] that had left and went to fight in Afghanistan was not the same one that returned home.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's drug abuse and FTR charges.

(5) A Licensed Clinical Social Worker (LCSW) contends, the applicant is being seen for their diagnosed PTSD and Depression. Since the applicant's involvement with VA, they have demonstrated regular compliance with their treatment and have gained some insight about how their history of PTSD may have impacted their ability to cope with their traumatic experiences, which led to the applicant's use of illicit substances to cope. Many veterans' struggle with coping with trauma experiences-especially combat and will find themselves abusing alcohol in other substances as a way to cope with their painful experiences. This veteran is continuing to learn more about better coping and defining their new purpose in life. The applicant has support and is open to engaging in other strategies to extend social support and mitigate symptoms of trauma. One of their discussions has focused on veteran enrolling in school. As their therapist, they believe this avenue would prove to only improve the applicant's self-esteem and sense of purpose. Since that time, they have learned that they are ineligible for the GI Bill secondary to their discharge from the military. The therapist's purpose in writing this letter, is to request reconsideration of veteran's discharge to allow them eligibility for the GI Bill.

The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare, or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

d. The Board determined the discharge is inequitable. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation

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code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length, Combat, Quality) and concurred with the conclusion of the medical advising official that the applicant's (PTSD) does mitigate the applicant's misconduct drug abuse. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable. The board voted that an upgrade is warranted but no change to the RE Code due to condition requiring a waiver (BH).

(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.

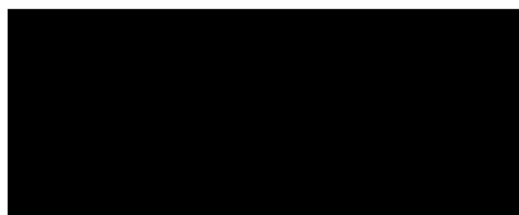
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

10/28/2024



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
UOTH – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs