

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 13 November 2020
- b. **Date Received:** 16 November 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.

b. The applicant seeks relief contending, in effect, they suffered from severe and undiagnosed Post traumatic Stress Disorder (PTSD) on a daily basis, which led to them coping with drugs and alcohol while in service. They were diagnosed with Combat Related – PTSD by Veterans Affairs (VA), one day following their discharge from the military. They were never given the opportunity for rehabilitation, only looked down upon and treated like an outsider, after fighting for their country. The applicant proudly served and received awards, such as their Army Good Conduct Medal and Combat Action Badge; however, their time spent in Iraq caused issues for them when trying to adapt to life back state side.

c. **Board Type and Decision:** In a records review conducted on 12 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD mitigated the drug abuse basis of separation. 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, and the reentry code to RE-3.

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:** 21 June 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 4 June 2012

(2) **Basis for Separation:** On or between 19 February – 21 March 2012, they wrongfully used marijuana.

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

(4) **Legal Consultation Date:** 4 June 2012

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

(6) **Separation Decision Date / Characterization:** 5 June 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 23 July 2008 / 5 years
- b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 95
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 25U10 Sig Support System Specialist / 3 years and 3 months
- d. **Prior Service / Characterizations:** NA
- e. **Overseas Service / Combat Service:** SWA / Iraq (6 July 2010 – 18 June 2011)
- f. **Awards and Decorations:** ARCOM, AAM, AGCM, NDSM, ICM-CS, GWOTSM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 15 July 2008, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; on 23 July 2008, they enlisted in the Regular Army for 5 years as a PVT.

(2) The Enlisted Records Brief provides the applicant promoted to SPC on 1 May 2010; they deployed to Iraq for 12 months (6 July 2010 – 18 June 2011); They were awarded the Army Commendation Medal, Army Achievement Medal, Army Good Conduct Medal, and their Combat Action Badge. On 8 February 2012, the applicant was flagged, a Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and on 16 May 2012, for field-initiated involuntary separation (BA).

(3) On 10 April 2012, the ASAP Officer, Fort, Stewart, GA, provides notification to the command for the positive test results for wrongful use of marijuana on 21 March 2012, advising to initiate mandatory actions IAW AR 600-85, which requires immediately reporting the positive result to Criminal Investigation Division (CID) within 48 hours, initiate a Suspend Favorable Personnel Actions (FLAG) refer the Soldier to ASAP Clinic for evaluation within 5 working days of receipt of the positive results, and initiate separation action.

(4) On 20 April 2012, 1SG notified the applicant of their intent to initiate separation proceedings IAW AR 635-200, Chapter 14-12c, Misconduct (Serious Offense); the record provides page 2 of 2 is missing which annotates if the applicant agreed or disagreed and whether they included a statement on their behalf.

(5) A Mental Status Evaluation Report, dated 26 April 2012, from the Clinical Psychologist at Hawks Troop Medical Clinic, Fort Stewart, GA, provides the applicant was screened with no follow-ups needed; They were fit for full duty, including deployment; there was no evidence of psychiatric disease or defect warranting disposition through medical channels; they were psychologically cleared for chapter separation; they were mentally responsible, can distinguish right from wrong, and was fully competent to participate in administrative proceedings.

(6) On 2 May 2012, a Report of Medical Examination, provides the applicant was qualified for separation with the Physician noting their history of a dislocated left shoulder while

in Advanced Individual Training (AIT) and recommended the applicant to follow-up with their Primary Care Manager as needed; they were qualified for service with a profile factor of P-1, U-1, L-1, H-1, E-1, S-1.

(7) On 7 May 2012, the applicant accepted nonjudicial punishment (NJP) for wrongful use of marijuana on or between 21 February – 21 March 2012, in violation of Article 112a, UCMJ. Their punishment imposed a reduction to E-1, forfeiture of \$745.00 pay per month for two months; extra duty for 45 days; restriction for 45 days. The applicant did not appeal.

(8) On 16 May 2012, the were flagged, a Suspend Favorable Personnel Actions (FLAG) for field-initiated involuntary separation (BA).

(9) On 4 June 2012, the company commander notified the applicant of their intent to separate them under provisions of AR-635-200, Chapter 14-12c (2), Misconduct (Drug Abuse) for wrongful use of marijuana and recommended a General (Under Honorable Conditions) characterization of service.

(a) The commander's report provides the applicant accepted nonjudicial punishment (NJP), in violation of Article 134, UCMJ with two specifications for driving without a license plate and insurance. They were imposed with reduction to PVT; forfeiture of \$745.00 pay per month for two months; extra duty for 45 days; restriction for 45 days.

(b) In the notes section, the commander handwrote their behavior since this incident has continued to decline. [The applicant] was arrested for Driving Under the Influence (DUI) over the weekend (3 June 2012).

(10) The same day, the applicant acknowledged receipt of the separation notice. The election of rights provides the applicant elected not to submit a statement on their behalf and elected to consult with counsel. Defense counsel provided legal consultation.

(11) On 5 June 2012, the battalion commander concurred; the same day, the separation approval authority approved the discharge with a General (Under Honorable Conditions) characterization of service.

(12) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 21 June 2012, with 3 years, 11 months, and 8 days of net service. The applicant 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) On 13 November 2020, the applicant provided a VA Summary of Benefits, which provides they have a service-connected disability with a 90 percent rating; however, the letter does not include the diagnoses/disabilities for the applicant.

(b) On 13 November 2020, the applicant provided the "Rated Disabilities" printout from their VA.gov account listing, in effect, Tinnitus rated as 10 percent, Irritable Bowel Syndrome (IBS) rated as 10 percent, Migraines rated as 30 percent, Obstructive Sleep Apnea rated as 50 percent, and PTSD – Combat rated as 70 percent effective 22 June 2012.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); VA Summary of Benefits Letter, VA.gov Rated Disabilities Printout

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been awarded 90 percent service-connected disability compensation by the VA.

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) 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) An 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 (Drug Abuse).

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for 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. 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 112a (wrongful use of marijuana) states in subparagraph the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) Article 134 (driving without a license and insurance) states in subparagraph the maximum punishment consists of bad conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

h. 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. A review of the record provides there was administrative irregularity in the proper retention of official military records, specifically, the Charge Sheet for driving without a license and insurance, in violation of Article 134, UCMJ, with two specifications.

b. A review of the AMHRR records provides the applicant enlisted in the RA for 5 years, promoted to SPC, and served in Iraq for 12 months. Their awards includes the Army Commendation Medal, Army Achievement Medal, Army Good Conduct Medal, and their Combat Action Badge.

(1) Approximately 12 months post-deployment, they accepted two NJPs for wrongful use of marijuana and for driving without a license and insurance; they were demoted to PVT and separation actions were initiated IAW AR 635-200, Chapter 14 -12c (2), Misconduct (Drug Abuse) with their service characterized as General (Under Honorable Conditions). Additionally, the commander's report provides their behavior continued to decline as they were arrested for DUI on 3 June 2012. They elected and consulted with defense counsel.

(2) The applicant received a separation physical and a mental health status evaluation and was qualified for separation, noting their dislocated shoulder injury which occurred in AIT, and recommended the applicant to follow-up with their PCM as needed. The applicant provided their VA Summary of Benefits which provides their combined rating is 90 percent service-connected with their disabilities listed as PTSD – Combat rated at 70 percent effective the day after their discharge (22 June 2012); Tinnitus rated as 10 percent; Irritable Bowel Syndrome (IBS) rated as 10 percent; Migraines rated as 30 percent; Obstructive Sleep Apnea rated as 50 percent.

(3) The applicant completed 3 years, 10 months, and 29 days of their 5-year contractual obligation prior to their discharge.

c. AR 635-200, Chapter 14 establishes policy and prescribes procedures for separating 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 discharge 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 impeded 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 diagnosis: PTSD

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant asserts PTSD in-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 given the nexus between trauma and substance use, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD outweighed the drug abuse basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends they suffered from severe and undiagnosed Post traumatic Stress Disorder (PTSD) on a daily basis which led to them coping with drugs and alcohol while in service. The Board considered this contention, determined it was valid and voted to grant relief.

(2) The applicant contends they were diagnosed with Combat Related – PTSD by Veterans Affairs (VA), one day following their discharge from the military. The Board considered this contention, determined it was valid and voted to grant relief.

(3) The applicant contends they were never given the opportunity for rehabilitation, only looked down upon and treated like an outsider, after fighting for their country. The Board considered this contention and found no evidence of capricious acts by the chain of command, but determined relief was warranted based on the applicant's medical diagnosis.

(4) The applicant contends they proudly served and received awards, such as their Army Good Conduct Medal and Combat Action Badge, however, their time spent in Iraq caused issues for them when trying to adapt to life back state side. The Board considered this contention and is appreciative of the applicant's service. Based on the applicant's PTSD mitigating the applicant's drug abuse, the Board determined relief was warranted.

c. The Board determined the discharge is inequitable based on the applicant's PTSD mitigated the drug abuse basis of separation. 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, and the reentry code to RE-3.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210008038

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD outweighed the applicant's misconduct of marijuana abuse. Thus, the prior characterization is no longer appropriate.

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

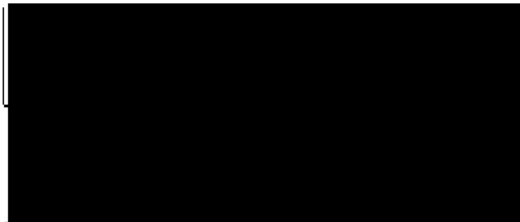
(3) The Board voted to change the RE code to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions) / JKN**
- d. Change RE Code to: RE-3**
- e. Change Authority to: AR 635-200**

Authenticating Official:

6/20/2024



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