

1. Applicant's Name: [REDACTED]**a. Application Date:** 16 December 2020**b. Date Received:** 21 December 2020**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

(2) The applicant seeks relief stating only after their immediate return from a tour of service as an infantryman in Iraq, did they start to have psychiatric issues that resulted in a drug addiction. After being stripped of their rank and discharged from the military, did they receive a correct diagnosis. They now receive service-connection disability compensation for Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI) and for a back injury, due to an improvised explosive device explosion they sustained during combat. They had exemplary conduct/service prior to returning home from Iraq in 2005.

b. Board Type and Decision: In a records review conducted on 20 March 2024, and by a 5-0 vote, the Board, based on the applicant's quality of service, to include combat service, and the circumstances surrounding the discharge (Post-Traumatic Stress Disorder), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN.

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: Drug Rehabilitation Failure / Army Regulations 635-200, Chapter 9 / JPC / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 30 August 2006

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** on or before the applicant's Acknowledgement of Notice to Separate, dated 20 June 2006

(2) **Basis for Separation:** failed to successfully complete the Army Substance Abuse Program (ASAP)

(3) **Recommended Characterization:** Honorable

(4) **Legal Consultation Date:** 21 June 2006

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 11 July 2006 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 5 November 2003 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1O, Infantryman / 2 years, 9 months, 26 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (15 January 2005 – 18 January 2006)

f. Awards and Decorations: ARCOM-V, ARCOM, AAM-2, NDSM, ICM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) The Enlisted Record Brief, dated 24 April 2006, reflects the applicant was advanced to the rank/grade of specialist/E-4 on 1 October 2005.

(2) A memorandum, Headquarters U.S. Army Medical Department Activity, Fort Benning, GA, subject: Alcohol and Drug Rehabilitation Failure of [Applicant], dated 3 May 2006, reflects the applicant was declared a rehabilitation failure in the Drug and Alcohol Program. The applicant's company commander was requested to initiate discharge procedures against the applicant within 60 calendar days.

(3) A DD Form 2807-1 (Report of Medical History), dated 16 April 2019, reflects the applicant marked "Yes" to multiple medical conditions to include recurrent back pain or any back problem and mental health symptoms. Item 30a (Comments) reflects the examiner commented, medical problems – PTSD, under treatment, .

(4) A DA Form 4856 (Developmental Counseling Form), dated 11 May 2006, reflects the applicant received counseling for testing positive on a urinalysis for cocaine on 28 April 2006. The applicant was notified that they will receive nonjudicial punishment under the provision of Article 15, Uniform Code of Military Justice.

(5) A DD Form 2808 (Report of Medical Examination), dated 16 April 2019, reflects the applicant is qualified for separation.

- item 74b (Physical Profile) – reflects a temporary for psychiatric with a numerical designation "3," which signifies the applicant has a medical condition that may require significant limitations
- item 77 (Summary of Defects and Diagnoses) reflects PTSD

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- item 78 (Recommendations) – continue current medications and treatment and follow-up with Mental Health

(6) A memorandum, Headquarters, 1st Battalion, 30th Infantry, 3rd Brigade, 3rd Infantry Division, subject: Notification under Army Regulation 635-200, Chapter 9 (Drug Abuse Rehabilitation Failure), the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 9, for commission of a serious offense, failure to successfully complete the ASAP. The company commander recommended characterization of service as honorable. On 20 June 2006, the applicant acknowledged the basis for the separation and of the rights available to them.

(7) A memorandum, Headquarters, 1st Battalion, 30th Infantry, 3rd Brigade, 3rd Infantry Division, subject: Recommendation under Army Regulation 635-200, Chapter 9 (Drug Abuse Rehabilitation Failure), the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states a report of Mental Status Evaluation or psychiatric report were not applicable and the applicant has demonstrated by their actions that they will not become a quality Soldier desired by the U.S. Army.

(8) On 21 June 2006, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation for Alcohol or Other Drug Abuse Rehabilitation Failure and its effects and of the rights available to them. They elected not to submit statements in their behalf. The applicant understood that they may expect to encounter substantial prejudice in civilian life if a General Discharge Under Honorable Conditions is issued to them.

(9) A memorandum, Headquarters, 3rd Brigade, 3rd Infantry Division, subject: Decision under Army Regulation 635-200, Chapter 9 (Drug Abuse Rehabilitation Failure), dated 11 July 2006, the separation authority directed that the applicant be separated from the U.S. Army prior to the expiration of their current term of service and their service be characterized as general (under honorable conditions).

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 1 December 2020 and shows in:

- item 4a (Grade, Rate or Rank) – private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 2 years, 9 months, 26 days
- item 12i (Effective Date of Pay Grade) – 31 May 2006
- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 9
- item 26 (Separation Code) – JPC [Drug Rehabilitation Failure]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Drug Rehabilitation Failure

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with attached letters
- DD Form 214
- Department of Veterans Affairs (VA) Rating Decision excerpt, reflecting the applicant's evaluation for PTSD evaluated at 30-percent disabling

6. POST SERVICE ACCOMPLISHMENTS: None submitted with application.**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Title 10, U.S. Code, Section 1553, (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, Title 10, U.S. Code, Section 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense (DoD) Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 July 2005, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

(4) Chapter 9 (Alcohol or Other Drug Abuse Rehabilitation Failure) provided the authority and outlines the procedures for discharging Soldiers for alcohol or other drug abuse rehabilitation failure. Discharge is based upon alcohol or other drug abuse such as illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug when the commander determines that further rehabilitation efforts are not practical, rendering the Soldier a rehabilitation failure. This determination will be made in consultation with the rehabilitation team. A Soldier who is enrolled in Alcohol and Drug Abuse Prevention and Control Program for alcohol/drug abuse may be separated because of inability to successfully complete such a program. The service of Soldiers discharged under this section will be characterized as honorable or general (under honorable conditions).

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 "JPC" as

the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 9, drug rehabilitation failure.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DoD Instructions 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) dated 15 October 2001, prescribed policies, and procedures to implement, administer, and evaluate the ASAP. 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.

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

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

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

(4) Paragraph 5-5 (Separation Actions for Alcohol and Other Drug Abuse) stated when a unit commander, in consultation with the ASAP clinical staff, determines that rehabilitative measures are not practical and that separation action will be initiated, all Soldiers identified as illegally abusing drugs will be processed for administrative separation. Soldiers diagnosed as being drug dependent by a physician will be detoxified and then processed for administrative

separation and be considered for disciplinary action under the UCMJ. Soldiers who are rehabilitation failures will be processed for administrative separation when the member is enrolled in the ASAP and the unit commander determines that further rehabilitation efforts are not practical (that is, a rehabilitation failure).

h. Manual for Courts-Martial, United States (2005 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

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):

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

b. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant failed to successfully complete the Army Substance Abuse Program and was involuntary separation from the service. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 9, by reason of drug rehabilitation failure, with a characterization of service of general (under honorable conditions). The applicant completed 2 years, 9 months, and 26 days of their 4-year service obligation.

c. Chapter 9 establishes policy and prescribes procedures for separation members for alcohol or other drug abuse rehabilitation failure. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. The service of Soldiers discharged under this section will be characterized as honorable or general (under honorable conditions).

d. The applicant's Army Military Human Resource Record provides documentation of a diagnosis of PTSD during the applicant's military service. However, the records are void of evidence showing a diagnosis of TBI.

e. 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 held an in-service diagnosis of Post-Traumatic Stress Disorder and is service connected for Post-Traumatic Stress Disorder and Traumatic Brain Injury.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Post-Traumatic Stress 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 given the nexus between trauma and substance use, the misconduct is mitigated.**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends only after their immediate return from a tour of service as an infantryman in Iraq, did they start to have psychiatric issues that resulted in a drug addiction. The Board determined that this contention was valid and voted to upgrade the characterization of service due to Post-Traumatic Stress Disorder mitigating the applicant's failure to successfully complete the Army Substance Abuse Program misconduct.

(2) The applicant contends that after being stripped of their rank and discharged from the military, they received a correct diagnosis. They now receive service-connection disability compensation for PTSD, TBI, and a back injury, due to an improvised explosive device explosion they sustained during combat. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's failure to successfully complete the Army Substance Abuse Program basis for separation.

(3) The applicant contends they had exemplary conduct/service prior to returning home from Iraq in 2005. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's failure to successfully complete the Army Substance Abuse Program basis for separation.

c. The Board determined based on the applicant's quality of service, to include combat service, and the circumstances surrounding the discharge (Post-Traumatic Stress Disorder), determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN.

d. Rationale for Decision:

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(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post-Traumatic Stress Disorder mitigated the applicant's misconduct of failure to successfully complete the Army Substance Abuse Program. Thus, the prior characterization is no longer appropriate.

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

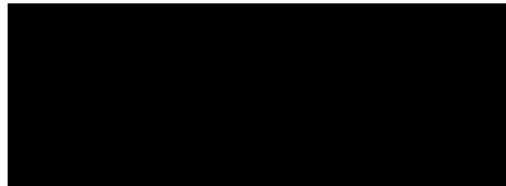
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

4/23/2024



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