

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 10 December 2020
- b. **Date Received:** 7 January 2021
- 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 after when they came back from Iraq, they were suffering from Post-Traumatic Stress Disorder (PTSD). Their drug use was because of their PTSD, related from the experiences in convoy security operations in Iraq, and related to other things.

b. Board Type and Decision: In a records review conducted on 20 October 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the circumstances surrounding the discharge - PTSD diagnosis. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. Based on the applicant's medical diagnosis the Board determined the RE code was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / Army Regulation 635-200, Paragraph 14-12c(2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 14 March 2006

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 6 January 2006

(2) **Basis for Separation:** The applicant was informed of the following reasons:

- On 25 July 2005, the applicant was given a Field Grade Article 15 for wrongful use of marijuana
- On 30 September 2005, the applicant was given a Field Grade Article 15, for disobeying a lawful command, wrongful use of marijuana and assault

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

(4) **Legal Consultation Date:** 17 January 2006

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

(6) Separation Decision Date / Characterization: 16 February 2006 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 July 2004 / 5 years

b. Age at Enlistment / Education / GT Score: 22 / Less Than HS Diploma / 87

c. Highest Grade Achieved / MOS / Total Service: E-4 / 52D10, Power Generator Equipment Repairer / 3 years, 10 months, 29 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany, SWA / Iraq (5 May 2003 – 22 July 2004)

f. Awards and Decorations: ARCOM-2, AGCM, NDSM, GWTEM, GWTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Electronic Copy of DD 2624, dated 6 June 2005, reflects the applicant tested positive for THC 29 during a command directed (CO) urinalysis conducted on 6 May 2005.

(2) A DA Form 4856 (Developmental Counseling Form), dated 15 June 2005, reflects the applicant received developmental counseling for violation of Article 92 (Failure to Obey an Order or Regulation), Uniform Code of Military Justice (UCMJ) and positive for the use of Tetrahydrocannabinol (THC). On 6 May 2005, during a command directed urinalysis the applicant tested positive for THC. The applicant was instructed that they will be enrolled into Army Substance Abuse Program (ASAP) and recommended for UCMJ action.

(3) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 25 July 2005, shows the applicant received nonjudicial punishment for, between on or about 6 April 2005 and on or about 6 May 2005, wrongful use of marijuana. The DA Form 2627 form does not show the applicant's punishment; however, the applicant's Enlisted Record Brief reflects the applicant was demoted to the rank/grade of private/E-1 on 25 July 2005.

(4) Electronic Copy of DD 2624, dated 27 July 2005, reflects the applicant tested positive for THC 101 during an inspection unit (IU) urinalysis conducted on 6 July 2005.

(5) Electronic Copy of DD 2624, dated 27 July 2005, reflects the applicant tested positive for THC 97 during an inspection unit (IU) urinalysis conducted on 7 July 2005.

(6) A DA Form 4856 (Developmental Counseling Form), dated 11 August 2005, reflects the applicant received developmental counseling for violation of Article 92 (Failure to Obey an Order or Regulation), (UCMJ and positive for the use of Tetrahydrocannabinol (THC). On 6 July 2005 and 7 July 2005 during a command directed urinalysis the applicant tested positive for THC. The applicant was instructed that they will be enrolled into Army Substance Abuse Program (ASAP) and recommended for UCMJ action.

(7) A DA Form 2627, dated 30 September 2005, shows –

(a) The applicant received nonjudicial punishment for, having received a lawful command from a superior commissioned officer, to not consume alcohol, did so, on or about 5 July 2005, willfully disobeying a lawful order. Between on or about 7 June 2005 and on 7 July 2005, wrongful use of marijuana. Additionally, on or about 5 August 2005, committed an assault upon Specialist W____, by swinging at him with a means likely to produce death or grievous bodily harm, to wit: a knife.

(b) Their punishment consisted of forfeiture of \$617.00 pay, and extra duty and restriction for 45 days.

(8) A DA Form 3822 (Report of Mental Status Evaluation), dated 5 December 2005, reflects the applicant has the mental capacity to understand and participated in the proceedings, was mentally responsible, and meets retention requirements.

(a) Remarks section reflects no diagnosis.

(b) Recommendations consisted of – treatment at this time is not deemed to be necessary, recommend an order against the use of alcohol and the applicant is psychiatrically cleared for any administrative action deemed appropriate by command.

(9) A memorandum, Charlie Company, 123rd Main Support Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14, dated 6 January 2006, provides the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, misconduct-abuse of illegal drugs, with a recommended characterization of service of general (under honorable conditions) for, on 25 July 2005 receiving a Field Grade Article 15 for wrongful use of marijuana and on 30 September 2005, receiving a Field Grade Article 15 for disobeying a lawful command, wrongful use of marijuana, and assault. On 17 January 2006, the applicant acknowledged the basis for the separation and of the rights available to them

(10) On 17 January 2006, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them and elected to submit a statement on their behalf; however, the statement is not in evidence.

(11) On 19 January 2006, the company commander submitted the request to separate the applicant prior to their expiration term of service. The memorandum shows in –

(a) Item J (Description of Rehabilitative Attempts) the company commander states the applicant is currently being disenrolled at ASAP.

(b) Item O (Statement why the commander does not consider it feasible or appropriate to accomplish other disposition) the company commander states the applicant has shown a consistent propensity towards misconduct over the past three years without sincere reform.

(12) A memorandum, Headquarters, Division Support Command, subject (Separation under Army Regulation 635-200, Paragraph 14, dated 16 February 2006, the separation authority approved the request for the applicant's separation from the Army under the provisions of Army Regulation 635-200, Chapter 14, Section III, Paragraph 14-12c, for commission of a

serious offense and that the applicant will be furnished a General (Under Honorable Conditions) Discharge Certificate.

(13) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 14 March 2006, with 3 year, 10 months, and 29 days of net active service this period. The applicant has completed the first full term of service; however, they only completed 1 year and 7 months, and 24 days of their reenlistment contractual obligation of 5 years.

(14) On 21 October 2021, the Army Review Boards Agency requested medical documents from the applicant in support of his application and their claim of PTSD. As of date, the applicant has not submitted medical documents.

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

b. **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)
- Army Commendation Medal Certificate
- two 3rd Party Statements, reflecting the applicant support for the Combat Action Badge

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their petition.

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), 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; 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), 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and

performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

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

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

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. 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. Paragraph 14-12c (2), misconduct (drug abuse), provides relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation. A 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.

(6) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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, paragraph 12c(2), misconduct (drug abuse).

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DoD Instructions 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable 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 waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable 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)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. It provides 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 missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

h. Manual for Courts-Martial, 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 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) may be subject to a punitive discharge, confinement, and/or forfeiture of pay.

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 that agency.

8. SUMMARY OF FACT(S):

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

b. The applicant's AMHRR reflects the specific facts and circumstances concerning the events which led to the discharge from the Army, specifically, the applicant's acceptance of nonjudicial punishment on two occasions for their wrongful use of marijuana. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a

characterization of service of general (under honorable conditions). They completed 9 months, and 18 days of their 5-year contractual obligation prior to the misconduct that led to their discharge.

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. The Manual for Courts-Martial provides wrongful use, possession, manufacture, or introduction of a controlled substance, to include cocaine may result in a punitive discharge, forfeiture of all pay and allowances, and confinement.

e. Neither the applicant nor the AMHRR provide documentation of a diagnosis of PTSD during the applicant's term of service.

f. 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. KURTA FACTORS. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnosis: the applicant was diagnosed in-service with PTSD. Post-service, he is service connected for combat related PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant was diagnosed in-service with PTSD.

(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, drug use is mitigated. Although assault is noted, the discharge is Drug Abuse allowing for full mitigation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD outweighed the use of marijuana but did not outweigh disobeying a lawful command and assault basis for separation. However, despite non mitigation of the assault offense the Board voted to upgrade based on length, quality, combat, and consideration of the applicant's PTSD.

b. Response to Contention(s): In regard to the applicant contention when they came back from Iraq, they were suffering from PTSD, their drug use was because of their PTSD related from the experiences in convoy security operations in Iraq, and other things, and submitted a copy of their VA ratings. The Board considered this contention and found it valid and voted to grant relief in the form of an upgrade based on the applicant's PTSD mitigating the misconduct.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the circumstances surrounding the discharge - PTSD diagnosis. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. Based on the applicant's medical diagnosis the Board determined the RE code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's misconduct of marijuana use. The Board found sufficient evidence of in-service mitigating factors (Length, Quality, Combat) despite the unmitigated misconduct of disobeying a lawful command and assault. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service were inequitable. Thus, the prior characterization is no longer appropriate.

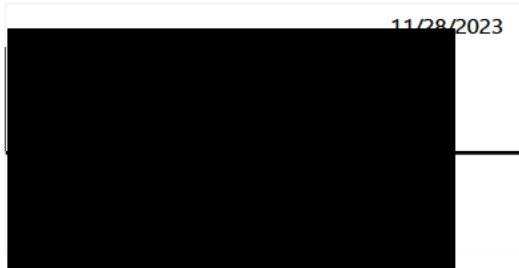
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change, as the Board determined it was proper and equitable based on the applicant's diagnosis and voted not to change it.

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:



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