

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

- a. **Application Date:** 25 November 2020
- b. **Date Received:** 15 December 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 under honorable conditions (general). The applicant requests an upgrade to honorable and a narrative reason change.

b. The applicant states in effect, their discharge was due to their mental health and lack of support for PTSD related issues. Because of their issues they relied on alcohol and substance abuse to cope. Their family dynamics issues were also ignored when they discussed them; they were having trouble.

c. **Board Type and Decision:** In a records review conducted on 9 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's diagnosis of Anxiety and post-service connected PTSD with additional diagnosis of Antisocial Personality Disorder mitigating the basis of separation (wrongful use of marijuana, driving under the influence, and failure to report), the applicant also possesses in-service factors (length, quality, combat) and warrant a change to the characterization and narrative reason for 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. The Board determined the reentry code was appropriate based on the applicant's medical diagnosis and voted not to change it. Please see Section 9 of this document for more detail regarding the Board's decision. Board member names available upon request.

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Pattern of Misconduct / AR 635-200 / JKA / RE-3 / Under Honorable Conditions (General)

b. **Date of Discharge:** 29 September 2008

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 8 September 2008

(2) **Basis for Separation:** The applicant wrongfully used marijuana, they were driving under the influence and failing to report.

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

(4) **Legal Consultation Date:** 8 September 2008

(5) **Administrative Separation Board:** N/A

**(6) Separation Decision Date / Characterization:** 9 September 2008 / General, Under Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 27 February 2008 / 4 years

**b. Age at Enlistment / Education / GT Score:** 19 / NIF / 116

**c. Highest Grade Achieved / MOS / Total Service:** E-4 (Specialist) / 11B1P Infantryman / 3 years, 8 months, 18 days

**d. Prior Service / Characterizations:** 12 January 2005 – 26 February 2008 / Continuous active service.

**e. Overseas Service / Combat Service:** None / Iraq; 4 October 2006 – 15 November 2007

**f. Awards and Decorations:** ARCOM-2, AGCM, NDSM, GWTSM, ICM-CR, ASR, OSR-2

**g. Performance Ratings:** N/A

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** An Enlistment/ Reenlistment Document provides the applicant reenlisted in the Army at the rank of specialist (E-4) for 4 years on 27 February 2008.

**(2)** Two Developmental Counseling Forms dated 28 May 2008 and 3 June 2008 provides the applicant was arrested for DUI off post on 24 May 2008, additionally they tested positive for marijuana from a company conducted urinalysis.

**(3)** On 26 June 2008 the applicant received 3 counseling statements for various acts of misconduct: being an uninsured motorist with unlawful tint, having a weapon in their vehicle when they were arrested for DUI, and for a physical altercation outside of a club after being arrested for DUI which prohibited them from being at locations that serve alcohol.

**(4)** A memorandum, subject breathalyzer dated 1 July 2008 provides the applicant failed to report to work on time and was picked up by their chain of command; they had slurred speech and stated they had been drinking the night before. A breathalyzer was requested and administered; .125 reading.

**(5)** Record of Proceedings UCMJ dated 1 July 2008 provides the applicant received a NJP for violating Article 112a of the UCMJ. They wrongfully used marijuana between or on 7 April – 7 May 2008. Punishment consisted of reduction in rank to E-1, forfeiture of \$673 pay for 2 months, extra duty and post restriction with an escort for 45 days. On 3 July 2008, the applicant was counseled for being 40 minutes late to extra duty

**(6)** A Report of Medical Assessment document dated 4 August 2008, provides that the applicant received a separation medical assessment/examination.

(7) A Report of Mental Status Evaluation document dated 4 August 2008, provides the applicant received a separation mental health evaluation: Remarks: the soldiers condition will not respond to command efforts at rehabilitation nor any treatment methods available.

(8) Record of Proceedings UCMJ dated 19 August 2008 provides the applicant received a NJP for violating Articles 86 and 134 of the UCMJ. They failed to go to their place of duty, overindulged in intoxicating alcohol and was incapacitated for the proper performance of their duties on 1 July 2008. Punishment forfeiture of \$673 pay, extra duty, and post restriction for 45 days.

(9) A memorandum, 1st Battalion, 501st Infantry, Fort Richardson, Alaska subject: Separation under AR 635-200, Chapter 14-12b dated 8 September 2008 provides the applicant's immediate commander notified them of their intent to separate them for patterns of misconduct with a recommended characterization of service of General (under honorable conditions). The applicant acknowledged the commander's notification and basis for separation, their available rights, they consulted with counsel and completed their election of rights, indicating they understood the prejudices that may occur in receiving a characterization of service of less than honorable and elected to not submit a statement(s) on their behalf.

(10) The chain of command endorsed and concurred with the commander's recommendation and on 9 September 2008 the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

(11) A DD Form 214 shows the applicant was discharged accordingly on 29 September 2008. Item 18 (Remarks) of their DD Form 214 has administrative error: missing required mandatory statement regarding the completion of first term of service, and reenlistment periods of service. The applicant reenlisted 27 February 2008.

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

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

(1) **Applicant provided:** A rated disabilities document that shows a 50 % service-connected disability rating for PTSD.

(2) **AMHRR Listed:** ASAP enrollment.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293 (Discharge Review) application, a copy of their DD Form 214, a Department of Veteran Affairs summary of benefits letters that provides the applicant is 60 percent service connected, and a document that shows a 50 percent service connection for PTSD in support of their application.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted in support of their 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 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) 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) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards

(5) 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 subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12b provides for the separation of Soldiers when they have a pattern of misconduct involving acts of discreditable involvement with civil or military authorities and conduct which is prejudicial to good order and discipline.

(6) 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 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.

f. 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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct

g. 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 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.

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 that agency.

i. Army Regulation 635-5 (Separation Documents) This regulation prescribes policy and procedural guidance relating to transition management. It consolidates the policies, principles of

support, and standards of service regarding processing personnel for transition and explains separation document preparation. It provides the following for Block 18 (Remarks):

(1) Mandatory entry: "The information contained herein is subject to computer matching within the Department of Defense (DOD) or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a federal benefits program."

(2) Mandatory entry: "SOLDIER (HAS) OR (HAS NOT) COMPLETED FIRST FULL TERM OF SERVICE." This information assists the State in determining eligibility for unemployment compensation entitlement. The following guidance will help determine which entry to use:

(a) To determine if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment contract and any extensions to those initial enlistment documents and compare the term of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed or exceeded the initial enlistment, enter "HAS." If block 12c of the DD Form 214 is less than the Soldier's commitment, enter "HAS NOT."

(b) Routinely, a Soldier should not be considered to have completed the first full term of service if separation occurs before the end of the initial contracted period of service. However, if a Soldier reenlists before the completion of that period of service, the first term of service is effectively redefined by virtue of the reenlistment contract.

(3) For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify inclusive dates for each period of reenlistment. For Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

**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 DD Form 214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge, which is normally considered appropriate for a soldier discharged for misconduct.

b. Based on the available evidence the applicant enlisted in the army at the age of 19, they completed a 14-month deployment in Iraq and reenlisted in the army. Three months into their contractual obligation they were arrested for driving under the influence, and after a companywide urinalysis they tested positive for marijuana. The applicant received two non-judicial punished and was processed for administrative separation.

c. The applicant was notified of the intent to separate them for patterns of misconduct and acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12b. The applicant consulted with military counsel and elected to not submit any statements on their behalf. They received the required health and mental health separation examinations that cleared them for administrative separation.

d. Review of the available evidence provides administrative error in Item 18 (Remarks) of the DD Form 214 which fails to provide mandatory remarks required according to Army Regulation 635-8 regarding the use of the DD Form 214, completion of the first term of service, and concurrent and reenlistment period of service.

e. Chapter 14 establishes policy and prescribes procedures for members being separated 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.

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. 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 by primary care with Anxiety. Post-service, he is service connected for PTSD with additional diagnosis of Antisocial Personality Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed by primary care with Anxiety.

(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, substance use, and avoidance, 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 Anxiety, PTSD and Antisocial Personality Disorder outweighed the wrongful use of marijuana, driving under the influence, and failure to report basis for separation for the aforementioned reason(s).

b. Response to Contention(s): The applicant contends that they would like to receive medical benefits for PTSD care. 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. However, the Board voted to grant the applicant relief based on medical mitigation.



c. The Board determined the discharge is inequitable based on the applicant's diagnosis of Anxiety and post-service-connected PTSD with additional diagnosis of Antisocial Personality Disorder mitigating the basis of separation (wrongful use of marijuana, driving under the influence, and failure to report), the applicant also possesses in-service factors (length, quality, combat) and warrant a change to the characterization and narrative reason for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code was appropriate based on the applicant's medical diagnosis 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 diagnosis of Anxiety and post-service-connected PTSD with additional diagnosis of Antisocial Personality Disorder mitigated the basis of separation (wrongful use of marijuana, driving under the influence, and failure to report). 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.

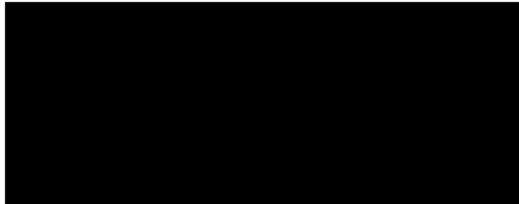
(3) The RE code will not change, based on the applicant's medical diagnosis, the Board voted not to change it and determined it was proper.

**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:**

3/5/2024



**Legend:**

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