

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 8 June 2020
- b. **Date Received:** 7 April 2021
- 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 a reentry eligibility (RE) code change from RE 4 to 3. The applicant did not properly annotate the enclosed application requesting a possible discharge upgrade. The Army Discharge Review Board considered the applicant for a possible upgrade as instructed in pertinent part by Department of Defense Instruction 1332.28, which stipulates a request for review from an applicant without an honorable discharge shall be treated as a request for a change to an honorable discharge unless the applicant requests a specific change to another character of discharge.

b. The applicant seeks relief contending, in effect, during a 4-day pass while driving, another driver failed to yield while the applicant was going through an intersection, causing a head on collision with the applicant. Because the applicant failed to wear their seat belt, the applicant was sent flying into their windshield cracking their head, their knee through the dashboard, and their hand into the shattered glass. The applicant was completely disoriented and had a concussion. The applicant's father took the applicant to the emergency room and was cared for. On the next day, the events of the accident were a dark blur and someone the applicant went to high school with that got into bad things, picked the applicant up and took the applicant to a house where they were taking part in drugs such as cocaine and marijuana. The applicant refused about a half dozen times before giving into partaking in cocaine use. The applicant feels they took advantage of the applicant having a concussion. Prior to this, the applicant has never indulged in the use of illegal drugs. The applicant attended the Army Substance Abuse Program (ASAP) and various other courses before departing the Army and strongly believes they deserve a second chance to show their worth within the Armed Forces.

c. **Board Type and Decision:** In a records review conducted on 1 March 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's one time drug use and post service accomplishments mitigated the wrongful use of cocaine. 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.

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:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 29 May 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 27 April 2020

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

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

(4) **Legal Consultation Date:** On 30 April 2020, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 18 May 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 18 September 2018 / 3 years and 20 weeks

b. **Age at Enlistment / Education / GT Score:** 17 / High School Graduate / 98

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 19K10, M1 Armor Crewman / 1 year, 8 months, and 19 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** NDSM, ASR

g. **Performance Ratings:** NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Electronic Copy of DD Form 2624, 12 December 2019, reflects the applicant tested positive for COC 2619 (cocaine), during an Inspection Random (IR) urinalysis testing, conducted on 2 December 2019.

(2) The applicant was flagged for drug abuse adverse action (UA) on 8 January 2020 effective 6 January 2020.

(3) Two developmental counseling forms, 7 January 2020, reflects the applicant was counseled for testing positive for cocaine and flag initiation. The applicant was referred to the ASAP, the Army's Substance Use Disorder Clinical Care (SUDCC) program, and Prime for Life.

(4) FG Article 15, 4 February 2020, for wrongfully using cocaine between on or about 30 November and 2 December 2019. The punishment consisted of a reduction from E-3 to E-1; forfeiture of \$866.00 pay (suspended); extra duty 45 days; and an oral reprimand.

(5) Report of Medical History, 2 March 2020, reflects the examining medical physician noted in the comments section: The applicant had left hand and leg pain after a motor vehicle accident while on leave for Thanksgiving in November 2019. The applicant suffered no bone

injuries but had some abrasions and bruising which were all resolved. The applicant was undergoing mandatory treatment with embedded behavioral health for cocaine abuse.

(6) Developmental Counseling Form, 20 April 2020, shows the applicant was counseled by the company commander for recommendation for separation under Chapter 14-12c, commission of a serious offense.

(7) The applicant's Enlisted Record Brief, 2 June 2020, reflects the applicant was flagged for APFT failure (JA), effective 8 January 2020; and was ineligible for reenlistment due to an adverse action flag (9B). The Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions.

FLAGS / AEA codes: JA / L RE/Prohibition code: 9B

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 28 January 2020, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; and could appreciate the difference between right and wrong. The applicant had been screened for PTSD and mTBI with negative results. The command was advised to consider the influence of these conditions. The applicant was diagnosed with unspecified problems related to employment and non-contributory.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; applicant self-authored letter; DD Form 2648 (Service Member Pre-Separation/Transition Counseling and Career Readiness Standards E-Form for Service Members Separating, Retiring, Released from Active Duty); German Armed Forces Proficiency Badge; three characters letters.

6. POST SERVICE ACCOMPLISHMENTS: Has continued to stay clean of drugs and has no want or need to partake in such events.

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), 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. AR600-85, (The Army Substance Abuse Program), paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes in part: Results of command-directed drug or alcohol testing that are inadmissible under the military rules of evidence; results of a drug or alcohol test collected solely as part of a safety mishap investigation undertaken for accident analysis and the development of countermeasures; and

information concerning drug or alcohol abuse or possession of drugs incidental to personal use, including the results of a drug or alcohol test, collected as a result of a soldier's emergency medical care solely for an actual or possible alcohol or other drug overdose.

e. 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) Paragraph 3-8a states a Soldier is entitled to an honorable characterization of service if limited-use evidence (see AR 600-85) is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence.

(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.

(5) Paragraph 14-3 prescribes 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.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing 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 under paragraph 14-12a or 14-12b as appropriate.

(7) 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.

f. Army Regulation 635-5-1 (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, misconduct (drug abuse).

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 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.

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 a change to the RE code from RE 4 to 3 and an upgrade will be considered. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 1 year, 8 months, and 19 days. The applicant tested positive for cocaine from a random urinalysis test conducted on 2 December 2019. The applicant was command-referred to the ASAP, SUDCC, and Prime for Life. On 29 May 2020, the applicant was discharged with a general (under honorable conditions) characterization of service.

c. The applicant requests the RE code be changed from RE 4 to 3 to join the Army. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

d. The applicant contends, in effect, prior to this one use of cocaine, the applicant has never indulged in the use of illegal drugs. The applicant attended the ASAP and various other courses before departing the Army and strongly believes they deserve a second chance to show their worth within the Armed Forces. The applicant's AMHRR contains a developmental counseling form, 7 January 2020, reflecting the applicant was referred to the ASAP, the SUDCC program, and Prime for Life for testing positive for cocaine use. AR 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

e. The applicant provided their German Armed Forces Proficiency Badge. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

f. The characters letters provided with the application speak highly of the applicant and request the applicant be able to rejoin the Army. One of the characters letters, states the applicant notified the platoon sergeant that they was involved in an accident. The sergeant advised the applicant that they could recover from their accident at home or could return to duty. The applicant being motivated to get back to the unit decided to return to Fort Bliss, KY. The applicant checked into the clinic to be evaluated for head and hand injuries. The applicant was given a profile for light duty and no physical training for 8 weeks. While in the clinic, the applicant was chosen for a random drug screening. The applicant was told months later that they was chosen because the urinalysis noncommissioned officer in charge believed the applicant would be clean. The applicant believed they would be clean also as they had no recollection of being exposed to cocaine. To this day, the applicant still does not remember the incident that took their dream of serving in the Army away.

g. 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

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

b. Response to Contention: The applicant contends, in effect, prior to this one use of cocaine, the applicant has never indulged in the use of illegal drugs. The applicant attended the ASAP and various other courses before departing the Army and strongly believes they deserve a second chance to show their worth within the Armed Forces. The Board considered this contention and determined it valid and voted to grant relief.

c. The Board determined the discharge is inequitable based on the applicant's one time drug use and post service accomplishments mitigated the wrongful use of cocaine. 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, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on the one-time drug use, misconduct took place right after a vehicle accident, and post-

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service accomplishments mitigate the applicant's misconduct (wrongful use of cocaine). 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.

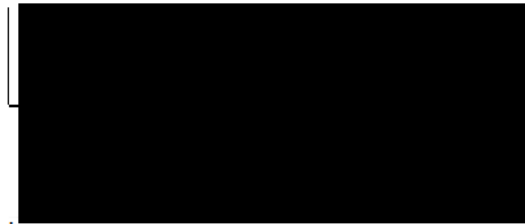
(3) The Board voted to change the RE code to RE-3.

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:

3/8/2024



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