

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210014647

1. Applicant's Name: [REDACTED]

a. **Application Date:** 29 July 2021

b. **Date Received:** 2 August 2021

c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant Requests:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

b. **Applicant Contention(s)/Issue(s):** The applicant was aware of their eligibility to apply for a discharge upgrade six months after post-service separation.

c. **Board Type and Decision:** In a records review conducted on 18 February 2026, and by a 3-0 vote, the Board determined the discharge is inequitable based on the applicant's length and combat service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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 **Board Discussion and Determination** section for more detail regarding the Board's decision. Board member names are 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:** 3 August 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 15 June 2009

(2) **Basis for Separation:** The applicant was informed of the following reason: The applicant wrongfully used cocaine between on or about 24 March 2009 and 31 March 2009.

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

(4) **Legal Consultation Date:** 16 June 2009

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

(6) **Separation Decision Date / Characterization:** 24 June 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment Under Review:** 26 September 2006 / 3 years

b. **Age at Enlistment / Education / GT Score:** 42 / High School Graduate / 101

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M1O, Motor Transport Operator / 2 years, 9 months, 15 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA /
Afghanistan, 14 April 2009 – 13 July 2009
Iraq, 4 August 2007 – 21 November 2007

f. Awards and Decorations: ACM-CS, NDSM, GWTSM, ICM-CS, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) FG Record of Proceedings under Article 15, Uniform Code of Military Justice, 4 June 2009, indicates the applicant was found to have wrongfully used cocaine between on or about 24 March 2009 and 31 March 2009. The imposed punishment included a reduction from E-4 to E-1 and extra duty for 45 days.

(2) Electronic Copy of Specimen Custody Document – Drug Testing, 8 April 2009, indicates the applicant tested positive for COC 493 (cocaine) during an Inspection Unit (IU) urinalysis testing conducted on 31 March 2009.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s): The following documents have been provided to the ARBA Medical Advisor, if applicable. See **“Board Discussion and Determination”** for Medical Advisor Details.

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Behavioral Health Evaluation (BHE), 10 June 2009, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by the command.

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of the 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. Office, Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder), 3 September 2014, directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

c. Office, Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017 issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

d. Office, Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations), 25 July 2018 issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

(1) This guidance does not mandate relief but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, DRBs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

(2) Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

e. 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.

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

- 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.

- 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.

- 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 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(a) Paragraph 3-7a states 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.

(b) Paragraph 3-7b states 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.

(2) 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) Paragraph 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(b) 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.

h. 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).

8. SUMMARY OF FACT(S): Standard of Review. 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 Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The applicant wrongfully tested positive for cocaine between or about 24 March 2009 and 31 March 2009, just prior to deploying to Afghanistan.

c. The applicant submitted a letter for the chain of command's consideration prior to his separation. Records confirm that the chain of command did review and consider this letter at the time when determining whether to pursue separation or retention. However, the version of this letter that was subsequently scanned and uploaded to the AMHRR is now mostly illegible, with only two paragraphs readable.

d. A review of the applicant's application, administrative separation packet, and AMHRR reveals no evidence of inequity or impropriety, as the separation was correctly processed in accordance with Army policy prohibiting drug use. Furthermore, the review found no mitigating factors or new evidence that would warrant an upgrade to the characterization of service.

e. The applicant's Army Military Human Resources Record (AMHRR) contains evidence leading to the discharge from the Army. The applicant's AMHRR does include a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions).

f. The applicant was informed of their eligibility to apply for a discharge after separation if they receive a discharge less than Honorable. However, the board's review and consideration of an application does not imply or guarantee that the discharge will be upgraded.

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 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. Prior Decisions Cited: None

c. Response to Contention: The applicant was informed of their eligibility to apply for a discharge after separation.

The Board recognizes and appreciates the applicant's service, considered this contention during Board proceedings along with the totality of the applicant's service record, and determined that the applicant's length of service, to include combat service, outweighed the applicant's one-time marijuana use and relief was warranted.

d. The Board voted based on the applicant's length of service, to include combat service, that the narrative reason and characterization of the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the narrative reason for separation to Misconduct (Minor Infractions), with the corresponding separation code of JKN, and the Re-entry Code to Re 3.

e. Rationale for Decision:

(1) Published Department of Defense guidance indicates the guidance is not intended to interfere or impede on the Board's statutory independence. The Board determines the relative weight of the action that was the basis for the discharge and whether it supports relief or not. In reaching its determination, the Board considers the application, available records and any supporting documents included with the application.

(2) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length of service, to include combat, mitigated the applicant's misconduct of cocaine abuse. Thus, the prior characterization is no longer appropriate.

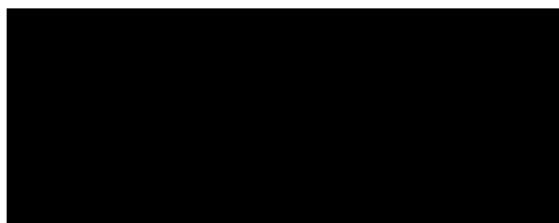
(3) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(4) 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:



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
 FTR – Failure to Report

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