

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 21 June 2020
- b. **Date Received:** 28 June 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 change to the SPD code. 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 is seeking an upgrade to obtain military benefits. The applicant checked the other mental health box on the DD Form 293 (Application for the Review of Discharge from the Armed Forces of the U.S.).

c. **Board Type and Decision:** In a records review conducted on 3 May 2024, and by a 5-0 vote, the Board, based on the applicant's length of service, and the circumstances surrounding the discharge (Chronic Adjustment DO (CAD), which mitigates some of his misconduct, voted to upgrade the applicant. As there is an association between CAD and self-medication with illicit drugs, there is a nexus between CAD and the applicant's wrongful use of marijuana. The Board determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was proper and equitable 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 1 May 2015

c. Separation Facts:

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 10 April 2015 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 27 August 2013 / 4 years and 24 weeks

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 88

c. Highest Grade Achieved / MOS / Total Service: E-2 / 42A10, Human Resources / 1 year, 8 months, and 5 days

d. Prior Service / Characterizations: NA

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: NDSM, GWTSM, KDSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Orders 113-001, 23 April 2015, shows the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 1 May 2015 from the Regular Army.

(2) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), shows the applicant had not completed the first full term of service. The applicant was discharged on 1 May 2015 under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was authenticated with the applicant's electronic signature.

(3) The applicant's Enlisted Record Brief, dated 4 May 2015, shows the applicant was reduced from E-2 to E-1 effective 18 April 2014.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Three Disability Benefits Questionnaires (DBQ), dated 29 November 2018, 28 February 2020, and 7 July 2021 showing a diagnosis of adjustment disorder with mixed anxiety and depressed mood.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DBQ Notification and mental disorder questionnaires.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with 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. 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. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 1-32, Medical examinations and mental status evaluations conducted by a psychologist, or master-level, licensed clinical social worker, are required for Soldiers being processed for separation under chapters 13 or 14 (section III).

(2) Paragraph 2-2 (Notice), stated commanders were to notify the soldier in writing of the following:

(a) Provide the basis of the proposed separation, including the circumstances upon which the action was based, and a reference to the applicable regulatory separation provision.

(b) The Soldier will be advised of the following rights:

- whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army
- the least favorable characterization of service or description of separation they could receive
- the type of discharge and character of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander

(c) Further advise the Soldier of the following rights:

- consult with military or civilian counsel at their own expense
- submit statements in their own behalf
- obtain copies of documents that will be sent to the separation authority supporting the proposed separation
- to a hearing before an administrative separation board under section III of this chapter if they had 6 or more years of total active and Reserve service on the date of initiation of recommendation for separation
- waive their rights

(3) 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.

(4) 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.

(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.

(6) 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.

(7) Paragraph 14-12c prescribes 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.

e. 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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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 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 SPD code and an upgrade to honorable will be considered. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain 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, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions).

c. The applicant requests a change to the SPD code. Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c, is "JKQ."

d. The applicant is seeking an upgrade to obtain military benefits. Eligibility for veteran's benefits does 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.

e. Analyst notes the applicant checked the other mental health box on the DD Form 293. The applicant submitted three DBQs showing a diagnosis of adjustment disorder with mixed anxiety and depressed mood. The applicant's AMHRR contains no documentation of a mental health condition. The Military Review Boards representative emailed the applicant on 23 December 2023 requesting documentation pertaining to a VA rating decision for their mental health condition but received no response from the applicant.

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/experiences: Chronic Adjustment Disorder (50% Service Connected).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection establishes diagnosis of Chronic Adjustment Disorder occurred and/or began during active military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a Behavioral Health condition, Chronic Adjustment Disorder (CAD), which mitigates some of the applicant's misconduct. As there is an association between CAD and self-medication with illicit drugs, there is a nexus between CAD and the applicant's wrongful use of marijuana. CAD does not mitigate the offense of being found in a female Soldier's room as CAD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

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

b. Response to Contention: None

c. The Board determined, based on the applicant's length of service, and the circumstances surrounding the discharge (Chronic Adjustment DO (CAD), which mitigates some of his misconduct, in favor of an upgrade for the applicant. The Board concurred with the Medical Advisor that there is an association between CAD and self-medication with illicit drugs, there is a nexus between CAD and the applicant's wrongful use of marijuana. Although CAD does not mitigate the offense of being found in a female soldier's room as CAD does not affect one's ability to distinguish right from wrong and act in accordance with the right), the Board determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN.

d. Rationale for Decision:

(1) The Board concurred with the medical advising official and voted to change the applicant's characterization of service to Honorable because the applicant's Chronic Adjustment Disorder (CAD) mitigates some of the applicant's misconduct. As there is an association between CAD and self-medication with illicit drugs, there is a nexus between CAD and the applicant's wrongful use of marijuana. Thus, the prior characterization is no longer appropriate. However, the CAD does not mitigate the other misconduct of being found in a female Soldier's room as CAD does not affect one's ability to distinguish right from wrong and act in accordance with the right, but the Board determined that the additional misconduct did not warrant a discharge received.

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

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

10. BOARD ACTION DIRECTED:

a. Issue a New DD-214: Yes

b. Change Characterization to: Honorable

c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN

d. Change RE Code to: No Change

e. Change Authority to: AR 635-200

Authenticating Official:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210015424

8/1/2024



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