

1. Applicant's Name: [REDACTED]**a. Application Date:** 12 October 2021**b. Date Received:** 18 October 2021**c. Counsel:** [REDACTED]**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 through counsel, requests an upgrade to honorable and a narrative reason change to "Secretarial Authority."

b. The applicant through counsel, seeks relief contending, in effect, the applicant's chain of command made a material error of discretion regarding the applicant's discharge from the U.S. Army. At the time of the applicant's drug use and subsequent discharge from the Army, the applicant was clearly struggling with the effects of mental health problems. After deploying to Iraq, the applicant reported that they was suffering from physical reactions when reminded of a stressful military experience, as well as a loss of interest in doing things they used to enjoy, feeling very upset when something reminded them of a stressful military experience, panic attacks, and suicidal thoughts (see Exhibits 5-7). The applicant was not formally diagnosed with PTSD; however, the applicant receives treatment for PTSD from K__ A. L__, Licensed Marriage and Family Therapist, Vet Center, Babylon, NY (see Exhibit 9). The applicant deserves an honorable discharge based on their overall quality of service in combination with their personal achievements. The applicant was awarded the Iraq campaign medal with two campaign stars and the National Defense service medal. In addition, the applicant serves as the treasurer for the Combat Veterans Motorcycle Association.

c. Board Type and Decision: In a records review conducted on 22 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and in service factors (length, combat, quality) outweighing the basis for separation - drug abuse. 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 no change to the reentry code.

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: 28 April 2010

c. Separation Facts:

(1) Date of Notification of Intent to Separate: The applicant signed the acknowledgement of notification of separation under AR 635-200, chapter 14, paragraph 14-12c (2), misconduct - commission of a serious offense memorandum, however it was not dated.

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant tested positive for cocaine on 13 January 2010 and 30 November 2009.

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

(4) Legal Consultation Date: On 10 April 2010, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: Date not specified / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 13 September 2007 / 3 years and 21 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 98

c. Highest Grade Achieved / MOS / Total Service: E-3 / 19D10, Calvary Scout / 2 years, 7 months, and 16 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (11 June 2008 - 28 May 2009)

f. Awards and Decorations: ICM-2CS, NDSM, GWOTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 11 June 2009, the applicant was counseled for heavily drinking while underage and command referred to the Army Substance Abuse Program (ASAP).

(2) Electronic Copy of DD Form 2624, 9 December 2009, shows the applicant tested positive for COC 3221 (cocaine), MDA 4523 (methylenedioxymethamphetamine), and MDMA 3309 (ecstasy), during an Inspection Unit (IU) urinalysis testing, conducted on 30 November 2009.

(3) Page two of a counseling, 14 December 2009, shows the applicant was going to be recommended for a FG Article 15 and command referral to the ASAP.

(4) Electronic Copy of DD Form 2624, 21 January 2010, shows the applicant tested positive for COC 9281 (cocaine), during an Inspection Random (IR) urinalysis testing, conducted on 13 January 2010.

(5) The applicant provided Exhibit 8 - Medical Record - Supplemental Medical Data, 3 March 2010, that states the applicant received a CG and FG Article 15, however copies are not in the applicant's AMHRR and was not provided.

(6) Report of Mental Status Evaluation (MSE), 10 March 2010, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in administrative proceedings; was mentally responsible; and met retention requirements of Chapter 3, AR 40-501. The applicant had been screened for PTSD and TBI with negative results.

(7) The applicant's Enlisted Record Brief, 19 April 2010, shows the applicant was flagged for adverse action (AA), effective 16 December 2009; was ineligible for reenlistment due to an Approved Involuntary Separation (9T). The Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions. The applicant was reduced from E-2 to E-1 effective 19 February 2010.

a. Lost Time / Mode of Return: None

b. Behavioral Health Condition(s):

(1) Applicant provided:

(a) Exhibit 5 - PTSD Checklist, 23 November 2009, shows the applicant began to report issues they was having regarding their mental health. After deployment to Iraq, the applicant had issues relating to memories or images and physical reactions of a stressful military experience, sleep problems, irritability, and difficulty concentrating.

(b) Exhibit 6 - Resilience and Restoration Center Intake Questionnaire, 23 November 2009, shows the applicant referred themselves to a clinic for mental health problems and panic attacks.

(c) Exhibit 7 - Resilience and Restoration Center Intake Questionnaire, 4 January 2010, shows the applicant was medically referred for suicidal thoughts.

(d) Exhibit 8 - Medical Record - Supplemental Medical Data, 3 March 2010, shows the applicant reported they was drinking 30 beers and smoking 30 cigarettes in one week. They reported sleep disturbances, memory problems, uncontrollable rage, and social withdrawal. The applicant desired to have a sleep test and a psychiatric referral.

(e) Exhibit 9 - Vet Center Letter, 12 August 2021, the applicant describes symptoms which are consistent with the diagnostic criteria for PTSD due to traumatic experiences while deployed to Iraq. Based on the applicant's report of their behavior following deployment, it seems that there were signs while the applicant was still enlisted that they was experiencing mental health issues including signs of PTSD and addiction.

(f) VA Rating Decision, 14 December 2023, shows the applicant was rated 30 percent disabled for PTSD.

(2) **AMHRR Listed:** MSE as described in previous paragraph 4h.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j (1).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Legal Brief with exhibits 1-13 (includes DD Form 214, PTSD Checklist - Military Version, two Resilience and Restoration Center Intake Questionnaires, Medical Record - Supplemental Medical Data, Vet Center Letter, and three character references).

6. POST SERVICE ACCOMPLISHMENTS: Serves as the treasurer for the Combat Veterans Motorcycle Association.

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 (Active Duty Enlisted Administrative Separations) 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) 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.

(4) 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.

(5) 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.

(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 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).

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 an upgrade to honorable and a narrative reason change to "Secretarial Authority." The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant served 2 years, 7 months, and 16 days during which the applicant served 11 months and 18 days in Iraq. The applicant tested positive for cocaine two times, methylenedioxymethamphetamine, and ecstasy. The applicant was discharged on 28 April 2010 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).

c. The applicant through counsel, requests the narrative reason for the discharge to be changed to "Secretarial Authority." The applicant was separated under the provisions of Chapter 14, paragraph 14-12c (2), AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code,

entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant through counsel contends, in effect, the applicant's chain of command made a material error of discretion regarding the applicant's discharge from the U.S. Army. At the time of the applicant's drug use and subsequent discharge from the Army, the applicant was clearly struggling with the effects of mental health problems. After deploying to Iraq, the applicant reported that they was suffering from physical reactions when reminded of a stressful military experience, as well as a loss of interest in doing things they used to enjoy, feeling very upset when something reminded them of a stressful military experience, panic attacks, and suicidal thoughts.

(1) The applicant provided:

- Exhibit 5 - PTSD Checklist, 23 November 2009, showing after deployment to Iraq, the applicant had issues relating to memories or images and physical reactions of a stressful military experience, sleep problems, irritability, and difficulty concentrating
- Exhibit 6 - Resilience and Restoration Center Intake Questionnaire, 23 November 2009, showing the applicant referred themselves to a clinic for mental health problems and panic attacks
- Exhibit 7 - Resilience and Restoration Center Intake Questionnaire, 4 January 2010, showing the applicant was medically referred for suicidal thoughts
- Exhibit 8 - Medical Record - Supplemental Medical Data, 3 March 2010, showing the applicant reported they were drinking 30 beers and smoking 30 cigarettes in one week and had sleep disturbances, memory problems, uncontrollable rage, and social withdrawal
- Exhibit 9 - Vet Center Letter, 12 August 2021, stating the applicant described symptoms which were consistent with the diagnostic criteria for PTSD due to traumatic experiences while deployed to Iraq and based on their report it seems that there were signs while the applicant was still enlisted that they were experiencing mental health issues including signs of PTSD and addiction
- VA Rating Decision, 14 December 2023, showing the applicant was rated 30 percent disabled for PTSD

(2) The AMHRR contains a Report of Mental Status Evaluation, 10 March 2010, that shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in administrative proceedings; was mentally responsible; and met retention requirements of Chapter 3, AR 40-501. The applicant had been screened for PTSD and TBI with negative results.

e. The applicant through counsel, contends the applicant deserves an honorable discharge based on their overall quality of service which includes a combat tour in Iraq, and award of the Iraq campaign medal with two campaign stars and the National Defense service medal. The

Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

f. The applicant through counsel, states the applicant has had a positive impact on their community and serves as the treasurer for the Combat Veterans Motorcycle Association. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

g. The character letters provided with the application states the applicant's dedication to others is unquestionable and has the highest moral standard in all aspects. The applicant has always displayed a high degree of maturity, integrity, responsibility, and commitment. One of the letters states they could tell there was a change in the applicant's demeanor which started during the deployment and continued after returning to the states. They remember the applicant was trying to get the help the applicant needed at the time but was not successful.

h. 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: In-service Adjustment Disorder and service connected PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** In-service Adjustment Disorder and service connected PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma and substance use, 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, the board determined that the applicant's in service factors (length, quality, combat) and PTSD outweighed the basis of separation - drug abuse – for the aforementioned reason.

b. Response to Contention(s):

(1) The applicant through counsel contends, in effect, the applicant's chain of command made a material error of discretion regarding the applicant's discharge from the U.S. Army. At the time of the applicant's drug use and subsequent discharge from the Army, the applicant was clearly struggling with the effects of mental health problems. After deploying to Iraq, the applicant reported that they was suffering from physical reactions when reminded of a stressful military experience, as well as a loss of interest in doing things they used to enjoy, feeling very upset when something reminded them of a stressful military experience, panic attacks, and suicidal thoughts. The board considered this contention during the proceedings, and an upgrade is granted based on the applicant in service factors (length, quality, combat) and PTSD outweighed the basis of separation - drug abuse – for the aforementioned reason.

(2) The applicant through counsel, contends the applicant deserves an honorable discharge based on their overall quality of service which includes a combat tour in Iraq, and award of the Iraq campaign medal with two campaign stars and the National Defense service medal. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted as outlined above in 9a (3-4) and 9b (1).

c. The board determined the discharge is inequitable based on the applicant's in service mitigating factors (length, quality, combat) and concurred with the medical advising official the applicant's PTSD outweighed the basis of separation – misconduct (drug abuse). Thus, relief is warranted.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to Honorable because in service mitigating factors (length, quality, combat) and PTSD outweighed the basis of separation - drug abuse. Thus, the prior characterization is no longer appropriate.

(2) The board voted to change the applicant's 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 / Separation Order: 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, paragraph 14-12a

Authenticating Official:

7/29/2024



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