

1. **Applicant's Name:** [REDACTED]
 - a. **Application Date:** 3 January 2023
 - b. **Date Received:** 17 January 2023
 - 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 an upgrade to honorable and a narrative reason change.

b. The applicant seeks relief contending, in effect, they had difficulty with stress while on active duty and turned to drug usage to cope. The applicant believes their discharge should be upgraded because the applicant was not a poor performing Soldier, they just had troubles with mental health.

c. **Board Type and Decision:** In a records review conducted on 8 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the applicant's discharge (prodromal psychotic symptoms). 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). The Board determined the RE code was proper and equitable and voted not to change it.

Please see Section 10 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:** 27 October 2021

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:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 5 February 2020 / 6 years and 19 weeks
- b. **Age at Enlistment / Education / GT Score:** 24 / Associate Degree / 113
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 88M10, Motor Transport Operator / 1 year, 8 months, and 23 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Orders 294-0014, 21 October 2020, shows the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 27 October 2020 from the Regular Army.

(2) The applicant's DD Form 214 shows the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c(2), misconduct (drug abuse). The DD Form 214 was authenticated with the applicant's electronic signature.

(3) The applicant's Enlisted Record Brief, 29 October 2020, shows the applicant was flagged for (BA), effective 1 September 2021, law enforcement investigation (MA), effective 17 June 2021, and drug abuse adverse action (UA), effective 15 June 2021; was ineligible for reenlistment due to pending separation (9V). The Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions.

FLAGS / AEA codes: BA, MA, and UA / L RE/Prohibition code: 9V

- i. **Lost Time / Mode of Return:** None
 - j. **Behavioral Health Condition(s):**
 - (1) **Applicant provided:** None
 - (2) **AMHRR Listed:** None
5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293
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 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 he/she 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.

(2) 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.

(3) 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.

(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.

e. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. It provides the ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

f. Army Regulation 635-5-1 (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 an upgrade to honorable and a narrative reason change. 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 served 1 year, 8 months, and 23 days and 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).

c. The applicant requests that the narrative reason for the discharge be changed. 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 contends, in effect, they had difficulty with stress while on active duty and turned to drug usage to cope. Analyst notes the Military Review Boards representative emailed the applicant at the email address in the application on 12 December 2023 requesting medical documentation to support a behavioral health condition and separation documents, however no response has been received from the applicant.

e. The applicant contends, in effect, their discharge should be upgraded because the applicant was not a poor performing Soldier, they just had troubles with mental health. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. **The applicant submitted the following additional document(s):** N/A

b. **The applicant presented the following additional contention(s):** N/A

c. **Counsel / Witness(es) / Observer(s):** N/A

10. 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 diagnoses included Cannabis Dependence, Substance Induced Psychosis, and Antisocial Personality

Disorder. However, in retrospective review, the applicant more likely than not enlisted with a developing thought disorder. Post-service, the applicant is diagnosed with Schizophrenia.

(2) Did the condition exist or experience occur during military service? **Yes.** In-service diagnoses included Cannabis Dependence, Substance Induced Psychosis, and antisocial personality disorder. However, in retrospective review, the applicant more likely than not enlisted with a developing thought disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined in consideration of all the pre-, in-, and post-service documentation, it is this advisor's belief the applicant had indicators of prodromal psychotic symptoms pre-enlistment which continued in-service. Given the nexus between thought disorders, even in the early stages, and substance use, the basis for separation 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 prodromal psychotic symptoms outweighed the drug abuse misconduct basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends, in effect, they had difficulty with stress while on active duty and turned to drug usage to cope. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's prodromal psychotic symptoms fully outweighing the applicant's drug abuse misconduct basis for separation.

(2) The applicant contends, in effect, their discharge should be upgraded because the applicant was not a poor performing Soldier, the applicant just had troubles with mental health. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's prodromal psychotic symptoms fully outweighing the applicant's drug abuse misconduct basis for separation.

(3) The Board determined the discharge is inequitable based on the circumstances surrounding the applicant's discharge (prodromal psychotic symptoms). 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). The Board determined the RE code was proper and equitable and voted not to change it.

c. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's prodromal psychotic symptoms mitigated the applicant's misconduct of drug abuse misconduct. Thus, the prior characterization is no longer appropriate.

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

(3) The RE code will not change, the Board determined the RE code was proper and equitable and voted not to change it.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230003991

11. BOARD ACTION DIRECTED:

Issue a New DD-214: Yes

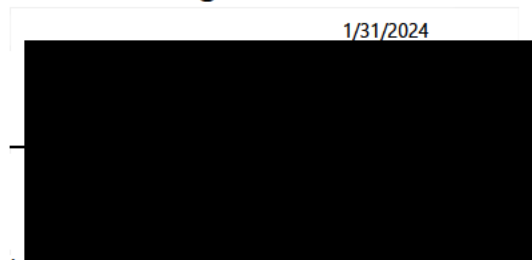
Change Characterization to: Honorable

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

Change RE Code to: No Change

Change Authority to: AR 635-200

Authenticating Official:



Le

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