

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 30 April 2023
- b. **Date Received:** 24 May 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 under other than honorable conditions. The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, since the discharge the applicant has been a law-abiding citizen. The applicant has been able to run their own company as well as obtain and hold a good job. Most importantly the applicant has contributed to society in a very positive way.

c. **Board Type and Decision:** In a telephonic personal appearance hearing conducted on 12 February 2024, and by a 5-0 vote, the Board determined the discharge was inequitable and too harsh and therefore voted to upgrade the characterization of service to General, change the separation authority to AR 635-200, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3. *Please see Section 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 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 3 September 2014

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 10 February 2014, the applicant submitted to unit urinals that tested positive for THC. The applicant failed to report to work call without an approved DA Form 31; this changed the applicant's status to absent without (AWOL), from 15 May 2014 to 19 May 2014. On diverse occasions the applicant has continuously missed appointments and failed to report for duty on time.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** NIF

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

(6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 April 2013 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 108

c. Highest Grade Achieved / MOS / Total Service: E-2 / 68X10, Mental Health Specialist / 1 year, 5 months, and 3 days.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Hawaii / None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Orders 230-0019, dated 18 August 2014, shows the applicant was to be reassigned to the U.S. Army Transition Point. Initially the applicant was scheduled to be discharged on 2 September 2013 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 on 3 September 2014 under the authority of AR 635-200, paragraph 14-12c (2), with a narrative reason of Misconduct (Drug Abuse). The DD Form 214 was authenticated with the applicant's electronic signature.

(3) The applicant's Enlisted Record Brief, dated 4 September 2014, shows the applicant was flagged for adverse action (AA), effective 15 May 2014, involuntary separation/field initiated (BA), effective 16 April 2014, and alcohol abuse adverse action (VA), effective 27 February 2014; was ineligible for reenlistment due to pending separation (9V). 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 16 April 2014.

FLAGS / AEA codes: AA, BA, VA / L RE/Prohibition code: 9V

i. Lost Time / Mode of Return: AWOL for 5 days, 15 May 2014 to 19 May 2014. This period is not annotated in block 29 of the DD Form 214.

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; General Lines Agent License; and Formation Certification of LLC.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been able to run their own company as well as obtain and hold a good job.

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 600-85 (The Army Substance Abuse Program (ASAP)) provides comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components, Army civilian corps members, and other personnel eligible for ASAP services. Paragraph 7-9 (Command responsibilities for referring Soldiers) states:

(1) When Soldiers are identified as probable alcohol or other drug abusers the unit commander or designated representative must -

- Coordinate with law enforcement about whether the commander or designated representative should conduct the initial interview of the alcohol or drug abuser
- When the unit commander believes the Limited Use Policy applies, the unit commander should consult with the Alcohol Drug Control Officer and supporting legal advisor and then the unit commander may explain the Limited Use Policy, if applicable to the particular circumstances
- If law enforcement does not initiate an investigation, the commander may wish to investigate suspected misconduct through a commander's inquiry, AR 15-6 investigation, or other appropriate method after consulting with the legal advisor

(2) The unit commander will refer individuals suspected or identified as alcohol and/or other drugs abusers, including those identified through drug testing (except those determined to be legitimate medical use by the medical review officer) and/or blood alcohol tests, to the ASAP counseling center for screening. Soldiers impaired by alcohol as described in paragraph 3-2 of this regulation while on duty will be referred to the ASAP counseling center for the initial evaluation.

(3) Positive drug test results for illicit use and law enforcement citations for alcohol and other drug abuse are identification sources that require mandatory referral to the ASAP counseling staff. Commanders must refer Soldiers who receive such drug test results or legal citations within 5 duty days of receipt of the notification.

e. 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:

(c) The Soldier will be further 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.

(d) 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) An under other than honorable conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(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(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.

(8) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early

separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

f. Army Regulation 635-5-1 (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, 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 waiverable and nonwaiverable 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 waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

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. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR includes partial facts and circumstances concerning the events which led to the discharge from the Army. The commander initiated action to separate the applicant for misconduct-abuse of illegal drugs because the applicant tested positive for THC. The applicant was also AWOL for 4 days, missed appointments, and failed to report for duty on time. The applicant's DD Form 214 shows the applicant served 1 year, 5 months, and 3 days. The applicant was discharged on 3 September 2014 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 under other than honorable conditions.

c. The applicant contends, in effect, to have been able to run their own company as well as obtain and hold a good job. 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.

d. Analyst notes the applicant checked the other mental health box on the DD Form 293. The applicant's AMHRR contains no documentation of a mental health condition and the applicant did not submit any evidence, other than the checked box on the DD Form 293, to support any medical condition. The Army Review Board Agency sent a letter to the applicant at the address in the application on 21 July 2023 requesting documentation to support mental health conditions but received no response from the applicant. The Military Review Boards representative emailed the applicant at the email address in the application on 6 February 2024 requesting documentation to support a mental health condition but received no response from the applicant.

e. 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):** None

b. **The applicant presented the following additional contention(s):** None

c. **Counsel / Witness(es) / Observer(s):** None

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 diagnosis: The applicant held an in-service diagnosis of Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's Adjustment Disorder was diagnosed after the misconduct secondary to the disciplinary action. Accordingly, the applicant did not have a condition prior to misconduct for consideration.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the Adjustment Disorder diagnosis did not outweigh the basis of separation, Misconduct (Drug Abuse).

b. Prior Decisions Cited: None

c. Response to Contention: The applicant contends to have been able to run their own company as well as obtain and hold a good job.

d. The Board considered this contention and acknowledged that the applicant has contributed to society in a positive way. However, found an upgrade to Honorable not supported by the evidence of record. The Honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of exceptional conduct and performance of duty or is otherwise meritorious that any other characterization would be clearly inappropriate. The Board found that the applicant's service, given the nature of the misconduct, Misconduct (Drug Abuse), was not sufficiently meritorious to warrant an honorable discharge.

e. The Board determined the discharge was inequitable, too harsh, based the applicant's acceptance of responsibility, post service accomplishments and elapsed time since the discharge, and therefore voted to upgrade the characterization of service to General, change the separation authority to AR 635-200, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

f. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service based on the following reasons. The applicant held an in-service diagnosis of Adjustment Disorder. The Board's Medical Advisor applied liberal consideration and opined that the applicant's Adjustment Disorder was diagnosed after the misconduct secondary to the disciplinary action. Accordingly, the applicant did not have a condition prior to misconduct for consideration. The Board discussed the applicant's contentions and carefully considered the applicant's request, supporting documents, medical review, and evidence in the records. Based on the applicant's acceptance of responsibility, post service accomplishments and elapsed time since the discharge, the Board determined that the current discharge is inequitable, was too harsh, served its intended purpose and therefore, warrants an upgrade.

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(2) The Board voted to change the applicant's narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN.

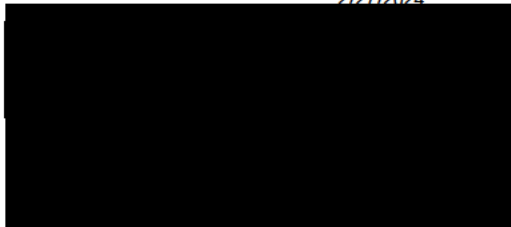
(3) The RE code will change to RE-3.

11. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** General, Under Honorable Conditions
- 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:

2/27/2024



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