

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 21 December 2023
- b. **Date Received:** 21 December 2023
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable and a change of the narrative reason for separation.

(2) The applicant seeks relief stating their discharge and their temporary substance abuse of cannabis were due to their lack of proper diagnosis for treatment. Their traumatic brain injuries they sustained throughout their service from accidents sustained within the field training exercises, in conjunction with injuries suffered from motor vehicular accident on the military installation from a drunk driver who hit their vehicle. The magnitude of these injuries, mentally, resulted in multiple diagnoses of mental illnesses, such as Bipolar 1, Major Depressive Disorder, and Anxiety. Their state of mind was severely compromised and they self-medicated before being involuntarily admitted for hospitalization.

(3) After their discharge from the Army, they began to be seen for their Bipolar Disorder and accompanying illnesses. The Department of Veterans Affairs (VA) helped them start their journey to recovery. With the upgrade of their characterization of service they may attend college and attempt to enlist into the Army.

b. Board Type and Decision: In a records review conducted on 7 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's circumstances surrounding the discharge (Bipolar Disorder), use of drugs as part of suicidal preparation, and the applicant's traumatic brain injuries sustained throughout service outweighing the applicant's misconduct (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, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined the RE code was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / Army Regulations 635-200 / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 18 December 2019

c. Separation Facts: The applicant's case separation file is void of several documents from their Army Military Human Resource Record (AMHRR). On 31 January 2024 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files), as of this date there has been no response.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 12 June 2018 / 3 years, 23 weeks
- b. **Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 91
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92F1O, Petroleum Supply Specialist / 3 year, 5 months, 7 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** AGCM, NDSM, GWTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) The Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell Orders 316-0215, date 12 November 2021, reflects the applicant's discharge from the Army effective 18 November 2021.

(2) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 18 November 2018, with 3 year, 5 months, and 7 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 25 May 2021
- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** VA Rating Decision reflecting the applicant's entitlement to individual unemployability granted on 29 April 2023, because they were unable to secure or follow a substantially gainful occupation as a result of their service-connected conditions, to include, TBI residual, Bipolar Disorder unspecified and co-morbid symptoms associated with TBI, physical symptoms associated with TBI, and post traumatic headache syndrome.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- 3rd Party Statement
- Army Achievement Medal Certificate

- Memorandum, Installation Provost Marshall Office, subject: Law Enforcement Report – Initial Final, reflecting the applicant as the victim of a vehicular accident resulting in a head injury and concussion
- VA letter with attached Rating Decisions, reflecting the applicant's entitlement to individual unemployability and to Dependents' Educational Assistance based on permanent and total disability status established from 29 April 2023

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, and the general provisions governing the separation of Soldiers before expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; 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. 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) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c(2), misconduct (drug abuse).

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 DoD Instructions 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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) provides a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components. The ASAP is a command program that emphasizes readiness and personal responsibility. 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, the Warrior Ethos, and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except

under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldier who test positive for illicit drugs for the first time will be evaluated for dependency, disciplined, as appropriate, and processed for separation within 30 calendar days of the company commander receiving notification of the positive result from the ASAP. Retention should be reserved for Soldiers that show clear potential for both excellent future service in the Army and for remaining free from substance abuse. Soldiers diagnosed as drug dependent will be offered rehabilitation prior to separation.

h. Manual for Courts-Martial, United States (2019 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

i. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation. Due to the lack of evidence the specific facts and circumstances surrounding the misconduct (drug abuse) that led to their discharged under the provision on Army Regulation 635-200, paragraph 14-12c(2) are unknown. Notwithstanding the absence of records, the DD Form 214, provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct (drug abuse). They completed 3 year, 5 months, and 7 days of their 3-year, 23 week contractual active duty obligation, not completing their first full term of service.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense; to include abuse of illegal drugs; and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

d. The applicant's AMHRR does not reflect documentation of a diagnoses of Traumatic Brain Injury (TBI), Bipolar 1, Major Depressive Disorder, and Anxiety; nor did the applicant provide evidence of these diagnoses during their military service.

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. 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: Bipolar Disorder and history Traumatic Brain Injury.

(2) Did the condition exist, or experience occur during military service? **Yes.** Bipolar Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that it is clear the applicant was using substances to manage symptoms of Bipolar Disorder. Additionally, the applicant was severely depressed at the time of the incident, and it is believed the intent behind possessing substances was to commit suicide highlighting mental impairment at the time of the misconduct.

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

c. Response to Contention(s):

(1) The applicant contends their discharge, and their temporary substance abuse of cannabis were due to their lack of proper diagnosis for treatment. Their traumatic brain injuries they sustained throughout their service from accidents sustained within the field training exercises, in conjunction with injuries suffered from motor vehicular accident on the military installation from a drunk driver who hit their vehicle. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization and reason.

(2) The applicant contends the magnitude of their injuries, mentally, resulted in multiple diagnoses of mental illnesses, such as Bipolar 1, Major Depressive Disorder, and Anxiety. Their state of mind was severely compromised and they self-medicated before being involuntarily admitted for hospitalization. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization and reason.

(3) The applicant contends after their discharge from the Army, they began to be seen for their Bipolar Disorder and accompanying illnesses. The VA helped them start their journey to recovery. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization and reason.

(4) The applicant contends with an upgrade of their characterization of service they may attend college and attempt to enlist into the Army. The Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and the narrative reason for separation to Secretarial Authority.

d. The Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Bipolar Disorder), use of drugs as part of a suicide attempt, and the applicant's traumatic brain injuries sustained throughout service outweighing the applicant's misconduct (drug abuse). The Board also noted this was a unique case, as the applicant was severely depressed at the time of the incident and it is believed the intent behind possessing substances was to commit suicide, highlighting mental impairment at the time of the misconduct. 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, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined the RE code was proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Bipolar Disorder, use of drugs as part of a suicide attempt, and the applicant's traumatic brain injuries sustained throughout service mitigated the applicant's misconduct of drug abuse. The Board noted this was a unique case, as the applicant was severely depressed at the time of the incident and it is believed the intent behind possessing substances was to commit suicide. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same reasons, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

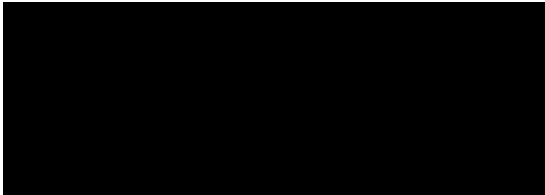
(3) The RE code will not change due to the applicant's BH diagnosis.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD Code to: Secretarial Authority/ JFF**
- d. Change RE Code to: No Change**
- e. Change Authority to: AR 635-200**

Authenticating Official:

9/12/2024



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