

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 12 December 2023
- b. **Date Received:** 13 December 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 honorable conditions (general). The applicant requests an upgrade to honorable, restoration of rank and a narrative reason change.

b. The applicant seeks relief contending, in effect, their actions resulting in their UCMJ for misconduct were a direct result of TBI and PTSD from military action in which they were wounded and received the Purple Heart. Prior to their blast injury they had an exemplary service record. Before their TBI injury they never experienced any of the symptoms that arouse, their physical symptoms were dismissed by their Battalion doctor and as a result they received no medical imaging or formal testing outside of verbal interviews. They sought care from a mental health professional and were placed on and off of suicide watch as several different styles of therapy were attempted to address their diagnosed PTSD and suicidal ideations. They were sent back stateside for medical separation as a result of the physical and mental injuries they sustained.

(1) A med board packet was created for submission to formally start the process of their medical separation however their packet was not submitted promptly. Their mental health appointments changed to once a week, they felt ignored and dismissed by their command team and health professionals. The severity and intensity of their PTSD, suicidal ideations and self-harm increased daily. They started to self-medicate to cope with their issues, they were drinking heavily to the point of blacking out on an almost nightly basis and they began smoking K2/Spice and cannabis to cope. When they tested positive for cannabis, their medical board packet was submitted and promptly rejected due to their pending UCMJ action. They were demoted to the rank of specialist as a result, which further exacerbated their depression and PTSD. They continued to medicate with K2/Spice and alcohol heavily and during a barracks inspection K2/Spice was found in their quarters, they were punished under the UCMJ a second time and were demoted to the rank of private (E-2). The following day they sought treatment at a thirty day inpatient treatment facility in West Texas for PTSD and substance abuse. Upon their return they were separated from the Army.

(2) They strongly assert their actions leading to their discharge were directly related to the PTSD and TBI they received from the grenade blast in December of 2010. Their service record and performance before and after blast read as if they were from two different service members. Their discharge status impacts how they view their self and their military service. They do not feel proud to be a veteran, they feel as though they failed their country even though they were an exceptional soldier until their injury. The discharge and loss of rank continues to plague their mind, exacerbating their PTSD and suicidal ideations thirteen years later. They are not looking to challenge military authority or policies, they are seeking fairness and justice in the characterization of their military service.

b. Board Type and Decision: In a records review conducted on 19 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse. 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), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

Please see Section 9 of this document for more detail regarding the Board's decision. (Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 13 October 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 22 Septemeber 2011

(2) Basis for Separation: On 1 June 2011 the applicant's urinalysis results showed they had used some amount of marijuana between 1 May 2011 – 1 June 2011. On 22 July 2011, during a Brigade health and welfare inspection spice and drug paraphernalia were found in their room.

(3) Recommended Characterization: General, under honorable conditions.

(4) Legal Consultation Date: Waived consultation 23 September 2011.

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 27 Septemeber 2011 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 December 2008 / 6 years

b. Age at Enlistment / Education / GT Score: 18 / NIF / NIF

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B10 Infantryman / 4 years, 2 months, 25 days.

d. Prior Service / Characterizations: RA; 20070719 – 20081229 / Honorable

e. Overseas Service / Combat Service: None / Iraq; 20080613 – 20090531, Iraq; 20100913 – 20110507

f. Awards and Decorations: PH, ICM-CS-3, ARCOM, AAM-3, MUC, AGCM, NDSM, GWTSM, ASR, OSR

g. Performance Ratings: 20110501 – 20110623; Marginal/ Poor
20100901 – 20110430; Fully Capable

h. Disciplinary Action(s) / Evidentiary Record:

(1) A Level Query document dated 14 June 2011 provides the applicant tested positive for THC.

(2) A Developmental Counseling Form dated 14 June 2011 provides the applicant was counseled after they tested positive for THC during a urinalysis conducted on 1 June 2011.

(3) Record of Proceedings UCMJ document signed 23 June 2011 provides the applicant received a NJP for violating Article 112a of the UCMJ; wrongfully used marijuana between 1 May – 1 June 2011. Punishment consisted of reduction in rank to E-4 (specialist), forfeiture of \$1061 pay per month for two months, extra duty and post restriction for 45 days.

(4) Report of Mental Status Evaluation document dated 30 June 2011, provides the applicant received a separation mental health evaluation and were not psychiatrically cleared to complete the chapter process; diagnosed with post-traumatic stress disorder.

(5) On 22 July 2011 the applicant was counseled for being in possession of controlled substances during a Brigade (BDE) Health and Welfare Inspection.

(6) CID Report dated 29 July 2011 provides the applicant were in possession of spice and paraphernalia; they waived their legal rights and confessed to using Spice, and they also confessed to using cocaine on 18 January 2010.

(7) Record of Proceedings UCMJ document signed 26 August 2011 provides the applicant received a NJP for violating Article 92 of the UCMJ; failure to obey a lawful order by wrongfully possessing spice/paraphernalia on 22 July 2011. Punishment consisted of reduction in rank to E-2, forfeiture of \$822 pay per month for two months, extra duty and company restriction for 45 days.

(8) A Commander's Worksheet provides the applicant's Medical Evaluation Board (MEB) was terminated due to misconduct. Rehabilitation attempts: ASAP, inpatient drug rehab and counseling's.

(9) On 22 Septemeber 2011 the applicant's immediate commander notified them of their intent to separate them for Misconduct-Abuse of illegal drugs. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they waived consulting with counsel and completed their election of rights indicating they understood the prejudices that may occur in receiving a characterization of service less than honorable.

(10) On 26 Septemeber 2011 the chain of command endorsed and concurred with the commander's discharge recommendation and on 27 Septemeber 2011 the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

(11) A Certificate Of Release Or Discharge From Active Duty document provides the applicant were discharged on 13 October 2011, they completed 4 years, 2 months, and 25 days of their contractual obligation.

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

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

(1) **Applicant provided:** TBI, PTSD, Depression, Substance Abuse

(2) **AMHRR Listed:** PTSD

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 149 (Correction of Military Record) application, DD Form 214, ERB and 190 pages of medical evidence and documentation in support of their petition.

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted in support of their petition.

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), dated 25 September 2019, 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 provides the authorized types of characterization of service or description of separation.

(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) 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.

(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. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) 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 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. Title 10, U.S. Code, Sections 1177 (Members Diagnosed with or Reasonably Asserting Post-Traumatic Stress Disorder or Traumatic Brain Injury: Medical Examination Require Before Administrative Separation) states under regulations prescribed by the Secretary of Defense, the Secretary of a military department shall ensure that a member of the armed forces under the jurisdiction of the Secretary who has been deployed overseas in support of a contingency operations, or sexually assaulted, during the previous 24 months, and who is diagnosed by a physician, clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advance practice registered nurse as experiencing PTSD or TBI or who otherwise reasonably alleges, based on the service of the member while deployed, or based on such sexual assault, the influence of such a condition, receives a medical examination to evaluate a diagnosis of PTSD or TBI. A member shall not be administratively separated under conditions other than honorable, including an administrative separation in lieu of court-martial, until the results of the medical examination have been reviewed by appropriate authorities responsible for evaluating, reviewing, and approving the separation case, as determined by the Secretary concerned.

g. 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.

h. 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, misconduct (drug abuse).

i. 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:

- 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.
- 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.
- 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, restoration of rank (E-5) and a narrative reason change. The applicant's DD-214 provides the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions discharge which is normally considered appropriate for a soldier discharged for drug abuse.

b. Based on the available evidence, during their second deployment the applicant suffered from loss of consciousness after a bomb hit the vehicle, they were traveling in. The applicant returned stateside and were recommended for a MEB due to their mental health. Six months after the incident the applicant tested positive for marijuana and received a NJP, shortly after they received their second NJP for being in possession of paraphernalia; demoted to E-2. Their MEB was terminated due to their misconduct, and they were subsequently processed for administrative separation.

c. The applicant was notified of the intent to separate them for misconduct-drug abuse and acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c, they waived consulting with counsel and the appropriate authority approved the separation. Evidence provides the applicant received the required mental health separation examination. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 13 October 2011.

d. Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense 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.

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):** N/A

b. **The applicant presented the following additional contention(s):** Applicant provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.

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: Adjustment Disorder, Depression, and combat related PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** Adjustment Disorder, Depression, and combat related 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 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 Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse.

b. **Response to Contention(s):**

(1) The applicant contends their misconduct was a direct result of their PTSD and TBI. The Board liberally considered this contention and determined that the applicant's Post

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Traumatic Stress Disorder outweighed the applicant's illegal substance abuse. Therefore, a discharge upgrade is warranted.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse. 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), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offense. 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, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

9/22/2025



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