

1. Applicant's Name: [REDACTED]**a. Application Date:** 16 October 2020**b. Date Received:** 5 November 2020**c. Counsel:****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 under other than honorable conditions. The applicant requests an upgrade of their character of service to honorable.

(2) The applicant seeks relief stating they were taken and accepted under waiver conditions. They had recently suffered the loss of their 11 month old child. In hindsight, they don't believe they were ready or able to properly perform their duties. They would like their discharge upgraded, not for financial gain, but for a gain of confidence in life.

b. Board Type and Decision: In a records review conducted on 14 June 2024, and by a 5-0 vote, the board determined the discharge is inequitable based on the applicant's Major Depressive Disorder (MDD) mitigated the applicant misconduct of wrongfully using marijuana. 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. No change to the reentry code.

Please see Section 10 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct, Commission of a Serious Offense / Army Regulation 635-200, Paragraph 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 10 November 2005**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 29 September 2005

(2) **Basis for Separation:** on 26 July 2005, received a Field Grade Article 15 for wrongfully using marijuana, a controlled substance, in violation of Article 112a, Uniform Code of Military Justice (UCMJ)

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

(4) **Legal Consultation Date:** 11 October 2005

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

(6) Separation Decision Date / Characterization: 26 October 2005 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 23 October 2003 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 25 / HS Graduate / 113
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 91P1O, Radiology Specialist / 2 years, 18 days
- d. **Prior Service / Characterizations:** NA
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, ASR, GWTSM
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 8003 (Army Substance Abuse Program (ASAP) Enrollment) dated 19 July 2005, reflects the applicant was command referred to the ASAP for a comprehensive assessment to determine whether or not the individual meets the criteria for enrollment.

(2) A memorandum, U.S. Army Criminal Investigation Command (USACIDC), subject: CID Report of Investigation – Initial Final, dated 26 July 2005, reflects the applicant as the named subject in violation of Wrongful Use of Marihuana with date of occurrence of 3 July 2005. The investigation established probable cause to believe the applicant committed the offense of Wrongful Use of a Controlled Substance (Marihuana) when, on 6 July 2005, they provided a urine sample, which was subsequently tested and found positive for the presence of Marihuana. On 19 July 2005, the applicant was interviewed and admitted to smoking marihuana while riding around the local area. On 22 July 2005, Captain M____ B____, Trial Counsel, Staff Judge Advocate, West Point, NY, opined there was probable cause to believe the applicant committed the offense of Wrongful use of a Controlled Substance (Marihuana).

(3) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 26 July 2005, reflects the applicant received nonjudicial punishment for, between on or about 4 July 2005 and on or about 6 July 2005, wrongfully used marijuana, a controlled substance, in violation of Article 112a, UCMJ. Their punishment consisted of reduction in rank/grade from specialist/E-4 to private two/E-2, forfeiture of \$692.00 pay, and restriction and extra duty for 45 days. The applicant elected not to appeal.

(4) A DD Form 2808 (Report of Medical Examination) dated 22 August 2005, reflects the applicant has no physical Profile limitations. Item 77 (Summary of Defects and Diagnoses) reflects no entries. [Note: the Mental Health Evaluation is not in evidence for review.]

(5) A memorandum, Medical Company, U.S. Army Medical Activity, United States Military Academy, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, dated 29 September 2005, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense with a recommended

characterization of service of general (under honorable conditions) for wrongfully using marijuana, a controlled substance, in violation of Article 112a, UCMJ. The company recommended the applicant receive a general (under honorable conditions) characterization of service. On the same day the applicant acknowledged the basis for the separation and of the rights available to them.

(6) A memorandum, Medical Company, U.S. Army Medical Activity, United States Military Academy, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commissioned of a Serious Offense, dated 29 September 2005, the applicant's company commander recommended the applicant be separated from the U.S. Army prior to the expiration of their current term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition through other means as it is not warranted as evidenced by the applicant's record of service.

(7) In the applicant's memorandum, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commissioned of a Serious Offense, dated 11 October 2005, the applicant completed their election of rights, signing they had been advised by consulting counsel of the basis for contemplated action to separate them for commission of a serious offense, and its effect; of the rights available to them; and of the effect of any action taken by them in waiving their rights.

(a) They understand they are entitled to have their case considered by an administrative separation board because they are being considered for separation under other than honorable conditions. They voluntarily waived consideration of their case by an administrative separation board. They waived their right to submit a conditional waiver, waived their right for a personal appearance before an administrative board, and waived their right for consulting counsel.

(b) They elected not to submit statements in their own behalf. They understood they may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to them. They further understood that as the result of issuance of a discharge under other than honorable conditions they may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(8) In a memorandum, Headquarters, U.S. Army Garrison, West Point, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12c, Commission of a Serious Offense, dated 26 October 2005, the separation authority directed the applicant's separation under the provisions of Army Regulation 635-200, paragraph 14-12c, commission of a serious offense, with a characterization of service of General (Under Honorable Conditions).

(9) On 10 November 2005, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 2 years, and 18 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private Two
- item 4b (Pay Grade) – E-2
- item 12i (Effective Date of Pay Grade) – 26 July 2005
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKQ
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct, Commission of a Serious Offense

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

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

(1) **Applicant provided:** On 13 July 2021 the Army Review Boards Agency requested the applicant provide their medical documents to support their mental health issue of PTSD, as of this date there has been no response

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214

6. POST SERVICE ACCOMPLISHMENTS: None submitted with 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 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; 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), dated 6 July 2005, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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. 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. Paragraph 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal

conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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 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.

g. Manual for Courts-Martial, United States (2005 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 Article 112a (Wrongful Use of Controlled Substance).

8. SUMMARY OF FACT(S):

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

b. The applicant's AMHRR provides the applicant received nonjudicial punishment for wrongful use of marijuana and was involuntarily separated from the U.S. Army. A properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's signature which provides the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Commission of a Serious Offense), with a characterization of service of general (under honorable conditions). The applicant completed 2 years and 18 days of net active service and has not completed their first full term of service of 6 years.

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 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 diagnosis of PTSD, nor did the applicant provide evidence of a diagnosis of PTSD, during their military service.

e. Published DoD 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/experiences: Major Depressive DO.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA medical records indicate applicant's MDD began prior to service and was aggravated beyond normal progression by applicant's service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, MDD. VA records indicate the applicant reported onset of depressive symptoms in high school. While in the military, the applicant's depressive condition was aggravated beyond its normal progression by the decision to take applicant 10 month old daughter off of life support. Since that time, has struggled with depression, anger control, substance abuse and intermittent homelessness. The applicant is not service connected by the

VA, likely because of UOTHC discharge. Given the association between MDD and use of illicit substances to self-medicate painful emotional symptoms, there is a nexus between applicant's diagnosis of MDD and wrongful use of marijuana.

(4) Does the condition or experience outweigh the discharge? **Yes.** The board concurred with the opinion of the Board's Medical Advisor, a voting member. As a result, the ADRB applied liberal consideration and found that the applicant's Major Depressive Disorder outweighed the misconduct (wrongfully using marijuana) - basis for separation for the aforementioned reason.

b. Response to Contention(s):

(1) The applicant contends they were taken and accepted under waiver conditions. They had recently suffered the loss of their 11 month old child. In hindsight, they don't believe they were ready or able to properly perform their duties. The board considered this contention during proceedings and determined that relief was warranted based on the applicant's Major Depressive Disorder outweighing the applicant's misconduct (wrongfully using marijuana) - basis for separation for the aforementioned reason.

(2) The applicant contends they would like their discharge upgraded, not for financial gain, but for a gain of confidence in life. The board considered this contention during proceedings and determined that relief was warranted based on the applicant's Major Depressive Disorder outweighing the applicant's misconduct (wrongfully using marijuana) - basis for separation for the aforementioned reason.

c. The board determined the discharge is inequitable based on the applicant's Major Depressive Disorder mitigated the applicant's misconduct (wrongfully using marijuana). 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 and no change to the reentry code.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable because, the applicant's Depressive Disorder mitigated the applicant's drug use. 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.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:



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