

1. Applicant's Name:

- a. Application Date:** 8 December 2020
- b. Date Received:** 10 December 2020
- 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 a change of their reentry code to enlist into the National Guard.

(2) The applicant seeks relief stating they are trying to enlist into the National Guard and their reentry code is preventing that from happening.

b. Board Type and Decision: In a records review conducted on 26 July 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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) / Army Regulations 635-200, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 9 July 2020

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 19 June 2020

(2) Basis for Separation:

- on or about 21 August 2019, without authority, failed to go at the time prescribed to their appoint place of duty
- on or about 21 August 2019, missed the movement of their unit to the National Training Center
- on or about 22 August 2019, without authority, failed to go at the time prescribed to their appointed place of duty
- on or about 22 August 2019, missed the movement of their unit to the National Training Center
- between on or about 22 March 2020 and on or about 22 April 2020, wrongfully used marijuana

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

(4) Legal Consultation Date: 19 June 2020

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 29 June 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 3 September 2018 / 5 years

b. Age at Enlistment / Education / GT Score: 24 / Virtual/Distance Learning School Diploma / 88

c. Highest Grade Achieved / MOS / Total Service: E-4 / 13F1O, Fire Support Specialist / 4 years, 3 months, 5 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Poland / None

f. Awards and Decorations: AAM, AGCM, NDSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 27 November 2019, reflects the applicant received nonjudicial punishment for, on or about 21 August 2019, without authority, failed to go at the time prescribed to their appointed place of duty, in violation of Article 86 (Absence Without Leave), UCMJ; and through design, missed the movement of their unit to the National Training Center, which was required in the course of duty to move, in violation of Article 87 (Missing Movement), UCMJ; and for, on or about 22 August 2019, without authority, failed to go at the time prescribed to their appointed place of duty, in violation of Article 86 (Absence Without Leave); UCMJ and through design, missed the movement of their unit to the National Training Center, which was required in the course of duty to move, in violation of Article 87, UCMJ. Their punishment consisted of a reduction in rank/grade from specialist/E-4 to private first class/E-3, forfeiture of \$500.00 pay, and extra duty for 30 days. The applicant elected not to appeal.

(2) A memorandum, Headquarters, Joint Base Lewis-McChord, subject: Lab-Confirmed Positive Urinalysis, dated 4 May 2020, notified the applicant's commander of their confirmed positive test result for Tetrahydrocannabinol (THC).

(3) Three DA Forms 4856 (Developmental Counseling Form) dated 4 May 2020, reflects the applicant received event-oriented counseling for positive urinalysis test results, initiating a suspension of favorable personnel actions (Flag), and of involuntary separation. The applicant agreed with the information and signed the forms.

(4) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 21 May 2020, reflects the applicant received nonjudicial punishment for, between on or about 22 March 2020 and on or about 22 April 2020, wrongfully used marijuana, in violation of Article 112a (Wrongful Use, Possession, etc., of Controlled Substance), UCMJ. Their punishment consisted

of a reduction from private first class/E-3 to private/E-1, forfeiture of \$400.00 pay for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(5) A DA Form 3822 (Report of Mental Status Evaluation) dated 11 June 2020, reflects the applicant has no duty limitations due to behavioral health reason, currently meets medical retention standards, and is cleared for administrative action.

(a) Section IV (Diagnoses) reflects no behavioral health diagnosis.

(b) Section V (Follow-Up Recommendations) reflects no follow-up needed.

(c) Section VI (Recommendations and Comment for Commander) the behavioral health provider states the applicant has already been referred to Substance Use Disorder Clinical Care for evaluation. From a behavioral health perspective, the applicant meets the medical fitness standards for retention and is cleared for administrative separation.

(6) A DA Form 4856 (Developmental Counseling Form) dated 12 March 2018, reflects the applicant received event-oriented counseling, from their first sergeant, for a positive urinalysis. The Key Points of Discussion states the applicant, on 16 January 2018 the unit conducted a urinalysis in which they tested positive for, therefore, they are being recommended for UCMJ and will be initiated for separation. Plan of Action consisted of recommend UCMJ, and a referral to Army Substance Abuse Program (ASAP).

(7) A memorandum, Bravo Company, 2nd Battalion, 17th Field Artillery Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c (2), Misconduct-Abuse of Illegal Drugs [Applicant], dated 17 June 2020, the applicant's company commander submitted a request to separate them from the Army prior to their expiration of their current term of service.

(8) A memorandum, Bravo Company, 2nd Battalion, 17th Field Artillery Regiment, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs [Applicant], dated 19 June 2020, 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(2), misconduct-abuse of illegal drugs, with a recommended characterization of service of general (under honorable conditions). On the same day, the applicant's acknowledgement of receipt of separation notice and of the rights available to them.

(9) On 19 June 2020, the applicant completed their election of rights signing they had been advised by consulting counsel of the basis for the contemplated action to separate them under Army Regulation 635-200, paragraph 14-12c(2), and its effects, of the rights available to them, and the effects of any action taken by them in waiving their rights. The applicant understood they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them and they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected not to submit statements on their own behalf.

(10) A memorandum, Headquarters, 2nd Stryker Brigade Combat Team, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs [Applicant], dated 29 June 2018, the separation authority having reviewed the separation packet of the applicant, directed the applicant be separated from the Army prior to the expiration of their current term of service, and their service be characterized as General (Under Honorable Conditions). After reviewing the rehabilitative transfer requirements, the separation authority

determined the requirements are waived, as the transfer will serve no useful purpose or produce a quality Soldier.

(11) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 9 July 2020, with 4 years, 3 months, and 5 days of net active service this period. The applicant completed their first full term of service. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 21 May 2020
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKK [Misconduct (Drug Abuse)]
- item 27 (Reentry Code) – 4 [Nonwaiverable Disqualification]
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE: None submitted with the application.

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 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), 19 December 2016, 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) Paragraph 1-16 (Counseling and Rehabilitative Requirements) stated Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier.

(5) 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.

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)) dated 28 November 2016, provided 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 (2016 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 86 (Absence Without Leave), Article 87 (Missing Movement), and Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

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. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment for absence without leave, missing movement, and wrongful use of marijuana and was involuntary separation from the Army. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c (2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions). The applicant completed 4 years, 3 months, and 5 days of net active service this period and did complete their first full term of service; however, they did not complete their contractual reenlistment obligation of 5 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. 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? **No.** The Board's Medical Advisor, reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

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

b. Response to Contention(s): The applicant contends they are trying to enlist into the National Guard and their reentry code is preventing that from happening. The Board considered this contention and determined that a change to the applicant's characterization of service/RE code is not warranted due to the frequency and nature of the applicant's misconduct.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant was not found to hold an in-service behavioral health condition that would mitigate or excuse the discharge. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General, Under Honorable Conditions discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to an Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same reasons, as the reason the applicant was discharged was both proper and equitable.

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(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:** No
- b. Change Characterization to:** No Change
- c. Change Reason / SPD Code to:** No Change
- d. Change RE Code to:** No Change
- e. Change Authority to:** No Change

Authenticating Official:

8/8/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

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