

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to general characterization of service.

The applicant seeks relief contending, in effect, veterans' affairs determined they are entitled to healthcare for service-connected disabilities. The applicant has been diagnosed with PTSD, Schizophrenia, and anxiety disorder as a direct result of experiences while in the service. The doctors have said the applicant's use of marijuana while still in service was a form of self-medicating for the mental conditions undiagnosed at the time. The applicant's parents and siblings have expressed the applicant is not the same person they knew when they entered the Army. The applicant's behavior, mood, fear and anxiety prohibit the applicant from working or leading a normal life.

b. Board Type and Decision: In a records review conducted on 27 March 2025, and by a 5-0 vote, The Board voted to change the applicant's characterization of service to General because the applicant's behavioral health conditions partially mitigating the applicant's misconduct. Thus, the prior characterization is no longer appropriate.

*Please see **Board Discussion and Determination** section for more detail regarding the Board's decision.*

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 13 April 2010**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 25 February 2010

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully used Marijuana twice, wrongfully used a prohibited substance (Salvia) in violation of CAM Reg 210-1 and committed larceny of above a value of \$500.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 26 February 2010

(5) Administrative Separation Board: On 26 February 2010, the applicant unconditionally waived consideration of the case before an administrative separation board. As part of an Offer to Plead Guilty in Summary Court-Martial.

(6) Separation Decision Date / Characterization: 30 March 2010 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 April 2008 / 3 years, 16 weeks / There appears to be an error in the applicant's DD Form 214, block 12a, Date Entered AD this Period. The DD Form 214 reflects 11 April 2008; however, the DD Form 4 reflects 10 April 2008.

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 100

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B10, Infantryman / 1 year, 10 months, 6 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (16 September 2008 – 22 November 2008)

f. Awards and Decorations: NDSM, GWOTSM, ICM-CS, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Commonwealth of Kentucky Uniform Citation, reflects on 22 July 2009, the applicant was arrested for failure to or improper signal; careless driving; one headlight; license to be in possession; OPMV under influence of narcotics; poss marijuana; and POP.

Specimen Custody Document – Drug Testing, 5 August 2009, reflects the applicant tested positive for THC (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 21 July 2009.

Four Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Confined, effective 7 August 2009;
 From Confined to PDY, effective 8 September 2009;
 From Present for Duty (PDY) to Confined by Civil Authorities (CCA), effective 5 March 2010;
 and,
 From CCA to PDY, effective 31 March 2010.

Commonwealth of Kentucky Uniform Citation, 8 August 2009, reflects the applicant was arrested for receiving stolen property greater than \$500.

FG Article 15, 1 October 2009, between on or about 22 June 2009 and 21 July 2009, the applicant wrongfully used marijuana. The punishment consisted of a reduction to E-1; forfeiture of \$699 pay per month for two months; extra duty and restriction for 45 days; and oral reprimand.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000368

Specimen Custody Document – Drug Testing, 20 October 2009, reflects the applicant tested positive for THC (marijuana), during an Inspection Other (IO) urinalysis testing, conducted on 1 October 2009.

General Officer Memorandum, Administrative Reprimand, 16 November 2009, reflects the applicant was reprimanded for being arrested two times for driving under the influence. On 22 July 2009, the applicant was arrested in Kentucky and charged with violation of the Implied Consent law and possession of marijuana. On 8 August 2009, the applicant was arrested for driving under the influence and subsequently also charged with receiving stolen property. It was totally unacceptable for the applicant – a United States Army Soldier – to act in such an irresponsible manner not just one time, but twice in less than a month's time.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 5 March 2010. The applicant was charged with five specifications. The summary of offenses, pleas, and findings:

Charge 1: Violation of Article 92, UCMJ. The Specification: At or near FTCKY on or about 9 February 2010, disobey CAM Reg 210-1 by wrongfully using salvia: guilty, consistent with the plea;

Charge II: Violation of Article 112a, UCMJ:

Specification 1: At or near FTCKY between o/a 22 June 2009 and o/a 21 July 2009 wrongfully use marijuana: guilty, consistent with the plea;

Specification 2: At or near FTCKY, between on or about 1 September 2009 and o/a 1 October 2009 wrongfully use marijuana; guilty, consistent with the plea;

Charge III: Violation of Article 121, UCMJ. The Specification: At or near FTCKY, between on or about 18 December 2009 and 28 December 2009 steal of a value of about \$2000 the property of SPC H.; guilty, consistent with the plea; and,

Charge IV: Violation of Article 134, UCMJ. The Specification: At or near FTCKY, o/a 24 June 2009 unlawfully enter FTCKY which conduct was to the prejudice of good order and discipline.

Sentence: Forfeiture \$965; and to be confined for 30 days.

Three Developmental Counseling Forms, for financial obligations; urinalysis failure; and being arrested.

i. Lost Time / Mode of Return: 56 days:

Confinement, 7 August 2009 – 7 September 2009 / Released from Confinement
CCA, 5 March 2010 – 30 March 2010 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: VA Rating Decision letter, 25 June 2012, reflects the applicant was entitled to healthcare under Chapter 17 of Title 38, USC for disabilities determined to be service-connected for the period of service from 11 April 2008 to 13 April 2010.

BH PES Evaluation, 5 August 2012, reflects the applicant was diagnosed with Axis I: Psychotic Disorder, NOS.

Second Judicial District Court Country of Bernalillo State of New Mexico Petition for Commitment for a Mental Disorder, 6 August 2012, reflects the applicant suffers from a mental disorder which was diagnosed as Psychotic Disorder, NOS.

ED Note – Provider, 7 August 2012, reflects a diagnosis of Schizophrenia 205.90.

BH Adult Inpt Physician Note, 8 August 2012, reflects a diagnosis of Axis I: Psychosis NOS r/o Substance Induced Psychosis; PTSD and Axis II: r/o antisocial personality disorder.

BH Adult Inpt Physician Note, 17 July 2012, reflects a diagnosis of Axis I: PTSD, Psychosis NOS, r/o paranoid schizophrenia, r/o bipolar with psychosis, r/o substance induced psychosis and Axis II: r/o antisocial disorder.

(2) AMHRR Listed: Report of Behavioral Health Evaluation (BHE), 24 August 2009, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was psychiatrically cleared for any administrative actions deemed appropriate by command. The BHE does not include a diagnosis.

The ARBA's medical advisor reviewed DoD and VA medical records, including documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; Certificate of Release or Discharge from Active Duty; VA Rating Decision letter; Federal Public Defender District of New Mexico letter; University of New Mexico Health Sciences Center Authorization Form; medical records.

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

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing

the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(6) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(7) Paragraph 14-12c prescribes 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.

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 DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes: 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.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The available evidence reflects the applicant received notification of the intent to discharge them from the U.S. Army for wrongfully using marijuana twice, wrongfully using a prohibited substance (Salvia), and committed larceny of about a value of \$500, they unconditionally waived consideration of their case by an Administrative Separation Board and was involuntarily

discharged from the U.S. Army. The DD Form 214 provides the applicant was discharged with a character of service under other than honorable conditions for misconduct (serious offense).

The applicant contends the Veterans' Affairs determined they are entitled to healthcare for service-connected disabilities. The applicant has been diagnosed with PTSD, Schizophrenia, and anxiety disorder as a direct result of experiences while in the service. The doctors have said the applicant's use of marijuana while still in service was a form of self-medicating for the undiagnosed mental conditions. The applicant provided a VA Rating Decision letter, 25 June 2012, reflecting the applicant is entitled to healthcare under Chapter 17 of Title 38, USC for service-connected disabilities for the period of service from 11 April 2008 to 13 April 2010. A BH PES Evaluation, 5 August 2012, reflects the applicant was diagnosed with Axis I: Psychotic Disorder, NOS. A Second Judicial District Court Country of Bernalillo State of New Mexico Petition for Commitment for a Mental Disorder, 6 August 2012, reflects the applicant suffers from a mental disorder, diagnosed as Psychotic Disorder, NOS. A ED Note – Provider, 7 August 2012, reflects a diagnosis of Schizophrenia 205.90. A BH Adult Inpt Physician Note, 8 August 2012, reflects a diagnosis of Axis I: Psychosis NOS r/o Substance Induced Psychosis; PTSD and Axis II: r/o antisocial personality disorder. A BH Adult Inpt Physician Note, 17 July 2012, reflects a diagnosis of Axis I: PTSD, Psychosis NOS, r/o paranoid schizophrenia, r/o bipolar with psychosis, r/o substance-induced psychosis and Axis II: r/o antisocial disorder. The AMHRR shows the applicant underwent a Behavioral Health Evaluation (BHE) on 24 August 2009, which reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was psychiatrically cleared for any administrative actions deemed appropriate by command. The BHE does not include a diagnosis. The separation authority considered the BHE.

The applicant contends their parents and siblings express the applicant is not the same person they knew when they entered the Army. The applicant's behavior, mood, fear, and anxiety prohibit the applicant from working or leading a normal life. The applicant did not submit any third-party statements to support the contention.

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 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: Adjustment Disorder, Schizophrenia, PTSD, Bipolar Disorder. Additionally, the applicant asserts Anxiety, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with an Adjustment Disorder and is service connected by the VA for Schizophrenia. There is evidence of post-service diagnoses of PTSD and Bipolar Disorder and the applicant self-asserts Anxiety.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. Given the nexus between Schizophrenia, PTSD, Bipolar Disorder, and self-medicating, the wrongful uses of marijuana and the wrongful use of a prohibited substance are mitigated. However, larceny is not mitigated by an Adjustment Disorder, Schizophrenia, PTSD, or Bipolar Disorder. The applicant stole a Playstation, Xbox,

and movie discs which reflects motivation and a conscious choice to steal for personal gain. While Schizophrenia and Bipolar Disorder can impair judgement when an individual is actively psychotic or manic, there is no evidence that the applicant was actively psychotic or manic during the theft. An Adjustment Disorder, PTSD, and self-asserted Anxiety (which is subsumed under the PTSD diagnosis) do not interfere with the ability to differentiate between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Schizophrenia, Post Traumatic Stress Disorder, Bipolar Disorder, and asserted Anxiety, outweighed the applicant's medically unmitigated theft offense.

b. Response to Contention(s):

(1) The applicant contends the Veterans' Affairs has determined they are entitled to healthcare for service connected disabilities. The applicant has been diagnosed with PTSD, Schizophrenia, and anxiety disorder as a direct result of experiences while in the service. The doctors have said the applicant's use of marijuana was a form of self-medicating for undiagnosed mental conditions. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Schizophrenia, Post Traumatic Stress Disorder, Bipolar Disorder, and asserted Anxiety, outweighed the applicant's medically unmitigated theft offense. However, the applicant's behavioral health conditions did mitigate the applicant's illegal substance abuse offenses. With the partial medical mitigation, the Board determined that an upgrade to General characterization of service is warranted.

(2) The applicant contends their parents and siblings express the applicant is not the same person they knew when they entered the Army. The applicant's behavior, mood, fear, and anxiety prohibit the applicant from working or leading a normal life. The Board considered this contention in its decision to change the characterization of service to General.

c. The Board voted to change the applicant's characterization of service to General because the applicant's behavioral health conditions partially mitigating the applicant's misconduct. Thus, the prior characterization is no longer appropriate. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to General because the applicant's Schizophrenia, Bipolar Disorder, and Post Traumatic Stress Disorder mitigated the applicant's illegal substance abuse. The applicant's General discharge is proper and equitable as the applicant's medically unmitigated theft offense fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000368

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

4/24/2025

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs