

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 general (under honorable conditions). The applicant requests an upgrade to honorable conditions.

The applicant seeks relief contending, in effect, at no time were they abusing drugs. The substances which tested positive were prescribed by a civilian psychotherapist to the applicant for depression, anxiety, and post-traumatic stress disorder (PTSD). The applicant attempted to use Mental Health Services on post, but they were not treating their disorders and symptoms. The chain of command was immediately made aware of the medications and treatment provided by the psychotherapist but insisted on disciplinary action. The applicant performed extra duty and participated in the Army Substance Abuse Program (ASAP) as ordered, but the command still pursued the discharge.

b. Board Type and Decision: In a records review conducted on 29 October 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the illegal substance abuse offense. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

Please see Section 9 of this document for more details 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, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 14 November 2011**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 23 August 2011

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully used marijuana between 29 March and 28 April 2011 and between 25 May and 24 June 2011.

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

(4) Legal Consultation Date: 1 September 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 28 September 2011 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 October 2010 / 4 years / The AMHRR is void of any enlistment contract retaining the applicant on active duty after the initial enlistment period; however, the record contains a Commander's Report and a Request for Reenlistment or Extension in the Regular Army, reflecting the applicant reenlisted on 4 October 2010 for four years.

b. Age at Enlistment / Education / GT Score: 25 / GED / 105

c. Highest Grade Achieved / MOS / Total Service: E-4 / 91B10, Wheeled Vehicle Mechanic / 3 years, 2 months, 5 days

d. Prior Service / Characterizations: RA, 10 September 2008 – 3 October 2010 / HD

e. Overseas Service / Combat Service: SWA / Iraq (21 March 2010 – 14 March 2011)

f. Awards and Decorations: ARCOM, NDSM, GWOTSM, ICM-2CS, NCOPDR, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 7 June 2011, reflects the applicant tested positive for THC 304 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 28 April 2011.

Field Grade Article 15, 13 July 2011, for wrongfully using marijuana (between 29 March and 28 April 2011). The punishment consisted of a reduction to E-1; forfeiture of \$733 pay per month for two months; and extra duty and restriction for 45 days.

Army Substance Abuse Program (ASAP) Enrollment form, 15 June 2011, reflects the applicant self-referred in the ASAP because of a positive urinalysis for THC.

Electronic Copy of DD Form 2624, 25 July 2011, reflects the applicant tested positive for THC 41 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 24 June 2011.

Report of Mental Status Evaluation, 29 August 2011, reflects the applicant was cleared for separation. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mild traumatic brain injury (mTBI). The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) **AMHRR Listed:** Report of Medical History, 9 August 2011, the examining medical physician noted in the comments section: Treated for depression and anxiety; has used illegal drugs.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge.

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 600-85, (The Army Substance Abuse Program), paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes a Soldier's self-referral to BH for SUD treatment.

e. 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 3-8a states a Soldier is entitled to an honorable characterization of service if limited-use evidence (see AR 600-85) is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence.

(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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(7) 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.

(8) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing 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 under paragraph 14-12a or 14-12b as appropriate.

f. 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, misconduct (drug abuse).

g. 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-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.

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 applicant contends being diagnosed with depression, anxiety, and PTSD. The applicant's AMHRR contains a Report of Medical History, 9 August 2011, reflecting the examining medical physician noted the applicant was treated for depression and anxiety and had used illegal drugs. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 29 August 2011, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis. The documents in the AMHRR were considered by the separation authority.

The applicant contends they were not abusing drugs because the drugs were prescribed by a civilian psychotherapist; the command was aware of the treatment; and the applicant participated in ASAP as ordered. The applicant did not provide any evidence other than the

applicant's statement to support the contention the drugs were prescribed. The applicant tested positive for marijuana on two occasions during a unit urinalysis. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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 Medical Advisor 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: PTSD, MDD, Anxiety.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant is diagnosed with PTSD by VA providers.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the discharge. Given the nexus between PTSD and the use of substances to self-medicate, the applicant's illegal substance abuse offense is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's Post Traumatic Stress Disorder outweighed the illegal substance abuse offense.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with depression, anxiety, and PTSD. The Board liberally considered this contention, found it credible, and determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse offense.

(2) The applicant contends they were not abusing drugs because the drugs were prescribed by a civilian psychotherapist; the command was aware of the treatment; and the applicant participated in ASAP as ordered. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the illegal substance abuse offense.

c. The Board determined that the characterization of service was inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the illegal substance abuse offense. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

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 outweighed the applicant's illegal substance abuse offense. Thus, the prior characterization is no longer appropriate.

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(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code based on inconsistencies in the applicant's assertions and the medical evidence regarding the applicant's drug use. The reason the applicant was discharged was both proper and equitable.

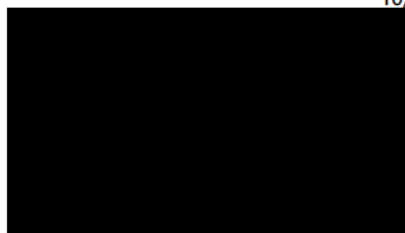
(3) The RE code will not change due to the BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

10/31/2024



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