

**1. Applicant's Name:**

- 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 period under review is general (under honorable conditions). The applicant requests an upgrade honorable.

The applicant seeks relief contending, in effect, during the applicant's military service, they were irresponsible with their actions. The applicant made some bad decisions and regrets them. The applicant would like the opportunity to move in the right direction. An upgrade to an honorable discharge would give the applicant a positive outlook and help them move forward. The applicant believes they had issues, which contributed to the applicant's behavior, resulting in their unfavorable discharge from the Army. The applicant has been awarded disability compensation for adjustment disorder, confirming the applicant's beliefs.

b. **Board Type and Decision:** In a records review conducted on 29 October 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) / AR 635-200, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 26 November 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 16 October 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: On divers occasions the applicant wrongfully used marijuana and possessed paraphernalia in the barracks room and in a privately owned vehicle (POV).

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

(4) **Legal Consultation Date:** On 16 October 2012, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 2 November 2012 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 6 September 2011 / 3 years, 27 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 88
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 91B10, Wheeled Vehicle Mechanic / 1 year, 2 months, 21 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 29 June 2012, reflects the applicant tested positive for THC 55 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 18 June 2012.

Company Grade Article 15, 19 July 2012, for making a false official statement to Sergeant First Class J. S., (31 May 2012). The form is void of the punishment imposed; however, the Article 15 Punishment Worksheet reflects the punishment consisted of reduction to E-2; a forfeiture; extra duty and restriction for 14 days, and an oral reprimand.

Criminal Investigation Division (CID) Report of Investigation – Initial Final, 25 July 2012, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Use of Marijuana when the applicant submitted a urine specimen on 18 June 2012, during the conduct of a unit urinalysis test, which subsequently tested positive for marijuana.

Criminal Investigation Division Report of Investigation – Initial Final, 2 August 2012, reflects an investigation established probable cause to believe the applicant committed the offenses of Wrongful Possession of Marijuana, Wrongful Introduction of Marijuana, and Fail to Obey General Order when on 29 July 2012, the applicant was accessing the installation and possessed approximately one gram of marijuana and drug paraphernalia (pipe) in the center console of their vehicle.

Criminal Investigation Division Report of Investigation – Initial Final, 15 August 2012, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Use of Marijuana on 9 August 2012, when the Military Police reported a pipe containing an unknown black residue was discovered in another Soldier's vehicle when the Soldier and the applicant attempted to enter the installation. The other Soldier was cited for various offenses. The applicant admitted to the offense of Wrongful Use of Marijuana.

Field Grade Article 15, 30 August 2012, for wrongfully using marijuana (between 19 April and 18 June 2012). The punishment consisted of a reduction to E-1; forfeiture of \$745 pay per month for two months; and extra duty and restriction for 45 days.

Criminal Investigation Division Report of Investigation – Initial Final, 30 August 2012, reflects an investigation established probable cause to believe the applicant committed the offense of Fail to Obey General Order when on 23 August 2012, Fort Drum Military Police reported a scent of

marijuana smoke emanating from the applicant's barracks room and there was probable cause to believe the applicant possessed paraphernalia in their room. The applicant invoked their legal rights.

Criminal Investigation Division Report of Investigation – 1st Final Supplemental, 4 September 2012, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Use of Marijuana when the applicant submitted a urine specimen on 18 June 2012, during the conduct of a unit urinalysis test, which subsequently tested positive for marijuana.

Electronic Copy of DD Form 2624, 25 September 2012, reflects the applicant tested positive for THC 101 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 4 September 2012.

Army Substance Abuse Program Repeat Positive Detail Report, 26 September 2012, reflects the applicant tested positive for THC (marijuana) on three occasions, during an IR urinalysis testing, conducted on 18 June 2012; an IR urinalysis testing, conducted on 17 July 2012; and a Probable Cause (PO) urinalysis testing, conducted on 10 August 2012.

Numerous Developmental Counseling Forms, for lying and being disrespectful to a senior noncommissioned officer (NCO); reception and integration; having poor monthly performance for May 2012; having positive monthly performance for June and July 2012; losing the military identification card; throwing away a meal card; failing to report; failing to obey a lawful order or regulation; malingering; and testing positive for THC on a urinalysis.

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

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

**(1) Applicant provided:** Department of the Veterans Affairs (VA) rated the applicant 70 percent disabled for adjustment disorder with mixed disturbance of mood and conduct, chronic (claimed as behavioral health condition).

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 14 September 2012, reflects the applicant was cleared for any administrative 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 mTBI, and tested positive for PTSD. 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. The applicant was diagnosed with adjustment disorder with anxiety and depressed mood and occupational problem. The applicant was enrolled in the Army Substance Abuse Program on 31 August 2012 for cannabis abuse.

*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; VA Statement in Support of Claim; and VA letter.

**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)** 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.

**(5)** 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.

**(6)** 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.

**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, 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 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 mental health issues affected behavior, which led to the discharge, and the VA granted the applicant disability for the conditions. The applicant provided medical documents reflecting the applicant was rated 70 percent disability for adjustment disorder with mixed disturbance of mood and conduct, chronic (claimed as behavioral health condition). The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 14 September 2012, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant was diagnosed with adjustment disorder with anxiety and depressed mood, and an occupational problem. The MSE was considered by the separation authority.

**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: Chronic Adjustment Disorder w/Disturbance of Emotion and Conduct, Adjustment Disorder, and Trauma-Related Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant is 70 percent service connected for Chronic Adjustment Disorder.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. The applicant's misconduct of wrongful use of marijuana on divers occasions and wrongfully having drug paraphernalia in the barracks are not mitigated given that the applicant's behavioral health conditions were not of a severity to impair the ability to differentiate between right and wrong and adhere to the right. When the applicant's initial BH engagement occurred, the applicant was pending separation for patterns of misconduct. This suggests the applicant's Adjustment Disorders developed secondary to facing the consequences of the misconduct, rather than mitigators of the misconduct. While the applicant is 70% service connected for Chronic Adjustment Disorder, at the time of the misconduct and subsequent separation from service, the Adjustment Disorders were not chronic in nature, as the reported symptoms did not last for a period greater than 6-months after exposure to the identified stressor.

(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 BH conditions outweighed the medically unmitigated illegal substance abuse offenses.

**b.** Response to Contention(s): The applicant contends mental health issues affected behavior, which led to the discharge, and the VA granted the applicant disability for the conditions. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's BH outweighed the medically unmitigated separating offenses per par 9a(3).

**c.** The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a 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 to all evidence before the Board, the applicant's BH conditions did not outweigh the medically unmitigated illegal substance abuse offenses. The conditions were either secondary or not severe enough to provide mitigation. The Board considered the totality of the applicant's record and found that it does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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 General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an Honorable characterization.

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

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

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000696

## 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:

11/4/2024

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