

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 honorable.

The applicant seeks relief contending, in effect, desiring to rejoin the Army. The applicant was young and confused while serving in the military. The applicant did not know what they wanted in life. Now the applicant is focused on life and knows what they need to do. The applicant wants to serve in the military and fix the wrongs the applicant has done in the Army. The applicant has worked the same job and worked themselves up in the company to a leadership position. The applicant is the best manager the applicant can be and requests a second chance and will do whatever needs to be done to correct their actions. The applicant wants to make their child proud and is tired of looking back in the past with regret. The applicant has lived with this punishment for too long. The applicant wants to show the country what the applicant can do.

b. **Board Type and Decision:** In a records review conducted on 29 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service, to include combat service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason and SPD code were proper and equitable and voted not to change them. The Board voted to change the reentry eligibility (RE) code to RE3.

Please see the Board Discussion and Determination portion 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 (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 2 December 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 13 November 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 4 August 2009, without authority and with intent to avoid field exercises, the applicant was absent from the unit and did remain so absent until on or about 11 September 2009; on or about 3 August 2009, through design, the applicant missed the movement of B Battery, 3rd Battalion, 6th Field Artillery; and between on or about 15 June 2009, the applicant wrongfully used marijuana.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: On 13 November 2009, the applicant waived legal counsel.

(5) Administrative Separation Board: On 13 November 2009, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 19 November 2009 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 May 2007 / 6 years, 17 weeks

b. Age at Enlistment / Education / GT Score: 17 / HS Graduate / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 / 13B10, Cannon Crewmember / 2 years, 5 months, 23 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (7 December 2007 – 20 October 2008)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Field Grade Article 15, 5 June 2008, for wrongfully using marijuana (between 23 January and 23 February 2008). The punishment consisted of a reduction to E-1; forfeiture of \$673 pay per month for two months; and extra duty for 45 days.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 4 August 2009;
From AWOL to Dropped From Rolls (DFR), effective 3 September 2009; and
From DFR, to PDY, effective 11 September 2009.

Electronic Copy of DD Form 2624, 7 August 2009, reflects the applicant tested positive for THC 3067 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 15 July 2009.

Army Substance Abuse Program Repeat Positive Detail Report, 11 August 2009, reflects the applicant tested positive for THC, during an IO (Inspection Other) urinalysis testing, conducted on 23 February 2008 and tested positive of THC, during an Inspection Unit (IU) urinalysis testing, conducted on 15 July 2009.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 14 October 2009. The applicant was charged with three specifications. The summary of offenses, pleas, and findings:

Violation of Article 86, Absence Without Leave on or about 3 August 2009, with authority, was absent from the unit until 11 September 2009; guilty, consistent with the plea.

Violation of Article 87, Missing movement on or about 3 August 2009, through design miss the movement of B Battery, 3rd Battalion, 6th Field Artillery, 1st Brigade Combat Team, with which the applicant was required in the course of duty to move: guilty, consistent with the plea.

Violation of Article 112a, Use of a Controlled Substance between on or about 16 June 2009 and on or about 15 July 2009, wrongfully use marijuana: guilty, consistent with the plea.

Sentence: Reduction to E-1; forfeiture \$933 pay; and confinement for 30 days.

Seven Developmental Counseling Forms, for missing movement; failure to obey order or regulation; absence without leave (AWOL); testing positive for THC; and various positive monthly counseling.

i. Lost Time / Mode of Return: 39 days (AWOL, 4 August 2009 – 11 September 2009) / NIF / The record reflects on 14 October 2009, the applicant was sentenced to military confinement for 30 days. This period is not annotated on the DD Form 214, block 29.

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 17 September 2009, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant was diagnosed with adjustment disorder by history.

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; and self-authored statement.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been employed at the same company and has advanced to a leadership position.

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.

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

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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-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 the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a Under Other Than Honorable Conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the separation code (SPD) should be changed. Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c, is "JKQ."

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age. The record shows the applicant underwent a mental status evaluation (MSE) on 17 September 2009, which indicates the applicant was mentally responsible. The applicant was diagnosed with an adjustment disorder by history. The MSE was considered by the separation authority.

The applicant desires to rejoin the military service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment matter.

The applicant contends being employed at the same company and advancing to a leadership position. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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 applied liberal consideration and opined that the applicant was diagnosed in 2007 with an Adjustment Disorder that was noted to be resolving in

November 2007. There is no indication that the Adjustment Disorder existed at the time of the misconduct that led to the applicant's separation. Furthermore, an Adjustment Disorder is a low level temporary difficulty coping with stressors that does not impair an individual's cognitive ability to understand right from wrong and make purposeful choices knowing the consequences. Accordingly, there is no mitigation for the misconduct that led to the separation.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in 2007 with an Adjustment Disorder that was noted to be resolving in November 2007.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in 2007 with an Adjustment Disorder that was noted to be resolving in November 2007. There is no indication that the Adjustment Disorder existed at the time of the misconduct that led to the applicant's separation. Furthermore, an Adjustment Disorder is a low level temporary difficulty coping with stressors that does not impair an individual's cognitive ability to understand right from wrong and make purposeful choices knowing the consequences. Accordingly, there is no mitigation for the misconduct that led to the separation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder outweighed the basis of separation (AWOL, missing movement, and drug use).

b. Response to Contention(s):

(1) The applicant contends the narrative reason and SPD need to be changed. The Board liberally considered this contention and determined the applicant's Adjustment Disorder did not outweigh the applicant's basis of separation misconduct. However, the Board voted to upgrade the characterization of service to General, Under Honorable Conditions and change the reentry eligibility (RE) code to RE3 based on the applicant's length of service, to include combat service, and desire to reenter the military. The narrative reason and SPD were found proper and equitable based on the range and severity of the misconduct.

(2) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board liberally considered this contention during proceedings and determined that the applicant met the minimum age requirements for military service.

(3) The applicant desires to rejoin the military service. The Board liberally considered this contention during proceedings, and changed the RE-Code to RE-3, which is waivable and does not necessarily preclude reentering military service.

(4) The applicant contends being employed at the same company and advancing to a leadership position. The Board liberally considered this contention during proceedings and noted the asserted positive post-service accomplishments. This information was considered with the totality of the evidentiary record for which an upgrade was granted.

c. The Board determined the discharge is inequitable based on the applicant's length of service, to include combat service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason and SPD code were proper and equitable and voted not to change them. The Board did vote to change the reentry eligibility (RE) code to RE3.

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AR20210000825

d. Rationale for Decision:

(1) The Board voted to grant relief by upgrading the characterization of service to General, Under Honorable Conditions based on the applicant's length of service, including combat service. The asserted post-service accomplishments were also considered.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, as the reason the applicant was discharged was both proper and equitable. The applicant did engage in serious misconduct and has no medical mitigation.

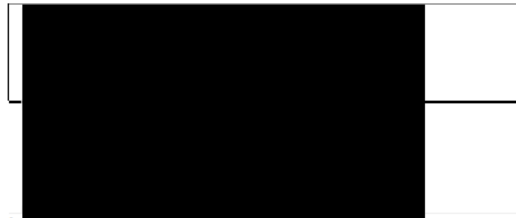
(3) The Board voted to change the reentry code to RE-3 based on the totality of the evidentiary record and the applicant's desire to reenter military service.

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:** RE-3
- e. Change Authority to:** AR 635-200

Authenticating Official:

9/8/2024



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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