

**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.

The applicant seeks relief contending, in effect, reporting an NCO for sexual harassment. The applicant was afraid because the NCO only lived a mile away from the applicant and knew where the applicant lived. The NCO had anger issues and the applicant had nothing to protect their self if there was a situation. The unit only gave the NCO a five foot distance from the applicant and the applicant's home; however, the command and 1SG gave themselves and the laboratory a 1,000 foot distance from the NCO. The applicant was stressed out with minor depression, uncomfortable at work, and frustrated with the command. It was a trying time for the applicant and the applicant spoke with a counselor by using the Army 1 Source program. Everything happening clouded the applicant's head and misguided the applicant's judgment. It was during this time and on the applicant's birthday, they smoked a minor amount of marijuana with friends. The applicant then failed a UA test and was placed into the ASAP program and received 30 days extra duty with a reduction in rank. The applicant accepted everything because they knew they were wrong. The applicant was told they would be discharged from the Army with only six months left on their contract. The 1SG told the applicant since school was important to the applicant, the 1SG was giving the applicant a general (under honorable conditions) discharge. The applicant found out after the discharge was signed, the information the 1SG provided was incorrect. Not long after being discharged, the applicant found out another Soldier failed the UA test, only received 45 days extra duty, and was able to stay in the Army. The same Soldier which was kept in the Army failed another UA test while in the applicant's situation, they were punished immediately. The one thing the applicant would love to have back, for all the good they did in the Army, would be the benefits for school. The applicant would like to better oneself and come back from this situation.

**b. Board Type and Decision:** In a records review conducted on 28 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the alleged sexual harassment and one time offense outweighing the applicant's marijuana use basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, Chapter 15. Accordingly, the Board changed the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and a change to the reentry eligibility (RE) code to 1.

*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, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 24 July 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 4 June 2014

(2) **Basis for Separation:** The applicant was informed of the following reasons: Between on or about 21 December 2013 and 21 January 2014, the applicant wrongfully used marijuana, a schedule I controlled substance.

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

(4) **Legal Consultation Date:** On 5 June 2014, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 8 July 2014 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 7 January 2009 / 6 years

b. **Age at Enlistment / Education / GT Score:** 20 / some college / 96

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 68E20, Dental Specialist / 5 years, 6 months, 18 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** ARCOM, AAM-5, AGCM, NDSM, GWOTSM, NCOPDR, ASR

g. **Performance Ratings:** None

h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 12 February 2014, reflects the applicant tested positive for THC 45 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 21 January 2014.

FG Article 15, 2 May 2014, for wrongfully using marijuana, a schedule I controlled substance (between 21 December 2013 and 21 January 2014). The punishment consisted of a reduction to E-4; forfeiture of \$1,164 pay, suspended, and extra duty for 30 days.

Developmental Counseling Form, for notification of entry into ASAP.

Memorandum For Army Review Boards Agency, Request for Redacted CID and Military Police Reports for Official Use Purposes, 4 March 2016, reflects there were no files responsive to the request for the CID report.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Mental Status Evaluation (MSE), 20 May 2014, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. 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. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The MSE contains a diagnosis.

*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:** DD Form 293; self-authored statement; DD Form 214.

**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.

(7) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 good service, including achieving the rank of SGT in five years, completing two combative levels, WLC, German Sports Proficiency Badge, and quarter Boards. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends being sexually harassed by an NCO and during the investigation because the NCO knew where the applicant lived, the applicant was afraid for their safety. The applicant was stressing out with minor depression, being uncomfortable at work, and frustrated with the command. It was during this time the applicant smoked marijuana and failed a UA. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends other Soldiers with similar offenses were not discharged. The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case

basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

#### **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's Medical Advisor, a voting member, 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.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with Adjustment Disorder with Depressed Mood while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that a review of the records shows the applicant with a potentially mitigating diagnosis of Adjustment Disorder. The applicant did not provide evidence of any post-service BH diagnosis or treatment history. As it relates to the diagnosis of Adjustment Disorder, there is no evidence the adjustment disorder was of such severity as to have noteworthy impact on behavior, judgment, or cognition, or impaired the applicant ability to differentiate between right and wrong and adhere to the right. Additionally, although the applicant asserted sexual harassment, she provided no documentation to support her assertion, and an Army CID memorandum dated 4 March 2016 reflects that a review of their system found no files associated with the applicant.

(4) Does the condition or experience outweigh the discharge? **No.**

b. Response to Contention(s):

(1) The applicant contends good service, including reaching the rank of SGT in five years, completed two combative levels, WLC, German Sports Proficiency Badge, and quarter Boards. The Board determined that this contention was valid and voted to upgrade the characterization of service due to the applicant's length and quality of service, to include combat service, and one time offense outweighing the applicant's marijuana use basis for separation.

(2) The applicant contends being sexually harassed by an NCO and during the investigation because the NCO knew where the applicant lived, the applicant was afraid for their safety. The applicant was stressing out with minor depression, being uncomfortable at work, and frustrated with the command. It was during this time the applicant smoked marijuana and

failed a UA. The Board considered this contention and determined that while there is insufficient evidence in the file to support this contention, any allegation of sexual harassment is taken seriously. Therefore, the Board voted to upgrade the applicant's discharge due to the applicant's length and quality of service, to include combat service, alleged sexual harassment and one time offense outweighing the applicant's marijuana use basis for separation.

(3) The applicant contends other Soldiers with similar offenses were not discharged. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, alleged sexual harassment and one time offense outweighing the applicant's marijuana use basis for separation.

(4) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, allegation of sexual harassment and one time offense outweighing the applicant's marijuana use basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, Chapter 15. Accordingly, the Board changed the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and a change to the reentry eligibility (RE) code to 1.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length and quality of service, to include combat service, alleged sexual harassment and one time offense outweighing the applicant's marijuana use basis for separation. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The Board voted to change the RE code to RE-1.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

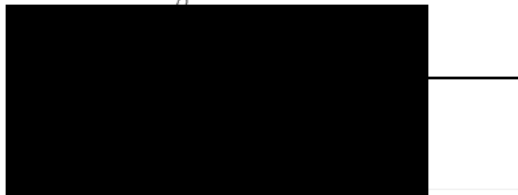
**AR20210001100**

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: RE-1
- e. Change Authority to: AR 635-200, Chapter 15

**Authenticating Official:**

8/26/2024



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