

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 the period under review is General (under Honorable conditions). The applicant requests an upgrade to Honorable.

The applicant seeks relief contending, in effect, being diagnosed with antisocial disorder while in the service, which led to the discharge. The applicant was ordered to attend psychological exams four times a week while in service. The applicant was in-patient for four weeks at Womack Army Hospital while in service. The applicant was discharged for marijuana use. The applicant was suffering from a mental health crisis and the prescribed medication was making the applicant sleepy, and the applicant was unable to perform the duties. The applicant believed the applicant had no other choice but to use marijuana. The applicant informed the leadership, but the leadership used it to punish the applicant, which the applicant believes was unjust.

b. **Board Type and Decision:** In a records review conducted on 28 May 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 (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 29 August 2001

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 17 May 2001

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive for marijuana, a controlled substance, on two different occasions on a standard unit urinalysis.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 21 May 2001

(5) **Administrative Separation Board:** On 21 May 2001, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable

conditions) discharge. The record is void of the action taken on the request for conditional waiver.

On 27 June 2001, the applicant was notified to appear before an administrative separation board and advised of rights.

On 31 July 2021, the administrative separation board convened, and the applicant appeared with counsel. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

(6) Separation Decision Date / Characterization: Undated / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 12 November 1998 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / GED / 107

c. Highest Grade Achieved / MOS / Total Service: E-3 / 51B1P, Carpentry and Masonry Specialist / 2 years, 9 months, 18 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 7 September 2000, reflects the applicant was apprehended for: willfully disobeying a lawful order of a noncommissioned officer (NCO); failing to obey a regulation to identify; and indecent language (on post). Investigation revealed, while on patrol, a Military Police Officer observed the applicant using obscene and offensive language. The patrol officer asked the applicant for identification on three occasions and the applicant indicated the applicant did not have ID. The patrol officers searched the applicant and found the ID card in the applicant's pocket.

Developmental Counseling Form, 17 October 2000, for willfully disobeying an NCO; failing to obey a regulation, failing to identify; and indecent language.

Company Grade Article 15, 30 November 2000, for, with intent to deceive, making to Sergeant (SGT) M., a false official statement (7 September 2000). The punishment consisted of a reduction to E-2; forfeiture of \$263 pay; and extra duty and restriction for 14 days.

DD Form 2624, 10 January 2001, reflects the applicant tested positive for THC (marijuana), during a "CD" urinalysis testing, conducted on 19 December 2000.

Field Grade Article 15, 9 February 2001, for wrongfully using marijuana (between 19 November and 19 December 2000). The punishment consisted of a reduction to E-1; forfeiture of \$521 pay per month for two months; and extra duty and restriction for 45 days.

DD Form 2624, 6 March 2001, reflects the applicant tested positive for THC (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 20 February 2001.

Field Grade Article 15, 26 March 2001, for wrongfully using marijuana (between 22 January and 20 February 2001). The punishment consisted of a forfeiture of \$521 pay per month for two months; and extra duty and restriction for 45 days.

Summary of Proceedings, 31 July 2001, reflects during the administrative board proceedings, the applicant's platoon sergeant, while being questioned by government counsel, disclosed the applicant self-referred to SARS around June 2000, a couple of days after the applicant submitted to a urinalysis. The platoon sergeant indicated, regarding the first urinalysis, the applicant was command directed to take a urinalysis after being caught off-post by the police. The platoon leader testified the applicant was directed to submit to a urinalysis test the morning after being caught downtown Fayetteville in possession of marijuana. The applicant contaminated the test and had to retest the following day, which was positive for marijuana.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Summary of Proceedings, 31 July 2001, reflects a Womack Army Hospital psychologist was called as a witness and testified the applicant had antisocial personality. The psychologist further explained the psychologist was not the applicant's primary psychologist but was familiar with the applicant's case.

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 149; DD Form 214; DD Form 293; and Disabled American Veterans 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 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 results of command-directed drug or alcohol testing that are inadmissible under the MRE and 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) 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 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.

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 "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).

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-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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

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

The applicant's separation packet includes two DD Forms 2624 (Specimen Custody Document for Drug Testing), which show one of the urinalysis tests coded "CD." The code "CD" is not an official code in Army Regulation 600-85; however, the code is commonly used instead of the code "CO," which indicates "Competence for Duty/Command Directed/Fitness for Duty." The administrative separation board Summary of Proceedings, reflects the urinalysis coded CD, was directed by the commander after the applicant was caught downtown Fayetteville in possession of marijuana. The Limited Use Policy does not apply to this test. The commander had a suspicion and probable cause the applicant was using a controlled substance based on the platoon sergeant's and platoon leader's testimony during the administrative separation board. Given this information, the commander had probable cause to direct the urinalysis. The code on the DD Form 2624 was in all likelihood incorrect and should have been coded PO for "Probable Cause." The Summary of Proceedings reflects the platoon sergeant testified the applicant self-referred to SARS after submitting to a urinalysis. The Limited Use Policy does not apply to this self-referral.

The applicant contends being diagnosed with antisocial disorder. The applicant's AMHRR supports a diagnosis of antisocial personality disorder. The record is void of a mental status evaluation, but the information was presented through testimony at the administrative separation board. The Summary of Board Proceedings was considered by the separation authority.

The applicant contends informing the command of the applicant's issues and was punished for it. 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'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: Neurosis/Depression, Depressive Disorder Unspecified.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 0 percent service connected (SC) for Neurosis/Depression.

(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 asserts applicant's misconduct was related to Antisocial Personality Disorder and a review of the records supports the applicant was diagnosed with Antisocial Personality Disorder, during service. Post-service records show the applicant is 0 percent SC, apparently, for Neurosis/Depression. The related C&P Examination was not available for review. While a SC of Neurosis would generally mitigate drug use, the available evidence suggests that the applicants drug use was secondary to Antisocial Personality Disorder. Additional misconduct characterized disobeying lawful orders, failure to obey regulation, use of obscene and offensive language, and making false official statement, were also related to Antisocial Personality Disorder. However, Antisocial Personality and other Personality Disorders are not offered relief under Liberal guidance given that they are characterological in nature, existed prior to service, not compatible

with military service, and individuals with the diagnosis are administratively separated under provisions of AR 635 – 200 Chapter 5-13, usually secondary to misconduct related to the Personality Disorder.

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends being diagnosed with antisocial disorder. The Board considered this contention and determined the applicant is diagnosed with antisocial disorder, however, antisocial disorder does not excuse or mitigate the applicant's misconduct of marijuana use on multiple occasions. The applicant's discharge is proper and equitable.

(2) The applicant contends informing the command of the applicant's issues and was punished for it. The Board considered this contention and determined the applicant was discharged for using marijuana on multiple occasions, not for issues the applicant states informing the command about. The applicant's discharge is proper and equitable.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's Neurosis/Depression and Depressive Disorder Unspecified did not excuse or mitigate the offenses of using marijuana on multiple occasions. 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 applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001129

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:

8/31/2024

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