

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 to honorable.

The applicant seeks relief contending, in effect, because the applicant was suffering from depression and self-medicating, the discharge should be changed. The applicant has since recovered from depression and has become a contributing member of society. The applicant works full-time as a corrections officer and part-time as a case manager for a private company contracted through the prosecuting attorney's office. The applicant is trying to live a positive life and believes the discharge may be inhibiting the applicant from reaching the full potential and utilizing resources available to the applicant.

b. **Board Type and Decision:** In a records review conducted on 13 December 2023, 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, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 5 May 2006

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 29 March 2006

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive for Marijuana on 4 November 2005, and 11 January and 1 February 2006.

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

(4) **Legal Consultation Date:** 29 March 2006

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

(6) **Separation Decision Date / Characterization:** Undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 3 June 2004 / 4 years, 20 weeks
- b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 108
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 92G10, Food Service Operations / 1 year, 10 months, 19 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Twenty-on Developmental Counseling Forms for various acts of misconduct, including multiple incidents of failing to go at the time prescribed to the appointed place of duty.

Summarized Article 15, 3 August 2005, for violating a lawful general on 18 July 2005. The punishment consisted of extra duty and restriction for 14 days.

Laboratory Confirmed Biochemical Test Results, 15 November 2005, reflects the applicant tested positive for THC 101 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 4 November 2005.

Report of Mental Status Evaluation, 20 December 2005, 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; could appreciate the difference between right and wrong; and met medical retention requirements.

FG Article 15, 12 January 2006, for wrongfully using marijuana (between 5 October and 4 November 2005). The punishment consisted of a reduction to E-1; forfeiture of \$617 pay per month for two months; extra duty and restriction for 45 days; and an oral admonition.

Laboratory Confirmed Biochemical Test Results, 31 January 2006, reflects the applicant tested positive for THC 155 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 11 January 2006.

Charge Sheet, 15 February 2006, reflects the applicant was charged with violation of the UCMJ, Article 112a, for wrongfully using Marijuana (between 12 December 2005 and 11 January 2006).

Record of Trial by Summary Court-Martial, 30 March 2006, reflects the applicant was charged with and found guilty of violating Article 112a, UCMJ, for wrongfully using Marijuana (between 12 December 2005 and 11 January 2006). The sentence adjudged was forfeiture of \$849 pay and confinement for 30 days.

Confinement Order, 30 March 2006, reflects the applicant was confined as the result of a summary court-martial sentence.

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

From "Present for Duty (PDY)" to "Absent Without Leave (AWOL)," effective 2 March 2006;
From "AWOL" to "PDY," effective 15 March 2006;
From "PDY" to "Confined by Military Authorities (CMA)" effective 30 March 2006; and
From "CMA" to "PDY," effective 23 April 2006.

i. Lost Time / Mode of Return: 14 days (AWOL, 2 March 2006 – 15 March 2006) / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant's application includes the applicant assertion of depression.

(2) AMHRR Listed: Report of Medical History, 21 February 2006, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Anxiety attacks once every four or five months and noted the behavioral health issues cited by the applicant.

5. APPLICANT-PROVIDED EVIDENCE: Online application; ARBA letter; and DD Form 214.

6. POST SERVICE ACCOMPLISHMENTS: The applicant obtained full-time employment as a corrections officer and part-time as a case manager for a private company.

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 contends suffering from depression led to self-medicating and subsequently, the discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR contains documentation which supports the applicant noting having behavioral health issues, which was noted by the medical examiner. The record shows the applicant underwent a mental status evaluation (MSE) on 21 February 2006, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

The applicant contends obtaining full-time employment as a corrections officer and part-time as a case manager. 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.

The applicant contends the discharge may be preventing the applicant from using the resources which may be available to the applicant. The applicant contends an upgrade of the discharge would allow veterans' benefits. Eligibility for veterans' benefits 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 [REDACTED] 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: the applicant asserts Anxiety and Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that, for purposes of liberal consideration, the applicant's asserted depression and anxiety existed during 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, while the applicant asserts suffering from depression with a history of anxiety attacks at a frequency of four (4) to six (6) months, neither of these assertions were made prior to the applicant's notification of the administrative separation. Further, the applicant's official record does not include any record that reflect the applicant was diagnosed or treated for depression or anxiety attacks. In absence of any evidence supporting the applicant assertion, there is insufficient evidence to support applicant's misconduct was related to either the applicant's asserted Anxiety or Depression to warrant medical mitigation.

(4) Does the condition or experience outweigh the discharge? **No.** The Board determined that, based on the Board Medical Advisor opine, that the applicant's asserted Anxiety and Depression do not outweigh the applicant's medically unmitigated wrongful drug use.

b. Response to Contention(s):

(1) The applicant contends suffering from depression led to self-medicating and subsequently, the discharge. The Board considered this contention and determined that the applicant's asserted Anxiety and Depression do not outweigh the applicant's medically unmitigated wrongful drug use because there is insufficient medical evidence to support the applicant's asserted behavioral health diagnosis in the applicant's official record or provided by the applicant. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends obtaining full-time employment as a corrections officer and part-time as a case manager. The Board considered this contention and determined that the applicant's full-time employment as a corrections officer and part-time as a case manager do not outweigh the misconduct based on the seriousness of the applicant's offense of wrongful drug use on three occasions.

(3) The applicant contends the discharge may be preventing the applicant from using the available resources. 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 that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted the applicant's 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, the applicant's asserted Anxiety and Depression do not outweigh the applicant's medically unmitigated wrongful drug use because there is insufficient medical evidence to support the applicant's asserted behavioral health diagnosis in the applicant's official record or provided by the applicant. 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. 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, and 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.

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:

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001385

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