

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, having a service-connected disability and wanting to receive medical attention and compensation. The applicant realizes their conduct was unacceptable and why they were discharged for a positive urinalysis/using marijuana. However, during this time, the applicant was battling depression from being separated from the spouse and resorted to using marijuana to cope with the situation. Before this incident, the applicant was one of the top Soldiers in the unit. The applicant was promoted to E-4 with only 18 months in service. Their conduct was always excellent until they started having problems in the marriage. Since the discharge, the applicant and spouse have reconciled and are now going on 14 years of marriage with four children. The applicant wants to use VA benefits for medical needs and to better the family situation (home loans and education benefits).

b. **Board Type and Decision:** In a records review conducted on 7 December 2023, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service, severe family matters, and post service accomplishments. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason/SPD and RE code were proper and equitable and voted not to change them based on the severity of the misconduct.

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 / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 19 November 2004

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 7 September 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons:

For multiple acts of drug use;

Breaking restriction;

Multiple failures to repair, and,
destruction of government property.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 8 September 2004

(5) Administrative Separation Board: On 8 September 2004, 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.

In an undated Memorandum, the applicant's conditional waiver was denied.

On 12 October 2004, the applicant was notified to appear before an administrative separation board and advised of rights.

On 25 October 2004, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the applicant had committed a serious offense, the specific circumstance of which warranted separation. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

In an undated Memorandum, the separation authority approved the findings and recommendations of the administrative separation board.

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

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 June 2001 / 4 years

b. Age at Enlistment / Education / GT Score: E-4 / some college / 99

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92G10, Food Service Specialist / 3 years, 4 months, 22 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Alaska / None

f. Awards and Decorations: GWOTSM, NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 26 September 2003, for wrongfully using marijuana on or about 27 August 2003. The punishment consisted of a reduction to E-2; forfeiture of \$645 pay per month for two months (suspended); and extra duty for 45 days.

FG Article 15, 19 July 2004, for wrongfully using marijuana on or about 20 May 2004. The punishment consisted of a reduction to E-1; forfeiture of \$597 pay per month for two months; and extra duty and restriction for 45 days.

MPR#006-2004-MPC109, Domestic Disturbance (Physical) – 2K2 (On Post), 2 August 2004, reflects an investigation revealed the applicant and spouse were in a verbal argument which turned physical when the applicant punched the spouse in the right eye causing bruising and minor swelling. The applicant was apprehended and transported to the MP station.

Military Protective Order, 5 August 2004, reflects the applicant was restrained from having contact or communication with the spouse due to a domestic violence incident which occurred between the applicant and spouse on 30 July 2004.

Report of Mental Status Evaluation (MSE), 10 August 2004, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; and met medical retention requirements. It was noted: The applicant was command referred to Community Mental Health for a Mental Status Evaluation pursuant to a consideration for Chapter 14-12b administrative discharge from service. There was no evidence of mental disorder which would affect judgement and reasoning, or which would require disposition through medical channels. The applicant denied any suicidal or homicidal ideas, intent, or plan.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 12 August 2004. The applicant was charged with two specifications. The summary of offenses, pleas, and findings:

Violation of Article 128, UCMJ: The Specification: On or about 30 July 2004, assault K. K. C. by striking in the eye with the hand; not guilty, consistent with the plea.

Violation of Article 134, UCMJ: The Specification: On or about 30 July 2004, break restriction; guilty, consistent with the plea.

Sentence: Confinement for 30 days; and forfeiture of \$796 pay.

Numerous Developmental Counseling Forms, for various acts of misconduct.

Report of Proceedings by Board of Officers, 25 October 2004, reflects the Board determined the applicant had committed a serious offense, the specific circumstance of which warranted separation. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

The applicant provided a copy of Sound Advice Hearing Services letter, 20 December 2005, which reflects the applicant was seen for audiological evaluation. The applicant stated they had just failed the hearing test during a physical for a job application for TSA and was told they were required to have a complete audiological examination. The applicant reported they frequently asked for repeats, especially when there is background noise. The applicant reported tinnitus AS notices for some time and stated they had an episode of dizziness accompanied by severe tinnitus in March of 2004. The applicant reported excessive noise exposure while serving in the Army for three years as a cook, however the applicant noted much rifle training and their ears started ringing following M16 training. The applicant denied recreational and occupational noise exposure. The applicant exhibited a slight to severe sensorineural hearing loss at 1500Hz and above, AS and hearing WNL AD. The test results and history support a cochlear site of

dysfunction with a probable noise exposure etiology. The applicant was encouraged to go to the VA and file a claim for hearing loss.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 20 July 2004, the examining medical physician noted in the comments section: Attending anger management classes and used marijuana in high school.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; Sound Advice Hearing Services letter; DD Form 2808; DD Form 2807-1.

6. POST SERVICE ACCOMPLISHMENTS: The applicant and spouse have reconciled and are now going on 14 years of marriage with four children.

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) 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.

(5) 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.

(6) 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.

(7) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (drug abuse).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

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

The applicant contends family issues affected behavior and ultimately caused the discharge. The applicant was coping with depression caused by the separation from their spouse. The AMHRR contains Report of Medical History, 20 July 2004, which reflects the examining medical physician noted in the comments section: Attending anger management classes and used marijuana in high school. A Report of Mental Status Evaluation (MSE), 10 August 2004, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; and met medical retention requirements. It was noted: The applicant was command referred to Community Mental Health for a Mental Status Evaluation pursuant to a consideration for Chapter 14-12b administrative discharge from service. There was no evidence of mental disorder which would affect judgement and reasoning or which would require disposition through medical channels. The applicant denied any suicidal or homicidal ideas, intent, or plan. The MSE was considered by the separation authority. 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 good service. The applicant was one of the top Soldiers in the unit and was promoted to E-4 with only 18 months in service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends having a service-connected disability and would like to receive medical services and compensation for the disability. The applicant did not provide a copy of a VA Rating Decision. The applicant provided a copy of Sound Advice Hearing Services letter, 20 December 2005, which reflects the applicant was seen for audiological evaluation. The applicant stated they had just failed the hearing test during a physical for a job application for TSA and was told they were required to have a complete audiological examination. The applicant reported they frequently asked for repeats, especially if when there was background noise. The applicant reported tinnitus AS notices for some time and stated they had an episode of dizziness accompanied by severe tinnitus in March of 2004. The applicant reported excessive noise exposure while serving in the Army for three years as a cook, however the applicant noted there was rifle training and their ears had started ringing following M16 training. The applicant denied recreational and occupational noise exposure. The applicant exhibited a slight to severe sensorineural hearing loss at 1500Hz and above, AS and hearing WNL AD. The test results and history supported a cochlear site of dysfunction with a probable noise exposure etiology. The applicant was encouraged to go to the VA and file a claim for hearing loss. Eligibility for veteran's 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.

The applicant and spouse have reconciled and are now going on 14 years of marriage with four children. 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? **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: None. Additionally, the applicant asserts depression, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant self-asserted having depression secondary to marital issues at the time of service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant self-asserted having depression secondary to marital issues at the time of service. However, there is no medical evidence to support the assertion, including no BH diagnoses while serving and no service connections by the VA. Given the lack of medical evidence, the applicant's asserted depression does not provide 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 self-assertion of depression secondary to marital issues outweighed the basis for separation.

b. Response to Contention(s):

(1) The applicant and spouse have reconciled and are now going on 14 years of marriage with four children. The Board determined that this contention was valid as part of the basis to upgrade the characterization of service General, Under Honorable Conditions. The applicant's length of service, severe family matters, and post-service accomplishments were ultimately the basis for the upgrade. The Board determined the narrative reason/SPD and RE code were proper and equitable and voted not to change them based on the severity of the misconduct.

(2) The applicant contends family issues affected behavior and ultimately caused the discharge. The applicant was coping with depression from separation from their spouse. The Board considered this contention during proceedings, but ultimately did not address it due to a characterization upgrade to General, Under Honorable Conditions based on the applicant's length of service, severe family matters, and post-service accomplishments.

(3) The applicant contends good service. The applicant was one of the top Soldiers in the unit and was promoted to E-4 with only 18 months in service. The Board considered this contention during proceedings, but ultimately did not address it due to an upgrade to General, Under Honorable Conditions based on the applicant's length of service, severe family matters, and post-service accomplishments.

(4) The applicant contends having a service-connected disability and wants to receive medical services and compensation for the disability. The Board considered this contention during proceedings, but ultimately did not address the contention due to a characterization upgrade to General, Under Honorable Conditions based on the applicant's length of service, severe family matters, and post-service accomplishments. Additionally, determination of medical benefits and compensation do not fall within the scope of this Board.

(5) The Board determined that the characterization of service was inequitable based on the applicant's length of service, severe family matters, and post service accomplishments. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. The Board determined the narrative reason/SPD and RE code were proper and equitable and voted not to change them based on the severity of the misconduct which led to separation. 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.

c. Rationale for Decision:

(1) The Board voted to grant relief by upgrading the applicant's characterization of service to General, Under Honorable Conditions. The Board found the discharge proper and equitable as there were no behavioral health diagnoses that mitigated the basis of separation.

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(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD based on the severity of the misconduct which led to separation. The reason(s) the applicant was discharged was both proper and equitable.

(3) The RE code will not change based on the severity of the misconduct which led to separation .

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** Yes
- b. **Change Characterization to:** General, Under Honorable Conditions
- c. **Change Reason / SPD code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

12/27/2023



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