

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, accepting complete responsibility for their actions which resulted in the discharge from the Army for the positive urinalysis of marijuana on 12 December 2013. The applicant's lapse in judgment embarrassed the chain of command, unit, and oneself. The applicant has learned from this incident and strongly desires to continue to move forward in life.

While there is no excuse for the applicant's mistake, the applicant believes there are extenuating circumstance which may have played a role in the misjudgment. On 24 November 2013, the applicant had dinner and drinks at a friend's house. At one point during the evening, the applicant was asked if they wanted a cigarette. The applicant replied yes. With the applicant being so engaged in the conversation, and festivities going on, the applicant did not knowingly or intentionally know they had ingested marijuana until the inhalation, which, without hesitation the immediate response was to quickly exhale. The applicant has been proactive in trying to rectify the severe lapse in judgment since the night of the incident. The applicant was evaluated for the Army Substance Abuse Program (ASAP); however, the organization concurred the applicant does not have a problem with illegal drugs. The psychiatrist agreed the incident was related to the applicant unawareness of the environment and not an addiction.

The applicant received and Article 15 and a discharge from the service. Since being discharged, the applicant has kept the Army Values with them and has maintained an outstanding reputation. The applicant works for the Department of Transportation as a Human Resource Consultant, and volunteers part time at the Tumwater Library. The applicant has grown from this experience and will never make this mistake again. Despite the isolated event, the applicant believes they were still a good Soldier. The applicant respectfully requests an upgrade to honorable so they may continue their schooling.

b. Board Type and Decision: In a records review conducted on 30 November 2023, and by a 5-0 vote, the Board determined the narrative reason for the applicant's separation is inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The Board determined the characterization of service (honorable) and RE-Code (3) are proper and equitable and voted not to change them.

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 / Honorable

b. Date of Discharge: 22 July 2014

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 15 May 2014

(2) Basis for Separation: The applicant was informed of the following reasons: On 12 December 2013, the applicant submitted a valid urine sample during a command directed random urinalysis inspection. The sample was analyzed and tested positive for the drug marijuana.

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

(4) Legal Consultation Date: 19 May 2014

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 20 June 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 27 April 2010 / 5 years

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 103

c. Highest Grade Achieved / MOS / Total Service: E-4 / 31B10, Military Police / 4 years, 2 months, 25 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (24 March 2011 – 24 March 2012)

f. Awards and Decorations: ACM-2CS, ARCOM, NATOMDL, MUC, AGCM, NDSM, GWOTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Memorandum for Commander, Lab Confirmed Positive Urinalysis, date illegible, reflects the applicant tested positive for THC 22 (marijuana), the sample was collected on 12 December 2013.

Army Substance Abuse Program (ASAP) Enrollment Form, 15 January 2014, reflects the applicant was referred by the supervisor to the ASAP.

FG Article 15, 29 January 2014, for wrongfully using marijuana (between 12 November and 12 December 2013). The punishment consisted of a reduction to E-2; forfeiture of \$858 pay, suspended; and extra duty and restriction for 45 days.

Developmental Counseling Form for positive urinalysis results.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 18 March 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 with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Axis I: Major Depressive Disorder, Single Episode (per VA evaluation PTSD). It was noted: While the applicant was diagnosed with posttraumatic stress disorder by a VA provider on 21 January 2014 and reported depressive symptoms during the evaluation, an IDES provider (on 14 February 2014) and this provider assessed the applicant as meeting medical fitness standards for retention per AR 40-501 3-31 to 3-37 as the applicant did not have any past or current profiles restricting duty, had not required psychiatric hospitalization and these conditions had not interfered with the effective duty performance. The applicant was in the IDES system for the hip (per Dr. K. AHLTA note on 18 December 2013) and thus recommended further actions towards administrative separation be processed IAW 635-200 chapter 1-33 and ALARACT 159/2012.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; self-authored statement; DD Form 214; Four third-party letters; partial separation packet.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is employed with the Department of Transportation as a Human Resource Consultant and volunteers part time at the Tumwater Library.

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) 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.

(4) 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.

(5) 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 good service, including a combat tour and receiving numerous ribbons and awards. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant accepts full responsibility for their actions; however, believes there are extenuating circumstance which may have played a role in the misjudgment. The applicant did not knowingly ingest marijuana. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statements provided with the application reflect the applicant's good conduct while serving in the Army.

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.

The applicant is employed with the Department of Transportation as a Human Resource Consultant and volunteers part time at the Tumwater Library. 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's AMHRR reflects the applicant underwent a mental status evaluation (MSE) on 18 March 2014, which supports a diagnosis of in-service Major Depressive Disorder, Single Episode (per VA evaluation PTSD). The MSE was considered by the separation authority.

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Major Depression, and PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, Major Depression, and PTSD. The VA has also service connected the applicant's PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder, Major Depression, and PTSD. The VA has also service connected the applicant's PTSD. Given the nexus between PTSD, Major Depression, and self-medicating with substances, the marijuana use that led to the applicant's separation is mitigated. The applicant already has an HD suggesting that the proper mitigation has already been applied.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's PTSD and Major Depression outweighed the marijuana use basis for separation.

b. Response to Contention(s):

(1) The applicant contends good service, including a combat tour and receiving numerous ribbons and awards. The Board considered this contention during board proceedings, along with the totality of the applicant's service record.

(2) The applicant accepts full responsibility for their actions; however, believes this was an isolated event and there were extenuating circumstance which may have played a role in the misjudgment. The applicant did not knowingly ingest marijuana. The Board considered this contention during proceedings, but ultimately did not address it due to an upgrade being granted based on the applicant's PTSD and Major Depression fully outweighing the applicant's marijuana use.

(3) 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 does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact the Department of Veterans Affairs for further assistance.

(4) The applicant is employed with the Department of Transportation as a Human Resource Consultant and volunteers part time at the Tumwater Library. The Board considered this contention during proceedings, but ultimately did not address it due to an upgrade being granted based on the applicant's PTSD and Major Depression fully outweighing the marijuana use.

c. The Board determined that the narrative reason for the applicant's separation is now inequitable because the applicant's PTSD and Major Depression mitigate the basis of separation (marijuana use). Accordingly, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service (honorable) was proper and equitable; no further upgrade is possible. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's behavioral health diagnoses.

d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable because a prior ADRB upgraded the characterization to Honorable. No further relief is possible.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) because the behavioral health conditions fully outweigh the basis of separation (marijuana use). Therefore, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

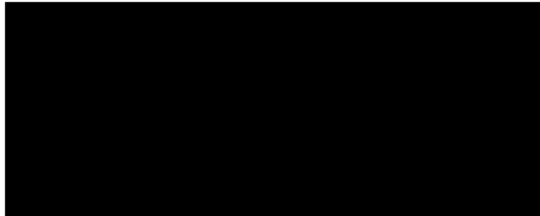
(3) The RE code will not change, as the current code (3) is proper and equitable due to the applicant's behavioral health diagnoses.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

2/14/2024



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