

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**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, serving three tours in Iraq and the only negative was when the applicant was charged with possession of a stolen handgun which the applicant wanted for protection. The applicant served with honor for eight years and eleven months. The Army discharged the applicant and the applicant used marijuana due to being depressed over being kicked out. The applicant was convicted of one stolen gun charge; however, was kicked out because the applicant was overcharged. The applicant served the country honorably and was stupid to have a gun; however, the applicant was paranoid.

b. Board Type and Decision: In a records review conducted on 5 October 2023, and by a 3-2 vote, the Board found the discharge inequitable based on the applicant's length, quality, and combat service. Therefore, the Board voted to change the characterization of service to General (Under Honorable Conditions) only. The narrative reason, SPD, and RE-Code were found 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, Chapter 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 11 September 2012

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 8 June 2012

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

On 24 May 2012, the applicant was found guilty beyond a reasonable doubt at a Field Grade Article 15 Hearing of one specification in violation of Article 112a, UCMJ (Wrongful use of controlled substance). Specifically on 21 December 2011, the applicant tested positive for marijuana, a Schedule I controlled substance, during a random drug test administered by the unit.

On 28 July 2011, the applicant was charged with four felonies (Assault I, Receiving Stolen Firearm, and Tampering with Physical Evidence (Two Counts)) and one misdemeanor (Possession of a Defaced Firearm) in Jefferson Circuit Court, Division One in the Commonwealth of Kentucky.

Assault I. On 28 April 2011, in Jefferson County, Kentucky, acting alone or in complicity with another or others, the applicant committed the offense of assault in the first degree when the applicant (a) intentionally caused serious physical injury to E. R., by means of a deadly weapon or a dangerous instrument, or (b) under circumstances manifesting extreme indifference to the value of human life, the applicant wantonly engaged in conduct which created grave risk of death to another and thereby caused serious physical injury to E. R. This is a Class B Felony in violation of KRS 508.010.

Receiving Stolen Firearm. On 28 April 2011, in Jefferson County, Kentucky, acting alone or in complicity with another or others, the applicant committed the offense of Receiving Stolen Property by knowingly having in their possession a stolen firearm, which had been stolen from another and at the time of such possession the applicant knew or had reason to believe the property had been stolen. This is a Class D Felony in violation of KRS 514.110.

Tampering With Physical Evidence (Count One). On 28 April 2011, in Jefferson County, Kentucky, acting alone or in complicity with another or others, the applicant committed the offense of Tampering With Physical Evidence when, believing an official proceeding may be pending or instituted against the applicant, the applicant destroyed, mutilated, concealed, removed, or altered the physical evidence which the applicant believed was about to be produced or used in such official proceeding, with the intent to impair its verity or availability in the official proceeding. This is a Class D Felony in violation of KRS 524.100.

Tampering With Physical Evidence (Count Two). On 28 April 2011, in Jefferson County, Kentucky, acting alone or in complicity with another or others, the applicant committed the offense of Tampering With Physical Evidence when, believing an official proceeding may be pending or instituted against the applicant, the applicant destroyed, mutilated, concealed, removed, or altered the physical evidence which the applicant believed was about to be produced or used in official in such official proceeding, with the intent to impair its verity or availability in the official proceeding. This is a Class D Felony in violation of KRS 524.100.

Possession of a Defaced Firearm. On 28 April 2011, in Jefferson County, Kentucky, acting alone or in the complicity with another or others, the applicant committed the offense of Possession of a Defaced Firearm by knowingly possessing a firearm upon which the manufacturer's serial number or other distinguishing number or identification mark had been removed, defaced, covered, altered or destroyed. This is a Class A Misdemeanor in violation of KRS 527.050.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 19 June 2012

(5) Administrative Separation Board: On 11 July 2012, the applicant was notified to appear before an administrative separation board and advised of rights.

On 19 June 2012, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable.

On 6 July 2012, the applicant's conditional waiver was denied.

On 11 July 2012, the applicant was notified to appear before an administrative separation board and advised of rights.

On 21 August 2012, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 23 August 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 October 2010 / 5 years

b. Age at Enlistment / Education / GT Score: 34 / GED / 95

c. Highest Grade Achieved / MOS / Total Service: E-5 / 19K20, M1 Armor Crewman / 9 years, 5 months, 27 days

d. Prior Service / Characterizations: RA, 13 May 2003 – 10 April 2006 / HD
RA, 11 April 2006 – 3 October 2010 / HD

e. Overseas Service / Combat Service: SWA / Iraq (15 October 2003 – 27 March 2004; 14 November 2005 – 8 November 2006; 26 October 2007 – 12 December 2008)

f. Awards and Decorations: ICM-3CS, ARCOM-6, AGCM-2, NDSM, GWOTEM, GWOTSM, NCOPDR, ASR, OSR-2

g. Performance Ratings: 29 April 2010 – 28 April 2011 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624, 9 January 2012, reflects the applicant tested positive for THC 70, during an Inspection Random (IR) urinalysis testing, conducted on 21 December 2011.

Electronic Copy of DD Form 2624, 9 January 2012, reflects the applicant tested positive for THC 70, during an Inspection Random (IR) urinalysis testing, conducted on 21 December 2011.

CID Report of Investigation – Initial – 0020-2012-CID032-82319-L2D1, 17 January 2012, preliminary investigation revealed on 21 December 2011, the applicant was selected in a random UUI and subsequently tested positive for Marihuana.

FG Article 15, 24 May 2012, for wrongfully using marijuana on or about 21 December 2011. The punishment consisted of a reduction to E-4; forfeiture of \$1,181 pay per month for two months (suspended); and extra duty and restriction for 45 days suspended.

Order on Plea of Guilty, 31 July 2012, reflects the applicant, by agreement, and with advice of counsel, filed a Motion to Enter Guilty Plea and entered a plea of guilty to amend charges of: Assault in the First Degree – Dismissed; Receiving Stolen Firearm Complicity; Tampering with Physical Evidence – Dismissed; and Possession of a Defaced Firearm – Dismissed.

Record Of Supplementary Action Under Article 15, UCMJ, 17 August 2012, reflects the suspended portion of the punishment imposed on 24 May 2012, was vacated for: Article 112a, UCMJ, wrongfully use marijuana, a Schedule I controlled substance.

Two Developmental Counseling Forms, for violating Article 112a (Wrongful use, possession of controlled substance).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Compensation and Pension Exam Report, 23 October 2012, reflects the applicant was diagnosed with Adjustment Disorder with Depressed Mood and Axis IV: Psychosocial and Environmental Problems: Family relationship stressors; Involvement with the Justice System.

(2) AMHRR Listed: Report of Medical Examination, 8 February 2012, the examining medical physician noted in the comments section: Adjustment Disorder.

Report of Mental Status Evaluation, 8 March 2012, 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 was diagnosed with: Axis I: Adjustment Disorder.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; legal statement; DD Form 214; ERB; photos; two certificates; two DA Forms 2166-8; three certificates; three DA Forms 638; AR 635-200; Memorandum for the applicant; Conditional Waiver; partial separation packet; US Senate letter; privacy release form; email.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing

the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 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 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.

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 "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).

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-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 contends good service, including three combat tours. 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 contends using marijuana to cope with the stress of being discharged. The applicant provided a copy of Compensation and Pension Exam Report, 23 October 2012, which reflects the applicant was diagnosed with Adjustment Disorder with Depressed Mood and Axis IV: Psychosocial and Environmental Problems: Family relationship stressors; Involvement with the Justice System. The AMHRR contains a Report of Medical Examination, 8 February 2012, the examining medical physician noted in the comments section: Adjustment Disorder. Report of Mental Status Evaluation (MSE), 8 March 2012, 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 was diagnosed with: Axis I: Adjustment Disorder. The MSE was considered by the separation authority.

The third-party statements provided with the application speak highly of the applicant. They all recognize the applicant's good conduct while serving in the Army.

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 determined, based upon the Board's Medical Advisor's opinea review of the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation, that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Depression, Anxiety.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that, based upon the Board's Medical Advisor's opine, the applicant was diagnosed in service with an Adjustment Disorder, Depression, and Anxiety.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board applied liberal consideration, including the Board's Medical Advisor's opine, and found that the applicant was diagnosed in service with an Adjustment Disorder, Depression, and Anxiety. There is evidence that the applicant was treated for Depression around the time of the marijuana use, so given the nexus with Depression and self-medicating with substances, applicant's marijuana use is mitigated. However, there is no natural sequela between an Adjustment Disorder, Depression, or Anxiety and the remaining offense of complicitly receiving a stolen firearm. Therefore, this misconduct is unmitigated.

(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 Adjustment Disorder, Depression, and Anxiety outweighed the applicant's medically unmitigated offense of complicitly receiving a stolen firearm.

b. Response to Contention(s):

(1) The applicant contends good service, including three combat tours. The Board considered the applicant's length and quality of service, including 3 combat tours in Iraq. The Board found these factors significant enough to warrant an upgrade to the characterization of service to General.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention and found creditability given the totality of the service record (length of service/quality of service (awards)) . This creditability further supported the board's decision to upgrade the characterization of service.

(3) The applicant contends using marijuana to cope with the stress of being discharged. The Board considered this contention and determined the applicant's marijuana use is mitigated by the depression diagnosis. However, the applicant's Adjustment Disorder, Depression, and Anxiety do not outweigh the remaining medically unmitigated offense of complicitly receiving a stolen firearm.

c. The Board determined that the discharge is inequitable based on the applicant's length, quality, and combat service. The applicant may request a personal appearance hearing to address additional issues before a Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support contention(s) that the discharge remains improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service because (1) the applicant's depression mitigated the drug use, and (2) the applicant's length, quality, and combat service warranted an upgrade to the characterization of service despite the remaining offense (complicitly accepting a stolen firearm). The applicant did not present any issues of impropriety for the Board's consideration. The applicant's total service record warrants a General discharge but does not reflect the meritorious service warranted for an Honorable characterization.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the unmitigated offense (complicitly receiving a stolen firearm) was found to be a serious offense.

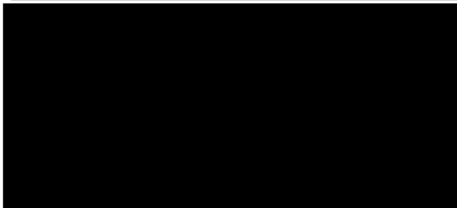
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: General
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

5/28/2024



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