

**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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the bad-conduct discharge was in error; it was disapproved by the separation approving authority. A DD Form 215 should have been issued but was never done. The applicant states has life together and need benefits and a job.

**b. Board Type and Decision:** In a records review conducted on 31 August 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Adjustment Disorder, Depression, and Bipolar Disorder mitigating applicant's multiple FTRs, marijuana abuse the possession of drugs and paraphernalia basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's Adjustment Disorder, Depression, and Bipolar Disorder diagnoses. *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:** Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / General Under Honorable Conditions

**b. Date of Discharge:** 21 October 2011**c. Separation Facts:**

**(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge:** As announced by Special Court-Martial Order Number 2, 4 January 2011:

Charge I, in violation of Article 86:

Specification 1-2, fail to go at the time prescribed to appointed place of duty between 30 December 2009 to 14 January 2010. Plea: Guilty; Finding: Guilty.

Specification 3, fail to go at the time prescribed to appointed place of duty on 12 April 2010. Plea: Guilty; Finding: Not Guilty.

Charge II, in violation of Article 92: Specification: On 26 April 2010, failed to obey a lawful general order by wrongfully possessing drug abuse paraphernalia. Plea: Guilty; Finding: Guilty.

Charge III, in violation of Article 112a:

Specification 1: on or about 27 September and 27 October 2009 wrongfully use marijuana. Plea: Guilty; Finding: Guilty.

Specification 2: on or about 13 December 2009 and on or about 12 January 2010, wrongfully use marijuana. Plea: Guilty; Finding: Guilty.

Specification 3: on or about 26 April 2010, wrongfully possess 42.5 grams of marijuana. Plea: Guilty, except the words and figures, "42.5 grams", substituting therefore the words and figures, "38.72 grams", to the excepted words and figures Not Guilty, to the substituted word and figures Guilty. Finding: Guilty, except the words and figures, "42.5 grams", substituting therefore the words and figures, "38.72 grams", to the excepted words and figures Not Guilty; to the substituted words and figures Guilty.

Specification 4: on or about 26 April 2010, wrongfully possess 17 pills of Methylenedioxyamphetamine, a Schedule I controlled substance. Plea: Not Guilty, but Guilty of lesser included offense, Attempted possession of one pill of ecstasy, in violation of Article 80 UCMJ. Finding: Not Guilty, but Guilty of the lesser included offense, Attempted possession of one pill of ecstasy, in violation of Article 80 UCMJ.

Charge IV, in violation of Article 134: Plea Not Guilty, Finding Not Guilty: Specification: on or about 26 April 2010, had a duty for the care of A'ziya Upchurch, a child under the age of 16 years and did endanger the physical health, safety, and welfare of said child, by possessing marijuana in a location accessible by the child, and such conduct ' constituted culpable negligence, Plea: Not Guilty, Finding Not Guilty.

**(2) Adjudged Sentence:** On 30 July 2010, to be discharged from the service with a Bad Conduct discharge.

**(3) Date / Sentence Approved:** 4 January 2011 / The sentence, was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed.

**(4) Appellate Reviews:** The record of trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

**(5) Date Sentence of BCD Ordered Executed:** 1 September 2011

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 6 March 2008 / 4 years, 21 weeks

b. **Age at Enlistment / Education / GT Score:** 18 / GED / 91

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 42A10, Human Resources Specialist / 3 years, 7 months, 16 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** Germany / None

**f. Awards and Decorations:** NDSM, GWOTSM, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Charge sheet as described in previous paragraph 3c.

Special Court Martial Order 62, 1 September 2011, reflects the applicant was sentenced to a Bad-Conduct discharge, adjudged on 30 July 2010, as promulgated in Special Court-Martial Order Number 2, Headquarters, V Corps, APO AE 09014, dated 4 January 2011, as corrected by United States Army Court of Criminal Appeals, Notice of Court-Martial Order Correction, dated 8 April 2011, had been finally affirmed. Article 71(c) having been complied with, the Bad-Conduct discharge would be executed.

**i. Lost Time / Mode of Return:** None

**j. Behavioral Health Condition(s):**

**(1) Applicant provided:** None

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 149; DD Form 214 and Special Court Martial Order Number 2.

**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), dated 25 September 2019, 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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's Army Military Human Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends bad-conduct discharge was in error; it was disapproved by the separation approving authority. A DD Form 215 should have been issued but was never done. The applicant's AMHRR reflects the applicant was sentenced to a bad conduct discharge, per Court Martial Order Number 2, but the discharge was not executed until the appeals process had been completed. The evidence of the AMHRR reflects Special Court Martial Order 62, 1 September 2011, reflects the sentence to a bad conduct discharge, adjudged on 30 July 2010, as promulgated in Special Court-Martial Order Number 2, 4 January 2011, as corrected by United States Army Court of Criminal Appeals, Notice of Court-Martial Order Correction, 8 April 2011, had been finally affirmed. Article 71(c) having been complied with, the Bad-Conduct discharge would be executed. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends an upgrade of the discharge would allow veterans benefits. 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 contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

**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: Adjustment Disorder, Depression, Bipolar Disorder.

(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 an Adjustment Disorder, Depression, and Bipolar Disorder. The VA has also service connected the applicant for Bipolar Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service an Adjustment Disorder, Depression, and Bipolar Disorder. The VA has also service connected the applicant for Bipolar Disorder. Applicant's BH conditions fully mitigate the basis of separation. Given the nexus between Bipolar Disorder/Depression and self-medicating with substances, the possession of drugs and paraphernalia, as well as the wrongful use of drugs is mitigated. And given that Bipolar Disorder can significantly interfere with daily functioning, applicant's Bipolar Disorder more likely than not contributed to the missed appointments resulting in multiple FTRs.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Adjustment Disorder, Depression, and Bipolar Disorder outweighed the multiple FTRs, marijuana abuse the possession of drugs and paraphernalia basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends bad-conduct discharge was in error; it was disapproved by the separation approving authority. A DD Form 215 should have been issued but was never done. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on applicant's Adjustment Disorder, Depression, and Bipolar Disorder mitigating applicant's multiple FTRs, marijuana abuse the possession of drugs and paraphernalia basis for separation.

(2) The applicant contends an upgrade of the discharge would allow veterans benefits. 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.

(3) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

c. The Board determined the discharge is inequitable based on the applicant's Adjustment Disorder, Depression, and Bipolar Disorder mitigating applicant's multiple FTRs, marijuana abuse the possession of drugs and paraphernalia basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's Adjustment Disorder, Depression, and Bipolar Disorder diagnoses. However, the applicant may request a personal appearance hearing to address further issues before the Board. 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 to change the applicant's characterization of service to Honorable because the applicant's Adjustment Disorder, Depression, and Bipolar Disorder mitigated the applicant's misconduct of multiple FTRs, marijuana abuse the possession of drugs and paraphernalia. Thus, the prior characterization is no longer appropriate.

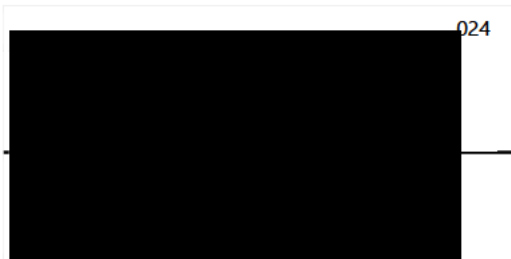
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change, due to the severity of applicant's Adjustment Disorder, Depression, and Bipolar Disorder diagnoses.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- 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:**



**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