

**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 a narrative reason change.

The applicant seeks relief contending, in effect, being raped by a Soldier shortly after arriving at the first duty station in the spring of 2007. The applicant did not report the rape and did not want to be talked about and blamed for not being able to avoid situations like this. The applicant states following the rape, their military career started to spiral downward. The applicant states after arriving at Fort Polk, they stupidly experimented with marijuana to help cope. The applicant contends not being given a chance to show their true potential as a Soldier. Since the discharge, the applicant has been unable to obtain a good job to support family. The applicant states they should have said something to someone. The applicant's goal is to one day help other Soldiers and Veterans cope with similar experiences and eventually wear the uniform proudly the second time around.

**b. Board Type and Decision:** In a records review conducted on 31 August 2023, and by a 5-0 vote, the Board determined the narrative reason for the applicant's separation is inequitable based on the applicant's Major Depression, PTSD, Bipolar Disorder, and MST diagnoses mitigating applicant's marijuana abuse basis for separation. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's BH 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:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / Honorable

**b. Date of Discharge:** 9 June 2009

**(1) Date of Notification of Intent to Separate:** 6 October 2008

**(2) Basis for Separation:** Under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense, the applicant was informed of the following reasons: Field Grade Article 15, 26 Aug 2008, violation of Article 112a, wrongful use of Marijuana.

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

**(4) Legal Consultation Date:** On 8 January 2009, the applicant waived legal counsel.

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

**(6) Separation Decision Date / Characterization:** On 8 May 2009, the separation authority approved the applicant's separation under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense. / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 3 October 2006 / 4 years

**b. Age at Enlistment / Education / GT Score:** 19 / GED / 104

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 68R10, Veterinary Food Inspector / 2 years, 8 months, 7 days

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

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

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

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 9 July 2008, reflects the applicant tested positive for THC 26 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 30 June 2008.

FG Article 15, 26 August 2008, for wrongfully using marijuana (between 30 May and 30 June 2008). The punishment consisted of a reduction to E-2; and extra duty for 5 days.

Electronic Copy of DD Form 2624, 30 December 2008, reflects the applicant tested positive for THC 45 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 17 December 2008.

Electronic Copy of DD Form 2624, 14 January 2009, reflects the applicant tested positive for THC 36 (marijuana), during a Rehabilitation Testing (RO) urinalysis testing, conducted on 6 January 2009.

Two Developmental Counseling Forms, for positive urinalysis and leaving formation.

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

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

**(1) Applicant provided:** My HealthVet Personal Information Report, 28 September 2015, reflects the applicant has been treated for PTSD, Depression and Anxiety.

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 8 September 2008, 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: Cannabis Abuse.

Report of Medical History and Assessment, 8 and 11 September 2008, the examining medical physician noted in the comments section: History of depression and Bipolar Disorder.

**5. APPLICANT-PROVIDED EVIDENCE:** Online application; DD Form 214; and My HealthVet Personal Information Report.

**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 600-85, paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes: Results of command-directed drug or alcohol testing that are inadmissible under the MRE; Results of a drug or alcohol test collected solely as part of a safety mishap investigation undertaken for accident analysis and the development of countermeasures; Information concerning drug or alcohol abuse or possession of drugs incidental to personal use, including the results of a drug or alcohol test, collected as a result of a Soldier's emergency medical care solely for an actual or possible alcohol or other drug overdose; A Soldier's self-referral to BH for SUD treatment; Admissions and other information concerning alcohol or other drug abuse or possession of drugs incidental to personal use occurring prior to the date of initial referral to treatment and provided by Soldiers as part of their initial entry into SUD treatment; Drug or alcohol test results, if the Soldier voluntarily submits to a DoD or Army SUD treatment before the Soldier has received an order to submit for a lawful drug or alcohol test; and, the results of a drug or alcohol test administered solely as a required part of a DoD or Army SUD treatment program. Delete if NA Leave only applicable protected evidence

e. 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 3-8a states a Soldier is entitled to an honorable characterization of service if limited-use evidence (see AR 600-85) is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct,

and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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

(7) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

f. 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).

g. 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

RE-4 Applies to: Person separated from last period of service with a nonwaivable 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 the narrative reason for the discharge needs to be changed.

The applicant contends being raped by a Soldier shortly after arriving at the first duty station in the spring of 2007. The applicant did not report the rape and did not want to be talked about and blamed for not being able to avoid these situations. The applicant states following the rape, their military career started to spiral downward. The applicant states after arriving at Fort Polk, stupidly experimented with marijuana to help cope. The applicant contends not being given a chance to show true potential as a Soldier. 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's AMHRR includes a Report of Mental Status Evaluation, 8 September 2008, reflecting the applicant was diagnosed with: Cannabis Abuse and the Report of Medical History and Assessment, 8 and 11 September 2008, the examining medical physician noted in the comments section: History of depression and Bipolar Disorder. The evaluation and medical assessment were considered by the separation.

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.

The applicant desires to rejoin the Military Service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

#### **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: Major Depression, PTSD, Bipolar Disorder, and MST.

(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 Major Depression, Bipolar Disorder, and PTSD. The applicant is also service connected by the VA for PTSD related to an MST that occurred in March 2007.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple mitigating BH conditions. The applicant was diagnosed in service with Major Depression, Bipolar Disorder, and PTSD. The applicant is also service connected by the VA for PTSD related to an MST that occurred in March 2007. Given the nexus between Major Depression/Bipolar Disorder/PTSD/MST and self-medicating with substances, applicant's wrongful use of marijuana is mitigated by applicant's BH conditions. The applicant already has an HD. Due to applicant's service connection for PTSD related to MST, a narrative reason

change to Secretarial Authority is recommended. RE Code should remain a 4 due to the severity of applicant's BH conditions, including the service connection for PTSD.

(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 Major Depression, PTSD, Bipolar Disorder, and MST outweighed the marijuana abuse basis for separation for the aforementioned reason(s).

**b. Response to Contention(s):**

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined the applicant's narrative reason for discharge warrants an upgrade based on applicant's Major Depression, PTSD, Bipolar Disorder, and MST outweighed the marijuana abuse basis for separation.

(2) The applicant contends being raped by a Soldier shortly after arriving at the first duty station in the spring of 2007. The applicant did not report the rape and did not want to be talked about and blamed for not being able to avoid these situations. The applicant states following the rape, their military career started to spiral downward stupidly experimented with marijuana to help cope. The Board considered this contention and determined the applicant's discharge warrants an upgrade based on applicant's Major Depression, PTSD, Bipolar Disorder, and MST outweighing the marijuana abuse basis for separation.

(3) The applicant contends not being given a chance to show their true potential as a Soldier. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Major Depression, PTSD, Bipolar Disorder, and MST outweighing the marijuana abuse basis for separation.

(4) 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.

(5) The applicant desires to rejoin the Military Service. The Board considered this contention and determined that a change to the applicant's RE code is not warranted, the severity of applicant's BH diagnoses found in applicant's record supports the Boards decision to maintain the applicant's RE code at 4.

**c.** The Board determined the narrative reason for the applicant's separation is inequitable based on the applicant's Major Depression, PTSD, Bipolar Disorder, and MST diagnoses mitigating applicant's marijuana abuse basis for separation. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's BH 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.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001688**

**d. Rationale for Decision:**

(1) The Board determined the discharge is proper and equitable as the applicant has a characterization of Honorable and a narrative Reason of Secretarial Authority; therefore no further relief is available.

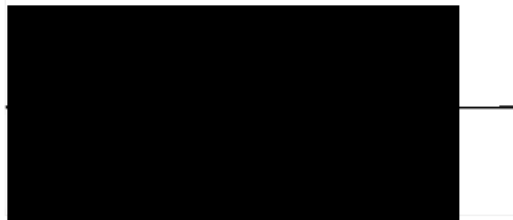
(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The Board voted the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's BH diagnoses.

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200, Chapter 15

**Authenticating Official:**

1/17/2024  


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