

**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, first enlistment on a separate DD Form 214 to reflect an honorable discharge. The applicant desires to access to VA benefits for school.

**b. Board Type and Decision:** In a records review conducted on 17 August 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD diagnosis, MST and IPV circumstances mitigating the applicant's marijuana use, FTR and AWOL. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed 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, and a change to the reentry eligibility (RE) code to 3. *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 / General (Under Honorable Conditions)

**b. Date of Discharge:** 30 April 2012

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 21 February 2012

**(2) Basis for Separation:** The applicant was informed of the following reasons: Between on or about 22 August 2011 and on or about 22 September 2011, the applicant wrongfully used Marijuana.

On or about 8 December 2011, the applicant was arrested for possession of Marijuana.

On or about 9 December 2011, until on or about 19 December 2011, the applicant was absent without leave.

On or about 28 December 2011, the applicant failed to report to 0625 accountability formation.

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

**(4) Legal Consultation Date:** 22 February 2012

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

**(6) Separation Decision Date / Characterization:** 16 April 2012 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 21 March 2011 / 5 years

**b. Age at Enlistment / Education / GT Score:** 35 / some college / 109

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 12C10, Bridge Crewmember / 3 years, 11 months, 11 days

**d. Prior Service / Characterizations:** RA, 20 May 2008 to 20 March 2011 / HD

**e. Overseas Service / Combat Service:** SWA / Afghanistan (3 August 2010 – 1 August 2011)

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

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Memorandum, 17 October 2011, reflects the applicant has been confirmed positive by the Air Force, Forensic Drug Testing Laboratory for marijuana on 22 September 2011.

Electronic Copy of DD Form 2624, 13 October 2011, reflects the applicant tested positive for THC 56 (marijuana), during an Inspection unit (IU) urinalysis testing, conducted on 22 September 2011.

Report of Mental Status Evaluation, 2 November 2011, 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 is being recommended for a Chapter 14 administrative separation, UP AR 635-200 by command. The applicant tested positive for THC on a unit urinalysis in September 2011. The applicant reportedly is pending UCMJ action. The applicant has no history of any Article 15s. The applicant denies any abuse of THC and very much wants to remain in the service. This evaluation is based on a clinical interview of the Soldier, a review of the Soldier's electronic medical records and command referral paperwork. The applicant meets psychiatric retention standards prescribed in Chapter 3, AR 40-501, and there is no psychiatric disease or defect which warrant disposition through medical channels.

CID Report of Investigation Final, 3 November 2011, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Possession and Use of a Controlled Substance (Marihuana); when the applicant submitted a urine sample during a command directed unit urinalysis inspection conducted on 22 September 2011, which subsequently tested positive for Tetrahydrocannabinol (THG), the active chemical in Marihuana.

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

**AR20210001690**

Electronic Copy of DD Form 2624, 8 November 2011, reflects the applicant tested positive for THC 165 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 27 October 2011.

Electronic Copy of DD Form 2624, 9 November 2011, reflects the applicant tested positive for THC 806 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 31 October 2011.

Texas Department of Public Safety Highway Patrol Division Offense Report, 9 December 2011, reflects the applicant was arrested for possession of controlled substance, Kush.

FG Article 15, 29 December 2011, for wrongful use of marijuana between (22 August and 22 September 2011). The punishment consisted of a reduction to E-2, forfeiture of \$822 pay for two months (suspended), and extra duty for 45 days.

Electronic Copy of DD Form 2624, 24 January 2012, reflects the applicant tested positive for THC 309 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 10 January 2012.

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

- From "PDY" to "CCA," effective 8 December 2011;
- From "CCA" to "AWOL," effective 9 December 2011; and
- From "AWOL" to "PDY," effective 19 December 2011.

Two Developmental Counseling Forms, for Initiation of Chapter 14-12c and failure to follow instructions.

**i. Lost Time / Mode of Return:** 11 days:

CCA, 8 December 2011 – 9 December 2011 / NIF / This period is not annotated on the DD Form 214 block 29.

AWOL, 9 December 2011 – 19 December 2011 / NIF / This period is not annotated on the DD Form 214 block 29.

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Medical Assessment and History, 12 January and 19 January 2012, the examining medical physician noted in the comments section: Has chronic problems falling and staying asleep and behavioral health counseling for depression.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214 and DD Form 293.

**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) 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.

**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 they should have a separate DD Form 214 for the first enlistment. Army Regulation 635-8 Separation Processing and Documents paragraph 5-2f reflects Soldiers discharged for immediate reenlistment in the Regular Army will not be issued a DD Form 214. 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, including the GI Bill, 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.

#### **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, IPV, PTSD, MST.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found an in service diagnosis of an Adjustment Disorder, as well as documented interpersonal violence (IPV) and MST during service. The VA has also diagnosed and service connected the applicant with PTSD related to MST. Service connection establishes that applicant's PTSD existed during military service.

(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 potentially mitigating BH conditions to include an in service diagnosis of an Adjustment Disorder, as well as documented interpersonal violence (IPV) and MST during service. The VA has also diagnosed and service connected the applicant with PTSD related to MST. Applicant's BH conditions and experiences fully mitigate the basis of separation. Given the nexus between PTSD/MST and avoidance, applicant's PTSD likely contributed to the AWOL and FTR. Applicant's marijuana use and possession occurred prior to the reported MST, but applicant was

also a victim of IPV. Victims of IPV may self-medicate with substances, so applicant's use and possession of marijuana is mitigated by IPV.

(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 PTSD and IPV and MST experiences outweighed the drug abuse, FTR and AWOL basis for separation for the aforementioned reason(s).

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

(1) The applicant contends they should have a separate DD Form 214 for the first enlistment. The Board considered this contention however, Army Regulation 635-8 Separation Processing and Documents paragraph 5-2f reflects Soldiers discharged for immediate reenlistment in the Regular Army will not be issued a DD Form 214.

(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.

**c.** The Board determined the discharge is inequitable based on the applicant's PTSD diagnosis and MST and IPV circumstances mitigating the applicant's marijuana use, FTR and AWOL. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed 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, and a change to the reentry eligibility (RE) code to 3 given the service-limiting BH conditions.

**d. Rationale for Decision:**

(1) The Board voted the discharge is inequitable based on the applicant's PTSD diagnosis and MST and IPV circumstances mitigating the applicant's marijuana use, FTR and AWOL. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable.

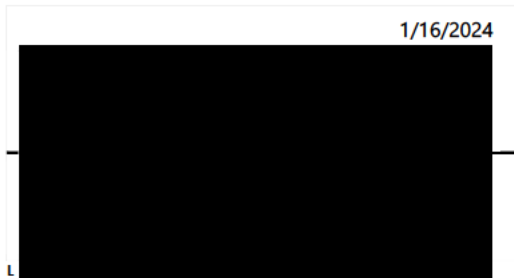
(2) The Board voted to change the applicant's reason for discharge the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF.

(3) The RE code will change to RE-3 given the service limiting BH conditions.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:



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