

**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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was handled poorly. The applicant's behavioral health issues were not considered when transferred from one NCO to another. The applicant states being prescribed pills for depression and sleep deprivation. The applicant contends being found not guilty but was discharged without benefits and entitlements. The applicant was promoted to E-3 within a year. However, after the first reprimand, the applicant received isolation, discrimination, and indifference from the medical unit.

**b. Board Type and Decision:** In a records review conducted on 18 July 2023, and by a 4-1 vote, the Board determined that the characterization of service was inequitable based on the applicant's depression mitigating applicant's wrongful marijuana use basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General Under Honorable Conditions. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them based on the unmitigated behavior to include transporting an unauthorized loaded weapon in vehicle (Art 92) and No Contact order violation. The Board voted not to change the RE code due to applicant's depression warranting consideration prior to reentry of military service.

*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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 9 December 2009**c. Separation Facts:**

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** On 15 November 2005, the applicant was charged with: Violating Article 112a, UCMJ, for wrongfully using marijuana on or about 23 September 2005.

**(2) Legal Consultation Date:** NIF

**(3) Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

**(4) Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** 23 November 2005 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**(1)Date / Period of Enlistment:** 10 June 2003 / 4 years

**(2)Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 113

**(3)Highest Grade Achieved / MOS / Total Service:** E-2 / 91W10, Health Care Specialist / 2 years, 6 months

**(4)Prior Service / Characterizations:** None

**(5)Overseas Service / Combat Service:** Alaska / None

**(6)Awards and Decorations:** NDSM, ASR, GWOTSM

**(7)Performance Ratings:** NA

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

FG Article 15, dated 8 June 2004, for on or about 15 May 2004, driving a vehicle while under the influence of alcohol and under the age of 21. The punishment consisted of a reduction to E-1; forfeiture of \$596 (suspended); and extra duty and restriction for 14 days.

Report of Mental Status Evaluation, dated 7 September 2005, 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. There was no evidence of a mental disorder which would affect judgement and reasoning, or which would require disposition through medical channels. The Soldier denied any active suicidal or homicidal ideation, intent, or plan. The Soldier is psychiatrically cleared for any administrative or judicial action deemed appropriate by command.

Military Police Report, dated 7 July 2005, reflects the applicant was apprehended for: Weapons violation, carrying a loaded firearm (on post).

FG Article 15, dated 12 September 2005, for wrongfully transporting a loaded privately owned firearm in vehicle on or about 3 July 2005. The applicant demanded trial by court martial.

Electronic Copy of DD Form 2624, dated 14 October 2005, reflects the applicant tested positive for THC 28 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 23 September 2005.

Numerous Developmental Counseling Forms, for various acts of misconduct.

**(9) 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 214; DD Form 293; self-authored letter orders 333-0200 and Enlisted Record Brief.

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

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

**(1)**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.

**(2)**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.

**(3)** 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.

**(4)** 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 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

**(6)** Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

**(7)** Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

(5) 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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

(6) 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-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 evidence in the applicant's Army Military Human Resource Record (AMHRR) reflects the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends the discharge was handled poorly. The applicant's behavioral health issues were not considered when transferred from one NCO to another. The applicant states being prescribed pills for depression and sleep deprivation. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a Report of Mental Status Evaluation, dated 7 September 2005, reflecting there was no evidence of mental disorder which would affect judgement and reasoning, or which would require disposition through medical channels. The Soldier denied any active suicidal or homicidal ideation, intent, or plan. The Soldier was psychiatrically cleared for any administrative or judicial action deemed appropriate by command. The mental status evaluation was considered by the separation authority. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being found not guilty but was discharged without benefits and entitlements. The evidence of the AMHRR reflects, the applicant tested positive for THC 28 (marijuana) and received two Article 15s for: wrongfully transporting a loaded privately owned firearm in vehicle and driving a vehicle while under the influence of alcohol under the age of 21. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

#### 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: depression per medication history.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant's depression existed during service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that applicant's depression mitigates the applicant's wrongful drug use offense given the nexus between depression and substance use to self-medicate symptoms.

(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 depression outweighed the applicant's medically mitigated marijuana use. However, the board determined that the applicant's unmitigated misconduct in the file of transporting an unauthorized loaded firearm in vehicle, and a No Contact Order violation justified the current narrative reason/SPD code. The Board determined that the preponderance of the evidence supports that the applicant intended to violate Article 92 by wrongfully transporting an unregistered firearm onto Ft. Wainwright and by transporting it in a loaded condition (see OMPF, MP report, sworn statements).

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

(1) The applicant contends the discharge was handled poorly. The applicant's behavioral health issues were not considered when transferred from one NCO to another. The applicant states being prescribed pills for depression and sleep deprivation. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the applicant claim.

(2) The applicant contends being found not guilty but was discharged without benefits and entitlements. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant claim.

(3) The applicant contends good service. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant claim.

c. The Board determined that the characterization of service was inequitable based on the applicant's depression mitigating applicant's wrongful marijuana use basis for separation (as well as DUI, FTRs, etc...). Accordingly, the Board voted to grant partial relief in the form of an upgrade to the characterization of service to General Under Honorable Conditions. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change

them based on the unmitigated behavior to include Article 92 violation and violation of No Contact Order. The Board voted not to change the RE code due to applicant's depression warranting consideration prior to reentry of military service. 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 General Under Honorable Conditions because the applicant's depression mitigated the applicant's misconduct of marijuana use. Thus, the prior characterization is no longer appropriate.

**(2)** The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

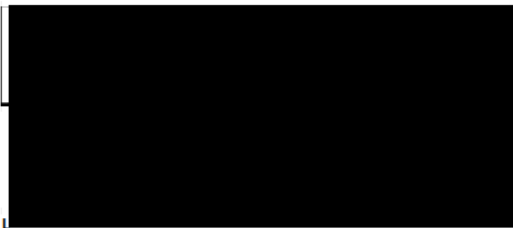
**(3)** The Board voted not to change the RE code due to applicant's depression warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

3/23/2024



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