

1. **Applicant's Name:** [REDACTED]
- a. **Application Date:** 10 December 2020
- b. **Date Received:** 21 December 2020
- c. **Counsel:** [REDACTED]

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues:

(1) The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to general (under honorable conditions) or honorable.

(2) The applicant seeks relief stating their justification for this request is for Post-Traumatic Stress Disorder (PTSD). They are suffering from anxiety, depression, acid reflux and many more illnesses that keep them from working. All these issues are service connected.

(3) They went to Substance Use Disorder Clinical Care for their condition. They were suffering from severe PTSD because of a Soldier who had recently ended their life that they were close to. Also from their unit keeping them on the height and weight program. They were going to the gym at the time with one of their noncommissioned officers, doing an exercise program.

b. Board Type and Decision: In a records review conducted on 5 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's diagnosis of Post-Traumatic Stress Disorder and Persistent Depressive Disorder and the applicant's length of service mitigate the basis of separation (wrongful use of marijuana). Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to General (Under Honorable Conditions). The Board voted the current narrative reason, SPD and reentry code were appropriate and voted not to change them.

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) / Army Regulations 635-200, Paragraph 14-12(2) / JKK / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 24 September 2018

c. Separation Facts: The applicant's case separation file is void of several documents from their Army Military Human Resource Record (AMHRR). On 15 March 2021 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files), as of this date there has been no response.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 4 November 2014 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 97
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 15U1O, Helicopter Repairer / 3 year, 10 months, 21 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) The Headquarters, III Corps and Fort Hood Orders 316-0215, date 12 November 2021, reflects the applicant's discharge from the Army effective 24 September 2018.

(2) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 24 September 2018, with 3 year, 10 months, and 21 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 26 April 2018
- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

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

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

(1) **Applicant provided:** Department of Veteran's Affairs (VA) Rating Decision reflecting the applicant's service connection for treatment purposes only for multiple medical conditions, to include PTSD, persistent depressive disorder, alcohol use disorder, and cannabis use disorder.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- excerpts of documents from their service record
- VA letter with attached Rating Decision

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

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

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, and the general provisions governing the separation of Soldiers before expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(1) 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.

(2) 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.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; 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. 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.

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, paragraph 12c(2), 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 DoD Instructions 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:

(1) 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.

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

(3) 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.

g. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation. Due to the lack of evidence the specific facts and circumstances surrounding the misconduct (drug abuse) that led to their discharged under the provision on Army Regulation 635-200, paragraph 14-12c(2) are unknown. Notwithstanding the absence of records, the DD Form 214, provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct (drug abuse). They completed 3 year, 10 months, and 21 days of their 6-year contractual active duty obligation, not completing their first full term of service.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense; to include abuse of illegal drugs; and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

d. The applicant's AMHRR does not reflect documentation of a diagnosis of PTSD nor did the applicant provide evidence of these diagnoses during their military service. A VA Rating Decision reflects service connection for treatment purposes only for PTSD, based on the applicant's original disability claimed filed the day after their discharge from the Army.

e. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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: Post-Traumatic Stress Disorder (0% Service Connected); Persistent Depressive Disorder. [Note- Attention Deficit Hyperactivity Disorder is a pre-existing Behavioral Health condition which does not fall under liberal consideration purview. Adjustment Disorder with mixed anxiety and depressed mood is subsumed under diagnosis of Post-Traumatic Stress Disorder.]

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that service connection for Post-Traumatic Stress Disorder /Persistent Depressive Disorder established it occurred or began during active 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 the applicant has two mitigating Behavioral Health conditions, Post-Traumatic Stress Disorder and Persistent Depressive Disorder. As there is an association between Post-Traumatic Stress Disorder, Persistent Depressive Disorder, and the use of illicit drugs to self-medicate, there is a nexus between these conditions and the applicant's wrongful use of marijuana.

(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 Post-Traumatic Stress Disorder and Persistent Depressive Disorder outweighed the misconduct (wrongful use of marijuana).

c. Response to Contention(s):

(1) The applicant contends their justification for this request is for Post-Traumatic Stress Disorder (PTSD). They are suffering from anxiety, depression, acid reflux and many more illnesses that keep them from working. All these issues are service connected. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

(2) The applicant contends they went to Substance Use Disorder Clinical Care for their condition. They were suffering from severe PTSD because of a Soldier who had recently ended their life that they were close to. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

(3) The applicant contends they were suffering from severe PTSD because of their unit keeping them on the height and weight program. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

d. The Board determined the discharge is inequitable based on the applicant’s diagnosis of PTSD and Persistent Depressive Disorder and the applicant’s length of service mitigate the basis of separation (wrongful use of marijuana). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General (Under Honorable Conditions). The Board voted the current narrative reason, SPD and reentry code were appropriate and voted not to change them.

e. Rationale for Decision:

(1) The Board voted to change the applicant’s characterization of service to General (Under Honorable Conditions) based on the applicant’s diagnosis of Post-Traumatic Stress Disorder and Persistent Depressive Disorder and the applicant’s length of service mitigate the basis of separation (wrongful use of marijuana). 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.

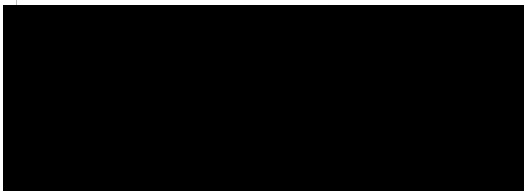
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

7/5/2024



Legend:

AWOL – Absent Without Leave
 AMHRR – Army Military Human Resource Record
 BCD – Bad Conduct Discharge
 BH – Behavioral Health
 CG – Company Grade Article 15
 CID – Criminal Investigation Division
 ELS – Entry Level Status
 FG – Field Grade Article 15
 GD – General Discharge

HS – High School
 HD – Honorable Discharge
 IADT – Initial Active-Duty Training
 MP – Military Police
 MST – Military Sexual Trauma
 N/A – Not applicable
 NCO – Noncommissioned Officer
 NIF – Not in File
 NOS – Not Otherwise Specified
 OAD – Ordered to Active Duty

OBH (I) – Other Behavioral Health (Issues)
 OMPF – Official Military Personnel File
 PTSD – Post-Traumatic Stress Disorder
 RE – Re-entry
 SCM – Summary Court Martial
 SPCM – Special Court Martial
 SPD – Separation Program Designator
 TBI – Traumatic Brain Injury
 UNC – Uncharacterized Discharge

UOTHC – Under Other Than Honorable Conditions
 VA – Department of Veterans Affairs