

1. Applicant's Name: [REDACTED]

a. **Application Date:** 28 September 2020

b. **Date Received:** 1 October 2020

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.

b. The applicant seeks relief contending, in effect, the applicant was an outstanding Soldier, never really gave the noncommissioned officer any problems. The applicant was always a big help to the missions as a 92A (Automated Logistical), dealing with all of the logistics for the company and battalion as a whole. The applicant really loved their job and excelled at it. The applicant entered the Army as a private two (PV2/E-2) and by the time the applicant got to their first duty station the applicant was already a private first class (PFC/E-3). Within only a few months of being at their duty station, the applicant went to the National Training Center and then deployed the following month to Germany where they was promoted to specialist (SPC/E-4). The applicant always wanted to attend school and using the military to their advantage.

c. **Board Type and Decision:** In a records review conducted on 10 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable. The Board found sufficient evidence of in-service mitigating factors (Length, Quality). Although there are no BH conditions that mitigate the applicant's misconduct the Board determined that the mitigating factors outweigh the one-time drug use. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-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:** 11 June 2019

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 13 May 2019

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully used marijuana.

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

(4) **Legal Consultation Date:** 14 May 2019

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 28 May 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 12 January 2016 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 94

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92A10, Automated Logistical Specialist / 3 years and 5 months

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany / None

f. Awards and Decorations: AAM, NDSM, GWTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Electronic Copy of DD Form 2624, dated 19 February 2019, shows the applicant tested positive for THC 136 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 8 January 2019.

(2) On 26 February 2019, the applicant was counseled for testing positive for marijuana, initiation of a flag, and potential repercussions such as counseling, receiving an Article 15, and an administrative separation.

(3) Report of Mental Status Evaluation (MSE), dated 13 March 2019, shows the applicant was psychiatrically 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 screened for depression, anxiety, PTSD and TBI with negative findings. There are no diagnoses.

(4) On 18 April 2019, the applicant declined to consult with A military attorney prior to receiving Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ).

(5) FG Article 15, 23 April 2019, for wrongfully using marijuana between 7 December 2018 and 7 January 2019. The punishment consisted of a reduction from E-4 to E-2; forfeiture of \$942.00 pay per month for 2 months (suspended); and extra duty for 45 days.

(6) On 13 May 2019, the commander initiated action to separate the applicant for wrongfully using marijuana.

(7) On an unspecified date, the applicant wrote a statement in their own behalf stating they take full responsibility for their actions. The applicant requested to remain in the unit.

(8) The applicant's Enlisted Record Brief, dated 12 June 2019, shows the applicant was flagged for drug abuse adverse action (UA), effective 26 February 2019; and was ineligible for reenlistment due to an adverse action flag (9B). The Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** MSE as described in previous paragraph 4h.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: 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 600-85 (The Army Substance Abuse Program (ASAP)) provides comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components, Army civilian corps members, and other personnel eligible for ASAP services. Paragraph 7-9 (Command responsibilities for referring Soldiers) states:

(1) When Soldiers are identified as probable alcohol or other drug abusers the unit commander or designated representative must -

- Coordinate with law enforcement about whether the commander or designated representative should conduct the initial interview of the alcohol or drug abuser
- When the unit commander believes the Limited Use Policy applies, the unit commander should consult with the Alcohol Drug Control Officer and supporting legal advisor and then the unit commander may explain the Limited Use Policy, if applicable to the particular circumstances
- If law enforcement does not initiate an investigation, the commander may wish to investigate suspected misconduct through a commander's inquiry, AR 15-6 investigation, or other appropriate method after consulting with the legal advisor

(2) The unit commander will refer individuals suspected or identified as alcohol and/or other drugs abusers, including those identified through drug testing (except those determined to be legitimate medical use by the medical review officer) and/or blood alcohol tests, to the ASAP counseling center for screening. Soldiers impaired by alcohol as described in paragraph 3-2 of this regulation while on duty will be referred to the ASAP counseling center for the initial evaluation.

(3) Positive drug test results for illicit use and law enforcement citations for alcohol and other drug abuse are identification sources that require mandatory referral to the ASAP counseling staff. Commanders must refer Soldiers who receive such drug test results or legal citations within 5 duty days of receipt of the notification.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(2) 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) 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.

f. Army Regulation 635-5-1 (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 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.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 3 years and 5 months including foreign service in Germany. The applicant tested positive for marijuana and received a FG Record of Proceedings under Article 15, UCMJ. The AMHRR contains the commander's report, dated 21 May 2019, showing no other misconduct. On 11 June 2019, the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a general (under honorable conditions) characterization of service.

c. The applicant contends, in effect, the applicant was an outstanding Soldier, excelled and was promoted quickly from E-2 to E-4 within 19 months of service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

d. The applicant would like to attend school through the military. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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 diagnosis: Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** Symptoms related to the service connected condition began in-service secondary to the discharge and transition.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the given the condition is secondary to difficulty coping with the separation and transition process, the diagnosis did not exist prior to the misconduct and, therefore, did not influence the misconduct.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention: The applicant contends, in effect, the applicant was an outstanding Soldier, excelled and was promoted quickly from E-2 to E-4 within 19 months of service. The Board considered this contention and determined relief was warranted.

c. The Board determined the discharge is inequitable. The Board found sufficient evidence of in-service mitigating factors (Length, Quality). Although there are no BH conditions that mitigate the applicant's misconduct the Board determined that the mitigating factors outweigh the one-time drug use. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on in-service mitigating factors (Length, Quality). Although there are no BH conditions that mitigate the applicant's misconduct the Board determined that the mitigating factors outweigh the one-time drug use. Thus, the prior characterization is no longer appropriate.

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

(3) The Board voted to change the RE code to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

12/9/2024



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