

1. Applicant's Name: [REDACTED]**a. Application Date:** 10 January 2021**b. Date Received:** 19 January 2021**c. Counsel:** [REDACTED]**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 through counsel requests an upgrade to honorable and a change to the narrative reason to "End of Service."

b. The applicant through counsel seeks relief contending, in effect, the applicant's discharge is inequitable because the commander and separation authority did not follow the guidelines established in the applicable regulation.

(1) Pursuant to AR 635-200, paragraph 1-15, "Adequate counseling and rehabilitations measures will be taken before initiating separation action against a Soldier when the reason for separation so specifies." Paragraph 1-16 goes on to state that in reviewing a separation " . . . commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated." The applicant was never provided an opportunity to demonstrate that they were not likely to use substances in the future. Accordingly, the applicant was not given a proper opportunity to attempt rehabilitative efforts.

(2) Pursuant to AR 635-200, paragraph 1-15c(6), the entire military record may be considered in deciding whether the member should be discharged or retained. It is clear from reviewing the applicant's military record that the use of marijuana was a complete departure from their normal daily conduct. In fact, a review of the applicant's records reveals that the applicant was an exemplary Soldier with a consistent record of Army awards (see attached enclosure 2). Based on the applicant's exemplary military record, it is clear that the command and separation authority overlooked the applicant's overall record prior to discharging the applicant from service. The applicant's military service record contains sufficient evidence to outweigh the isolated incident of self-medication.

(3) The discharge is manifestly unjust because at the time of the applicant's marijuana related indiscretion, the applicant was suffering from service related PTSD, for which they had not been diagnosed. During the applicant's deployment to Iraq, they was stationed in a designated imminent danger area and witnessed several traumatizing events. At the time of discharge, the applicant was unknowingly using marijuana to self-medicate for anxiety they had experienced since their return from Iraq in January 2006. The applicant began to experience a multitude of symptoms, including isolation, increased temper, anxiety, poor concentration, depression, sleeping problems, and lack of motivation.

(4) As a direct result of the applicant's discharge and service characterization, the applicant is unable to access veteran's benefits, including the GI Bill.

c. Board Type and Decision: In a records review conducted on 1 March 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's in-service

factors (length, quality, combat) and the determination that an UOTH is too harsh for 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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 8 June 2006

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 28 April 2006, the applicant was charged with violating Article 112a, Uniform Code of Military Justice (UCMJ), for wrongful use of marijuana on or about 28 February and 30 March 2006.

(2) Legal Consultation Date: 9 May 2006

(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 May 2006 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 27 March 2002 / 6 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 115

c. Highest Grade Achieved / MOS / Total Service: E-4 / 15R10, AH-64 Attack Helicopter Repairer / 4 years, 2 months, and 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea, SWA / Iraq (22 January 2005 - 9 January 2006)

f. Awards and Decorations: NDSM, ICM, GWTSM, KDSM, ASR, OSR / The applicant through counsel provided two DA Forms 638 (Recommendation for Award) and three certificates for award of three AAMs, however, these awards are not reflected on the DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 9 February 2006, the applicant was flagged for adverse action (AA) effective 3 January 2006.

(2) FG Article 15, 15 March 2006, shows the applicant failed to obey a General lawful order by consuming an alcoholic beverage in Iraq on or about 3 December 2005. The punishment consisted of a reduction from E-2 to E-1; forfeiture of \$636.00 pay for 1 month; and extra duty for 45 days.

(3) Two developmental counseling forms shows the applicant was counseled by the first sergeant on initiation of separation procedures and separation under AR 635-200, paragraph 14-12c.

(4) On 3 April 2006, the company commander requested a mental status evaluation for a chapter 14, paragraph 14-12c.

(a) Record of disciplinary action shows Record of Proceedings under Article 15, UCMJ for:

- 12 January 2005, Failure to obey a lawful order, reduction
- 5 March 2005, Wrongful Use of Marijuana, reduction
- April 2006, Violation of General order, reduction

(5) Report of Mental Status Evaluation (MSE), 7 April 2006, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in the proceedings; was mentally responsible; and met the retention requirements of chapter 3, AR 40-501. There were no psychiatric disease or defect that warranted disposition through medical channels period.

(6) Electronic Copy of DD Form 2624, 7 April 2006, shows the applicant tested positive for THC 24 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 30 March 2006.

(7) Charge Sheet, 28 April 2006, shows the applicant was charged with violating Article 112a, UCMJ, for wrongful use of marijuana on or about 28 February and 30 March 2006.

(8) The applicant's company and battalion commanders recommended the applicant receive a special court-martial empowered to impose a bad conduct discharge.

(9) On 9 May 2006, the applicant received consultation with legal counsel, and 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.

(10) On 16 May 2006, trial counsel spoke with the chain of command which resulted in them concurring with the recommendation to accept the applicant's request for a chapter 10 with all recommendations of an other than honorable discharge.

(11) On 23 May 2006, the Staff Judge Advocate recommended approval of the chapter 10 request with an other than honorable discharge. The separation authority approved the

discharge under chapter 10, AR 635-200 with an under other than honorable conditions discharge and reduction to the lowest enlisted pay grade.

(12) The applicant's Enlisted Record Brief (ERB), 31 May 2006, shows the applicant was flagged for involuntary separation/field initiated (BA), effective 6 April 2006; was ineligible for reenlistment due to Other; prohibitions not otherwise identified (9X). The Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions. Reductions:

- E-4 to E-3 effective 12 January 2005
- E-3 to E-2 effective 1 September 2005
- E-2 to E-1 effective 15 March 2006

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.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; legal comments with two enclosures; copies of military personnel records.

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) Rehabilitation. Except as provided in AR 635-200, paragraph 1-16 d (Waivers), rehabilitative measures such as being recycled (trainees), reassignment (other than trainees), and permanent change of station transfers are required prior to initiating separation proceedings for minor disciplinary infractions/patterns of misconduct (see chapter 14)

(2) The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier, such as: (1) Active resistance of rehabilitative efforts; (2) Situations in which transfer to a different duty station would be detrimental to the Army or the soldier (for example, indebtedness, participation in the Alcohol and Drug Abuse Prevention and Control Program, Mental Health Treatment Program, and so forth).

(3) 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.

(4) 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.

(5) An 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.

(6) 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.

(a) Commanders having discharge authority per AR 635-200, paragraph 1-19 must be selective in approving requests for discharges in lieu of trial by court-martial. The discharge authority should not be used when the circumstances surrounding an offense warrant a punitive discharge and confinement. Nor should it be used when the facts do not establish a serious offense, even though the punishment, under the UCMJ, may include a bad conduct or dishonorable discharge.

(b) Consideration should be given to the Soldier's potential for rehabilitation, and their entire record should be reviewed before taking action per this chapter.

(c) Use of this discharge authority is encouraged when the commander determines that the offense is sufficiently serious to warrant separation from the Service and that the Soldier has no rehabilitation potential.

(7) 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.)

(8) Paragraph 10-8b 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.

(9) Chapter 14 states before taking action against a Soldier under section III of this chapter because of minor disciplinary infractions or a pattern of misconduct, commanders will ensure that the Soldier has received adequate counseling and rehabilitation. (See AR 635-200, paragraph 1-16.)

(10) 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 "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.

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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

a. The applicant requests an upgrade to honorable and a change to the narrative reason to "End of Service." 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 4 years, 2 months, and 12 days during which the applicant served 11 months and 26 days serving in Iraq. The applicant received two developmental counseling forms for separation under AR 635-200, paragraph 14-12c (Commission of a serious offense) and a FG Record of Proceedings under Article 15, UCMJ, for disobeying a lawful order. On 28 April 2006, charges were preferred against the applicant for wrongful use of marijuana on or about 28 February and 30 March 2006. 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.

c. The applicant through counsel requests a change to the narrative reason to "End of Service." The applicant was separated under the provisions of Chapter 10, AR 635-200, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8, Separation Processing and Documents,

governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant through counsel contends, in effect, the applicant's discharge is inequitable because the commander and separation authority did not follow the guidelines established in the applicable regulation. Pursuant to AR 635-200, paragraph 1-15, "Adequate counseling and rehabilitations measures will be taken before initiating separation action against a Soldier when the reason for separation so specifies." Paragraph 1-16 goes on to state that in reviewing a separation " . . . commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated." The applicant was never provided an opportunity to demonstrate that they were not likely to use substances in the future. Accordingly, the applicant was not given a proper opportunity to attempt rehabilitative efforts. The applicant's AMHRR shows two developmental counseling forms for separation under AR 635-200, paragraph 14-12c (Commission of a serious offense) and the imposition of non-judicial punishment. The applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial. Per AR 635-200, chapter 10, use of this discharge authority is encouraged when the commander determines that the offense is sufficiently serious to warrant separation from the Service and that the Soldier has no rehabilitation potential.

e. The applicant through counsel contends, in effect, the applicant's records reveals that the applicant was an exemplary Soldier with a consistent record of Army awards and their military service record contains sufficient evidence to outweigh the isolated incident of self-medication. Pursuant to AR 635-200, paragraph 1-15c(6), the entire military record may be considered in deciding whether the member should be discharged or retained. The applicant provided military awards and course completion certificates. AR 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

f. The applicant through counsel contends, in effect, the discharge is manifestly unjust because at the time of the applicant's marijuana related indiscretion, the applicant was suffering from service related PTSD, for which they had not been diagnosed. During the applicant's deployment to Iraq, they was stationed in a designated imminent danger area and witnessed several traumatizing events. At the time of discharge, the applicant was unknowingly using marijuana to self-medicate for anxiety they had experienced since their return from Iraq in January 2006. The applicant began to experience a multitude of symptoms, including isolation, increased temper, anxiety, poor concentration, depression, sleeping problems, and lack of motivation. The MSE, 7 April 2006, in the applicant's AMHRR cleared the applicant for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in the proceedings; was mentally responsible; and met the retention requirements of chapter 3, AR 40-501. There were no psychiatric disease or defect that warranted disposition through medical channels period.

g. The applicant through counsel contends, in effect, the applicant is unable to access veteran's benefits, including the GI Bill because of the discharge and service characterization. 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.

h. AR 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court martial. 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.

i. Analyst notes the applicant's DD Form 214 has administrative irregularities as follows:

(1) Block 12f (Foreign Service), does not reflect foreign service credit in Korea.

(2) AR 635-5, states from the enlisted record brief, enter the total amount of foreign service completed during the period covered in block 12c (Net Active Service this Period).

(3) Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized), does not reflect three AAMs.

(4) AR 635-5, list awards and decorations for all periods of service in the priority sequence specified in AR 600-8-22 (Military Awards). Each entry will be verified by the Soldier's records. Do not use abbreviations.

(5) This does not fall within this Board's purview; however, the applicant may apply to the ABCMR, using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

j. 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 and found there was no behavioral health diagnosis. However, the applicant asserts PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** Applicant asserts PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that while the applicant's assertion is acknowledged, the applicant's records are void of a condition and the applicant did not submit records in support of the assertion. Accordingly, at this time, there is no mitigation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined

that the available evidence did not support a conclusion that the applicant's PTSD assertion outweighed the medically unmitigated offense of failure to obey a General lawful order for wrongful use of marijuana.

b. Response to Contention(s):

(1) The applicant through counsel contends, in effect, the applicant's discharge is inequitable because the commander and separation authority did not follow the guidelines established in the applicable regulation. Pursuant to AR 635-200, paragraph 1-15, "Adequate counseling and rehabilitations measures will be taken before initiating separation action against a Soldier when the reason for separation so specifies." Paragraph 1-16 goes on to state that in reviewing a separation "... commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated." The applicant was never provided an opportunity to demonstrate that they were not likely to use substances in the future. Accordingly, the applicant was not given a proper opportunity to attempt rehabilitative efforts. The Board considered this contention and found no arbitrary or capricious acts by the chain of command. 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.

(2) The applicant through counsel contends, in effect, the applicant's records reveals that the applicant was an exemplary Soldier with a consistent record of Army awards and their military service record contains sufficient evidence to outweigh the isolated incident of self-medication. Pursuant to AR 635-200, paragraph 1-15c(6), the entire military record may be considered in deciding whether the member should be discharged or retained. The applicant provided military awards and course completion certificates. The Board considered this contention and voted to grant relief.

(3) The applicant through counsel contends, in effect, the discharge is manifestly unjust because at the time of the applicant's marijuana related indiscretion, the applicant was suffering from service-related PTSD, for which they had not been diagnosed. During the applicant's deployment to Iraq, they were stationed in a designated imminent danger area and witnessed several traumatizing events. At the time of discharge, the applicant was unknowingly using marijuana to self-medicate for anxiety they had experienced since their return from Iraq January 2006. The applicant began to experience a multitude of symptoms, including isolation, increased temper, anxiety, poor concentration, depression, sleeping problems, and lack of motivation. The Board considered this contention and based on the amount of misconduct and the applicant's service record, the Board voted to grant relief based on concurrence that the discharge was too harsh.

(4) The applicant through counsel contends, in effect, the applicant is unable to access veteran's benefits, including the GI Bill because of the discharge and service characterization. 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 in-service factors (length, quality, combat) and the determination that an UOTH is too harsh for 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 the applicant's in-service factors (length, quality, combat) and the determination that an UOTH is too harsh for 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.

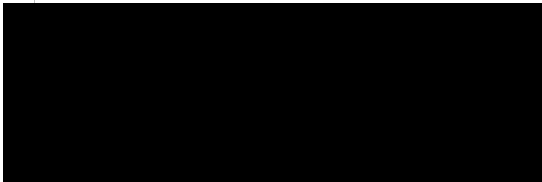
(3) The Board voted to change the RE code to RE-3.

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:

4/3/2024



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