

1. Applicant's Name: [REDACTED]**a. Application Date:** 20 January 2021**b. Date Received:** 1 February 2021**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 general (under honorable conditions). The applicant requests an upgrade to honorable and a change of their narrative reason for separation.

(2) The applicant, through counsel, seeks relief contending, their discharge should be changed because of their mental health condition and serious family problems conjunctively mitigate or excuse their use of cannabidiol (CBD) and unintentional use of tetrahydrocannabinol (THC); the sole behavioral infraction that resulted in a general (under honorable conditions) character of service.

(3) They had difficulty adjusting to military life and sought treatment after the first year of their enlistment. They continued to experience issues with depression and insomnia but their condition worsen during their third year of service where three of their close family members died that year, including their best friend who committed suicide. Their service treatment records confirm they began to engage in mental health counseling in 2019. They began to self-medicate with CBD as an alternative to alcohol. They were not aware the CBD product they were using contained small amounts of THC that exceeded the threshold necessary to show up positive during a urinalysis. They had never been informed that CBD was not permissible for military members and they understood this product was legal in all 50 states. Despite their mental health issues and subsequent infraction for using CBD, they did not let it impact their job performance, earning an Army Good Conduct Medal and receiving positive counseling statement.

(4) After their discharge the Department of Veterans Affairs (VA) determined their diagnosis of adjustment disorder with mixed anxiety and depressed mood also claimed as insomnia and trouble sleeping, manifested during their military service. An upgrade of their discharge would enable them to access the GI Bill to better themselves by furthering their education and secure better employment.

(5) Department of Defense (DOD) guidance provides guidance for discharge upgrades involving mental health conditions. They had both a mental health condition and experiences during their military service that excuses or mitigates and outweighs their discharge and are entitled to liberal consideration in accordance with the DOD guidance.

b. Board Type and Decision: In a records review conducted on 13 December 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length quality of service, and the circumstances surrounding the discharge (Anxiety Disorder diagnoses). 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. The Board determined the reentry code is proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / Army Regulations 635-200, Paragraph 14-12c(2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 9 March 2020

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 13 January 2020

(2) Basis for Separation: between on or about 10 September 2019 and on or about 10 October 2019, wrongfully use tetrahydrocannabinols, a Schedule I controlled substance.

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

(4) Legal Consultation Date: 16 February 2020

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 27 February 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 15 August 2016 / 4 years

b. Age at Enlistment / Education / GT Score: 18/ HS Graduate / 92

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92A1O, Automated Logistical Specialist / 3 years, 6 months, 25 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AGCM, NDSM, GWTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Six Standard Forms 600 (Chronological Record of Medical Care) dated 3 July 2019 through 27 August 2019, reflects the applicant's behavioral health treatment for adjustment disorder with mixed anxiety, depression, insomnia, and alcohol and cannabis use. The behavioral health diagnoses include; Alcohol Dependence, [Rule Out] R/O Major Depressive Disorder, Reactions to Severe Stress, Adjustment Disorder with mixed anxiety and depressed mood, Insomnia, and Other problems related to psychosocial circumstances.

(2) Two DA Forms 4856 (Developmental Counseling Form) dated 21 October 2019 reflects the applicant received event oriented counseling for a positive urinalysis, notification of suspension of favorable actions, and initiation of separation in accordance with Army Regulation 635-200, paragraph 14-12c. The Key Points of Discussion reflects the applicant tested positive for THC on a unit urinalysis conducted on 10 October 2019. The Plan of Action reflects the company commander's recommendation for nonjudicial punishment under the provision of Article 15, Uniform Code of Military Justice (UCMJ). The applicant agreed with the information and signed the forms.

(3) A DA Form 8003 (Command Referral for a Substance Use Disorder Evaluation) dated 21 October 2019, reflects the applicant being referred to behavioral health for a comprehensive substance use disorder assessment to determine if they meet the criteria for enrollment into mandatory treatment. The reason for referral is shown as a positive unit urinalysis. The company commander marked "Excellent" for the applicant's performance / efficiency and behavioral/conduct.

(4) A DA Form 3822 (Report of Mental Status Evaluation) dated 29 October 2019 reflects the applicant has no duty limitations due to behavioral health reasons and currently meets medical retention standards.

- Section V (Diagnoses) – reflects "see detailed notes in [Embedded Health Record] EHR"
- Section V (Follow-Up Recommendations) – reflects the applicant is already scheduled with Behavioral Health and Substance Use Disorder Clinical Care
- Section VI (Recommendation and Comments for Commander) reflects the behavior health provider marked "No" to "The effects of PTSD and [Traumatic Brain Injury] TBI likely constitute matters in extenuation that relate to the basis for separation"
- Further Comments - the behavior health provider states –
 - the applicant has not deployed in the last 24 months
 - the medical record does not contain substantial evidence that the applicant currently meets criteria for a condition requiring referral to Integrated Disability Evaluation System, but has not yet received a diagnosis
 - applicant is psychiatrically cleared for administrative separation

(5) A DD Form 2697 (Report of Medical Assessment) dated 7 November 2019, reflects in –

(a) Item 10 (Compared to my last medical assessment/physical examination, my overall health is) the applicant marked "Yes" and commented they have gained weight because of their depression, their neck hurts at times due to a rollover accident, and they have trouble sleeping at night.

(b) Item 13 (Have you suffered from any injury or illness while on active duty for which you did not seek medical care) the applicant marked "Yes" and commented a neck injury from a rollover accident.

(c) Item 18 (At the present time do you intend to seek Department of Veterans Affairs (VA) Disability) the applicant marked "Yes" and commented depression, neck pain and sleep trouble.

(d) Item 20 (Health Care Provider Comments) the healthcare provider commented the applicant is in ongoing behavioral health care.

(6) A DD Form 2807-1 (Report of Medical History) dated 7 November 2019, reflects the applicant marked "Yes" to the question "Have you ever had or do you now have:" for multiple items to include; frequent or severe headaches, nervous trouble of any sort (anxiety or panic attacks); frequent trouble sleeping, received counseling of any type, depression or excessive worry, and used illegal drugs or abused prescription drugs. In item 30 (Examiner's Summary and Elaboration of all Pertinent Data) the examiner commented, the applicant is medically cleared for separation and to see behavioral health details in notes – cleared for separation.

(7) A DD Form 2808 (Report of Medial Examination) dated 7 November 2019, reflects the examining physician marked "Normal" to all items examined.

- item 74a (Examinee) reflects the applicant is qualified for service (Chapter)
- item 74b (Physical Profile) reflects the applicant has no physical profile restrictions
- item 76 (Signification or Disqualifying Defects) – the examining physician commented "0"
- item 77 (Summary of Defects and Diagnosis) – the examining physician commented "0"
- item 78 (Recommendations) – the examining physician commented "0"

(8) Six Standard Forms 600 (Chronological Record of Medical Care) dated 22 October 2019 through 14 November 2019, reflects the behavioral health diagnoses of Insomnia and Adjustment Disorder.

(9) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 26 November 2019, reflects the applicant received nonjudicial punishment for, between on or about 10 September 2019, and on or about 10 October 2019, wrongfully use THC, a Schedule I controlled substance, in violation of Article 112a, UCMJ. The applicant's punishment consisted of reduction in rank/grade from specialist/E-4 to private first class/E-3, suspended, and extra duty for 14 days.

(10) Two Standard Forms 600 (Chronological Record of Medical Care) dated 9 December 2019 and 11 December 2019, reflects the behavioral health diagnoses of Insomnia and Adjustment Disorder.

(11) A memorandum, 41st Transportation Company, 519th Military Police Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 13 January 2020, the applicant's company commander notified them of their intent to separate them for Misconduct-Abuse of Illegal Drugs, for between on or about 10 September 2019 and on or about 10 October 2019, wrongfully used tetrahydrocannabinols, a Schedule I controlled substance. The company recommended the applicant receive a General (Under Honorable Conditions) characterization of service. On the same day, the applicant acknowledged receipt of separation notice and of the rights available to them.

(12) In the applicant's memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 21 June 2016, the applicant acknowledged that they have been advised by their consulting counsel of the basis for the contemplated action to separate them for a Misconduct-Abuse of Illegal Drugs under Army Regulation 635-200, Paragraph 14-12c, and its

effects; of the rights available to them; and the effect of any action taken by them in waiving their rights. They understood they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them and they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They requested consulting counsel and elected to submit statements in their behalf. The applicant states –

(a) They fully understand their punishment and there was no excuse for their actions, but they wanted the separation authority to understand what they were dealing with that led to their decision. Throughout 2019 they had a constant battle with depression. They sought help by admitting themselves to Behavioral Health; however, they felt like they were not making any productive progress. They forced themselves to find happiness.

(b) A major contributing factor, they lost a close friend to cancer and they also lost their closest cousin to suicide. They felt trapped, lost and depressed. They hit the point where they just couldn't take anymore and began having nervous breakdowns at work. They are currently talking to a new therapist and has actually helped them to cope with their depression.

(13) A memorandum, 41st Transportation Company, 519th Military Police Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 21 January 2020, the applicant's company commander recommended the applicant be separated from the Army prior to the expiration of current term of service. They do not consider it feasible or appropriate to accomplish other disposition as the applicant informed Behavioral Health personnel that they were utilizing CBD oil. The applicant is outstanding at their job and unwavering work ethic. The applicant did not realize they could change behavioral health providers until they tested positive on a unit urinalysis. The applicant has made great progress in Army Substance Abuse Program and Substance Use Disorder Clinical Care and Behavioral Health recommends retaining the applicant.

(14) A memorandum, 519th Military Police Battalion, 16th Military Police Brigade, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 24 January 2020, the applicant's battalion commander recommended the applicant be retained and their service be characterized as Honorable.

(15) A memorandum, Headquarters, U.S. Army Garrison Fort Polk, subject: Separation Under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 27 February 2020, the separation authority, having reviewed the applicant's separation packet, directed applicant's service be characterized as General (Under Honorable Conditions). The separation authority states after reviewing the rehabilitative transfer requirements they determined the requirements do not apply to this action.

(16) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 9 March 2020, with 3 years, 6 months, and 25 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Specialist
- item 4b (Pay Grade) – E-4
- item 12i (Effective Date of Pay Grade) – 1 April 2018
- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) –General (Under Honorable Conditions)
- item 26 (Separation Code) – JKK
- item 27 (Reentry Code) – 4

- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided:

(a) Six Standard Forms 600 (Chronological Record of Medical Care) dated 3 June 2019 through 24 October 2019, reflects the behavioral health treatment and diagnoses consisting of Adjustment Disorder with mixed anxiety and depressed mood, Insomnia, Alcohol Dependence, Cannabis Abuse, Reactions to Severe Stress, and [Rule Out] R/O Depressive Disorder.

(b) VA Rating Decision reflecting service connection for adjustment disorder with mixed anxiety and depressed mood (also claimed as insomnia and trouble sleeping) granted with an evaluation of 50-percent, effective 10 March 2020.

(2) AMHRR Listed: Report of Mental Status Evaluation and Service Treatment Records as described in previous paragraphs. 4c(1) through

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Brief with attachments –
 - Applicant's Statement
 - three 3rd Party Statements
 - Prime for Life Certificate
 - Service Treatment Records consisting of six Standard Forms 600, DD Form 2697, DD Form 2807-1, and DD Form 2808
 - DD Form 214
 - County Sheriff's Department – Summary of Local Criminal History Information
 - VA letter with VA 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) effective 19 December 2016 prescribed 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 prescribed 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.

(5) Chapter 15 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, 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. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

h. Manual for Courts-Martial, United States (2019 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

i. 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 the applicant received nonjudicial punishment for wrongfully used tetrahydrocannabinols in violation of Article 112a, UCMJ, and was involuntary separation from the Army. 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 years, 6 months, and 25 days of net active service this period and did not complete their first full term of service of 4 years.

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 reflect documentation of other mental health diagnoses; however, behavioral health provider stated the applicant's medical record does not contain substantial evidence they meet criteria for a condition requiring referral to Integrated Disability Evaluation System and was psychiatrically cleared for administrative separation. The applicant provided their Service Treatment Record reflecting their behavioral health treatment and mental health diagnoses. Their VA evidence reflects service connection for adjustment disorder with mixed anxiety and depressed mood (also claimed as insomnia and trouble sleeping) granted with an evaluation of 50-percent, effective 10 March 2020.

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: Anxiety Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the service connected disability for anxiety disorder at 50% was determined by the Veterans Administration.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that as there is an association between anxiety disorder and self-medication behavior with various illicit drugs; there is a nexus between this condition and his cannabis usage.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition of anxiety disorder outweighed the basis of separation, drug use.

b. Prior Decisions Cited:

c. Response to Contention(s):

(1) The applicant contends their discharge should be changed because of their mental health condition and serious family problems conjunctively mitigate or excuse their use of CBD and unintentional use of THC; the sole behavioral infraction that resulted in a general (under honorable conditions) character of service.

(2) The applicant contends they had difficulty adjusting to military life and sought treatment after the first year of their enlistment. They continued to experience issues with depression and insomnia but their condition worsened during their third year of service where three of their close family members died that year, including their best friend who committed suicide. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Anxiety Disorder outweighing the applicant's illegal substance abuse offense.

(3) The applicant contends their service treatment records confirm they began to engage in mental health counseling in 2019. They began to self-medicate with CBD as an alternative to alcohol. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Anxiety Disorder outweighing the applicant's illegal substance abuse offense.

(4) The applicant contends they were not aware the CBD product they were using contained small amounts of THC that exceeded the threshold necessary to show up positive during a urinalysis. They had never been informed that CBD was not permissible for military members and they understood this product was legal in all 50 states.

(5) The applicant contends despite their mental health issues and subsequent infraction for using CBD, they did not let it impact their job performance, earning an Army Good Conduct Medal and receiving positive counseling statement.

(6) The applicant contends the VA determined their diagnosis of adjustment disorder with mixed anxiety and depressed mood also claimed as insomnia and trouble sleeping, manifested during their military service. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Anxiety Disorder outweighing the applicant's illegal substance abuse offense.

(7) The applicant contends an upgrade of their discharge would enable them to access the GI Bill to better themselves by furthering their education and secure better employment. 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.

(8) The applicant contends DOD guidance provides guidance for discharge upgrades involving mental health conditions. They had both a mental health condition and experiences during their military service that excuses or mitigates and outweighs their discharge and are entitled to liberal consideration in accordance with the DOD guidance. The Board liberally considered this contention and determined that it was valid due to the applicant's Anxiety Disorder outweighing the applicant's use of illicit drugs offense. Therefore, a discharge upgrade is warranted.

d. The Board determined the discharge is inequitable based on the applicant's length, quality of service, and the circumstances surrounding the discharge (Anxiety Disorder diagnoses). 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. The Board determined the reentry code is proper and equitable and voted not to change it.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210006586****e. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Anxiety Disorder outweighed the applicant's misconduct of marijuana abuse. 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.

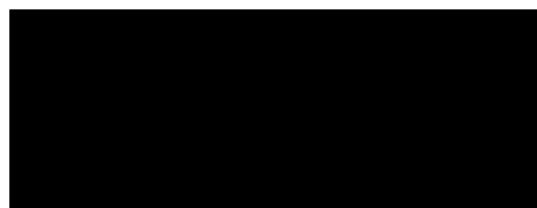
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN**
- d. Change RE Code to: No Change**
- e. Change Authority to: AR 635-200**

Authenticating Official:

6/23/2025



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