

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 3 March 2021**b. Date Received:** 4 March 2021**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

**a. Applicant's Requests and Issues:** The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

(1) The applicant seeks relief contending, during their military service, they made the mistake of ingesting marijuana, and made sure when going out, there was no possibility of ingesting marijuana again. In doing so, the applicant realized their mistake and thought the Army would give them another chance, since they were not discharged for almost a year. After the positive urinalysis, someone in Fort Leonard Wood was trying to help the applicant change their separation code, due to their unit drug testing them, while they were in Substance Use Disorder Clinical Care (SUDCC). Every drug test taken from the applicant while they were in SUDCC was not supposed to be used against them, however, they were, and became the deciding factor to their separation code. Due to marijuana taking a month or so to leave the system, the applicant was enrolled in SUDCC, passed all of their drug test, but was recognized as clean before they were actually clean.

(2) The person who helped them in Fort Leonard Wood, MO, was only able to change their paperwork to General (Under Honorable Conditions) and the new Commander, due to the change of command, approved their separation for the General discharge, however, left their separation code as un-waiverable. The applicant contends they were always respectful, on time, did as they were told, and exceeded the expectations of those who tasked them. The year the applicant has been separated from the military, has been the hardest year of their life, especially with everything going on with the virus [at the time of submission]. The applicant desires to show their spouse and child they can succeed and be responsible, without making the kind of mistakes to jeopardize their career.

**b. Board Type and Decision:** In a records review conducted on 31 July 2024, and by a 5-0 vote, the Board determined that the discharge was improper based on a violation of the Army's Limited Use Policy. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable. The Board voted not to change the narrative reason for separation or the reentry code.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

**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:** 22 January 2020

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** Undated

(2) **Basis for Separation:** Wrongful marijuana use

(3) **Recommended Characterization:** Under Other than Honorable Conditions

(4) **Legal Consultation Date:** 26 September 2019

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** The separation authority is undated, incomplete, and unsigned.

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 26 February 2018 / 3 years, 21 weeks

b. **Age at Enlistment / Education / GT Score:** 23 / High School Diploma / 100

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 92Y10 Unit Supply Specialist / 1 year, 10 months, 27 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** NDSM, GWOTSM, ASR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 26 February 2018, the applicant enlisted in the Regular Army for 3 years and 21 weeks as a PVT. The Enlisted Record Brief provides they promoted up to PFC (1 November 2018); on 8 and 27 March 2019, they were flagged, Suspend Favorable Personnel Actions (FLAG), for drug abuse adverse action (UA) and for field-initiated involuntary separation (BA).

(2) The Army Substance Abuse Program (ASAP), Alcohol and Drug Control Officer, Fort Leonard Wood, MO, provides notification to the command of the applicant's positive test results for wrongful use of marijuana (THC) for the following occurrences, advising to initiate mandatory actions IAW AR 600-85, requiring Soldiers identified as illicit drug users must be referred to attend the Prime for Life course. The applicant must be screened by the Substance Use Disorders Clinical Care (SUDCC); a referral must be made within 5 days.

(a) 22 January 2019 (IU: 100% Inspection Unit Testing)

(b) 10 May 2019 (RO: Rehabilitation Testing)

(c) 24 July 2019 (RO: Rehabilitation Testing)

(d) 27 August 2019 (IR: Inspection Random)

(e) 28 August 2019 (RO: Rehabilitation Testing)

(3) On 22 March 2019, they accepted nonjudicial punishment for having wrongfully used marijuana (22 January), in violation of Article 112a, UCMJ. They did not appeal. The punishment imposed consisted of reduction to PVT; forfeiture of \$840.00 per month for two months, suspended, to be automatically remitted if not vacated 22 June 2019; and extra duty for 20 days.

(4) On 7 May 2019, the applicant completed their medical history and health examination at General Leonard Wood Army Community Hospital (GLWACH) Victory Clinic, Fort Leonard Wood, MO, which provides the following:

(a) The history's explanation of "yes" answers in block 29 indicates:

- 10d: pollen
- 10f: when [they] was younger
- 12b: arthritis in left knee from 2 ACL surgeries
- 12i: ACL surgeries in high school
- 12j: ACL surgery
- 12k: knee brace
- 12m: screw in knee and plate in [their] thigh
- 12n: knee
- 17i: marijuana
- 20: knee, being sick
- 22: ACL 16 and 17 years old

(b) On their history, block 30a provides the examiner's notes:

- 10d: Has history of SAR at times. Has not been seen for it. Over the counter Allegra.
- 10f: History of bronchitis in high school x1. No ongoing problems.
- 12b: States history of arthritis in left knee status post. 2 ACL surgeries 2011/2012
- 12i, j, k, m: History of 2 ACL surgeries in high school. History of left tibia fracture.
- 12n: States both were football injuries
- 17i: marijuana use – currently being chaptered
- 20: Seen in ER for knee pain, minor illnesses
- 22: ACL surgeries age 16/17

(c) On 6 August 2019, they were seen for their medical examination and was qualified for service and separation. The providers diagnosis listed "substance abuse – currently in SUDCC," with no recommendations.

(5) Although undated, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), for wrongfully using marijuana (THC). They recommended a Under Other than Honorable Conditions characterization of service. They acknowledged receipt of their separation notice and on 26 September 2019, the applicant received legal consultation, and made no election on whether or not, they were submitting matters on their behalf.

(a) On 26 September 2019, the applicant voluntarily waived the consideration of their case by an administrative separation board, since they were being recommended for an Under Other than Honorable Conditions, contingent upon them receiving a characterization of service no less favorable than a General (Under Honorable Conditions). The applicant elected to submit statements on their own behalf; however, no statements were found in the separation package.

(b) The battalion commander and the separation authority did not indicate their recommendation/approval, did not sign, or date their endorsement.

(6) On 7 January 2020, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 22 January 2020, with 1 year, 11 months, and 6 days of total service. The applicant has not completed their first full term of service and was unable to provide an electronic signature.

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

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

(1) **Applicant provided:** On 17 June 2019, the applicant completed their mental status evaluation at the Mental (Behavioral) Health Clinic, GLWACH, Fort Leonard Wood, MO, for a misconduct administrative separation evaluation. There was no duty limitations and the applicant met medical retention standards, clearing them for administrative action. Their cognition, perceptions, behavior, and impulsivity were normal. There was no elevated risk of harm to themselves or others. Their BH diagnosis indicated Cannabis Use disorder and provided no follow-up recommendations. Page 2 of 2 is missing, which provides further comments from the provider and their signature.

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** Online ARBA Case Tracking System (ACTS) Application

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with this 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), dated 25 September 2019, 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) 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) 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.

(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. 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. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) 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 "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12c (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 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.

**g.** Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. 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.

**(1)** 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.

**(2)** ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

**(3)** Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

**(4)** All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

**(5)** A Soldier is entitled to an honorable characterization of service if limited-use evidence (see AR 600-85, chap 6) is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence.

**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. A review of the record provides administrative irregularity in the proper retention of records, specifically, the AMHRR is void of an ASAP rehabilitation failure memo and the statement they were supposed to submit with their separation proceedings.

**b.** A review of the available evidence provides the applicant enlisted in the RA as a PVT, promoted to PFC, and served for 1 year and 12 days, prior to their misconduct. They were flagged for having wrongfully used marijuana, as a result, received nonjudicial punishment and was demoted to PVT.

**(1)** The applicant contends they were enrolled in SUDCC for substance abuse; therefore, the rehabilitation testing is limited use information as defined in AR 600-85. They were flagged, for field-initiated involuntary separation IAW AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse) and recommended for an Under Other than Honorable Conditions characterization of service. They elected and consulted with defense counsel and received a conditional waiver and received a General (Under Honorable Conditions) characterization of service, for waiving their right to an administrative separation board.

**(2)** The applicant completed both a mental status and medical health examinations, which qualified them for service and separation, indicating they were currently enrolled in SUDCC for Substance Use, at the time.

**(3)** They served 1 year, 10 months, and 27 days of their 3 year, 21 week contractual obligation.

**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 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.** 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? **No.** The Board's Medical Advisor, reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided



no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge?  
**N/A**

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

**b. Prior Decisions Cited: None**

(1) Response to Contention(s): The applicant seeks relief contending, during their military service, they made the mistake of ingesting marijuana, and made sure when going out, there was no possibility of ingesting marijuana again. In doing so, the applicant realized their mistake and thought the Army would give them another chance, since they were not discharged for almost a year. After the positive urinalysis, someone in Fort Leonard Wood was trying to help the applicant change their separation code, due to their unit drug testing them, while they were in Substance Use Disorder Clinical Care (SUDCC). Every drug test taken from the applicant while they were in SUDCC was not supposed to be used against them, however, they were, and became the deciding factor to their separation code. Due to marijuana taking a month or so to leave the system, the applicant was enrolled in SUDCC, passed all of their drug test, but was recognized as clean before they were actually clean.

The Board acknowledged and considered this contention during proceedings.

(2) The person who helped them in Fort Leonard Wood, MO, was only able to change their paperwork to General (Under Honorable Conditions) and the new Commander, due to the change of command, approved their separation for the General discharge, however, left their separation code as un-waiverable. The applicant contends they were always respectful, on time, did as they were told, and exceeded the expectations of those who tasked them. The year the applicant has been separated from the military, has been the hardest year of their life, especially with everything going on with the virus [at the time of submission]. The applicant desires to show their spouse and child they can succeed and be responsible, without making the kind of mistakes to jeopardize their career.

The Board acknowledged and considered this contention during proceedings.

**a.** The Board determined that the discharge was improper based on a violation of the Army's Limited Use Policy. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable. There is no change to the narrative reason for separation or the reentry code.

**b. Rationale for Decision:**

(1) The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board determined that the discharge was improper based on a violation of the Army's Limited Use Policy. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable.

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

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

**2. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214 / Separation Order:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD code to:** No change
- d. **Change RE Code to:** No change
- e. **Change Authority to:** No change

**Authenticating Official:**

9/24/2024



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

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

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs