

1. **Applicant's Name:** [REDACTED]

a. **Application Date:** 24 September 2020

b. **Date Received:** 13 October 2020

c. **Counsel:** None

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 of the characterization of their service in the U.S. Army Reserve (USAR) to general (under honorable conditions).

(2) The applicant seeks relief stating they never received documents to appeal their discharge from the USAR and they want to appeal their discharge. During their pregnancy, they were unable to eat, and it was suggested they notify the noncommissioned officer (NCO) at the testing. This was the only positive drug test they ever received, but they were discharged.

(3) They would like their discharge upgrade, access to benefits and official documentation of their discharge from the USAR. They feel because of major cutbacks at the time of their discharge and their positive testing for marijuana, they were turned away without a blink of an eye, without question or reasoning. They, as well as others were victimized due to the major cutback and to act to get rid of anyone occupying space that could potentially have been occupied by anyone else that was military occupational specialty (MOS) qualified or new personnel. They lacked the knowledge at the time, and they felt as though there were other veterans that could really use the benefits not knowing how much they really needed them then and now.

b. **Board Type and Decision:** In a records review conducted on 3 May 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. **DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** NIF / Army Regulation 135-178 / NIF / Under Other Than Honorable Conditions

b. **Date of Discharge:** 5 May 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 21 January 2014

(2) **Basis for Separation:** abuse of illegal drug

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

(4) **Legal Consultation Date:** NIF

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

(6) Separation Decision Date / Characterization: 23 April 2014 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 March 2011 / 8 years (USAR)

b. Age at Enlistment / Education / GT Score: 17 / 10th Grade HS / 91

c. Highest Grade Achieved / MOS / Total Service: E-3 / 42A1O, Human Resources Specialist / 3 years, 1 month, 20 days

d. Prior Service / Characterizations: NA

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NIF

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Electronic Copy of the DD Form 2624 (Specimen Custody Document – Drug Testing) dated 14 August 2013, reflects the applicant's positive test for marijuana.

(2) A Certificate of Vital Record, Certificate of Live Birth dated 9 December 2013, reflects the birth of the applicant's child on 3 December 2013.

(3) A DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) dated 15 January 2014, reflects the applicant's company commander's initiation of a flag against the applicant for Drug Abuse Adverse Action, effective that day.

(4) A DA Form 2A (Personnel Qualification Record) dated 23 January 2014, reflects the applicant is not qualified – excess to unit. They are ineligible for Education Assistance Program as they have a service obligation but has not completed their Initial Active Duty Training.

(5) A memorandum, Headquarters, 143rd Sustainment Command (Expeditionary), subject: Separation under Army Regulation 135-178, Chapter 12-1d, Misconduct – Abuse of Illegal Drugs, dated 21 January 2014, the applicant's company commander attempted to notify the applicant of their initiating action to separate them from the USAR for Misconduct, abuse of illegal drugs, stating the least favorable characterization of service authorized for this separation is under other than honorable conditions. The attached memorandum, subject: Acknowledgment, Election and Waiver of Rights in Separation Proceedings under Army Regulation 135-178, Chapter 12-1d, Misconduct – Abuse of Illegal Drugs, reflects no entries from the applicant acknowledging receipt of notification.

(6) An email exchange between the 143rd Sustainment Command (Expeditionary) Paralegal NCO and the applicant, covering the period 5 February 2014 through 7 March 2014, reflects the Paralegal NCO sent the applicant their letter that was also sent to their home of record. On 5 March 2014, the applicant acknowledged receiving all the information, stating they wished to proceed with consulting with a Judge Advocate General representative.

(7) An Affidavit of Service by Hand Delivery, subject: Notification under Army Regulation 135-178, reflects Staff Sergeant H____ G____, deposes and says they are the Human Resource NCO of the 461st Human Resources Company, they personally hand delivered a Notification of Separation under Army Regulation 135-178, dated 21 January 2014, on or about 8 March 2014 to the applicant. Both the applicant and the NCO signed the Affidavit.

(8) A memorandum, 461st Human Resources Company, subject: Commander's Report for Separation under Army Regulation 135-178, Chapter 12-1d, [Applicant], dated 8 April 2014, reflects the applicant's company commander's recommendation to separate the applicant from the USAR prior to their expiration of their term of military service and that their service be characterized as Under Other Than Honorable Conditions.

(9) A memorandum, Headquarters, 143rd Sustainment Command (Expeditionary), subject: Administrative Separation Action – [Applicant], in Accordance with Army Regulation 135-178, Abuse of Illegal Drugs, dated 9 April 2014, reflects the applicant abused illegal drugs and the Office of the Staff Judge Advocate recommends the applicant be separated with Other Than Honorable Conditions characterization of service. A Legal Review determined no legal or administrative errors; the applicant was properly notified of a separation action on 8 March 2014. There is sufficient evidence to verify the allegations of Misconduct-Abuse of Illegal Drugs set forth against the applicant.

(10) A memorandum, Headquarters, 377th Theater Sustainment Command, subject: Proposed Involuntary Separation under Army Regulation 135-178, Chapter 12-1d, Misconduct: Abuse of Illegal Drugs, [Applicant], dated 23 April 2014, reflects the separation authority carefully reviewed the matters presented against the applicant alleging Abuse of Illegal. Having reviewed the matters and the recommendation of the chain-of-command found there is sufficient evidence to verify the allegations Abuse of Illegal Drugs set forth against the applicant. They have reviewed the separation recommendations concerning the applicant and hereby direct separation with the issuance of an Under Other Than Honorable Conditions discharge and reduction in rank from private first class to private.

(11) Headquarters, 81st Regional Support Command Orders 14-120-00135, dated 30 April 2014, reduced the applicant in grade of private first class to private effective 30 April 2014 and discharged the applicant from the USAR with the type of charge of Under Other Than Honorable Conditions, effective 5 May 2014, under the authority of Army Regulation 135-178.

i. **Lost Time / Mode of Return:** NIF

j. **Behavioral Health Condition(s):** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with personal statement
- two DD Forms 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Chapter 12-1d Separation Checklist
- Headquarters, 143rd Sustainment Command (Expeditionary), subject: Separation under Army Regulation 135-178, Chapter 12-1d, Misconduct – Abuse of Illegal Drugs, [Notification of Separation], with unsigned Acknowledgment, Election and Waiver of Rights Memorandum
- Electronic Copy of the DD Form 2624 (Specimen Custody Document – Drug Testing)
- Affidavit of Service by Mail

- DA Form 2a (Personnel Qualification Record)
- State Marriage Certificate
- **POST SERVICE ACCOMPLISHMENTS:** none submitted with application.

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

d. Army Regulation 135-178 (Enlisted Administrative Separations), dated 18 April 2014, set policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States and USAR enlisted Soldiers for a variety of reasons.

(1) An honorable characterization 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. When a Soldier is discharged before expiration of the service obligation for a reason for which an honorable characterization is discretionary, the following considerations apply, to include –

(a) An honorable characterization may be awarded when disqualifying entries in the Soldier's military record are outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service.

(b) It is a pattern of behavior and not an isolated instance which should be considered the governing factor in determining the character of service.

(c) Unless otherwise ineligible, a Soldier may receive an honorable characterization of service if he or she has, during his or her current enlistment, or any extension thereof, received a personal decoration.

(2) A General discharge is if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

(3) A Under Other Than Honorable Conditions Discharge, service may, but is not required to be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, homosexual conduct, unsatisfactory participation, or security reasons. The Adjutant General will direct reduction in grade to private/E-1 when the Soldier is discharged under other than honorable conditions.

(4) Chapter 12 (Misconduct) stated a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances; to include, abuse of illegal drugs or alcohol. Illegal drug use is serious misconduct. Discharge action normally will be based upon commission of a serious offense. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug

offense may be combined with one or more disciplinary infractions or incidents or other misconduct and processed for discharge. Commander will process separation all Soldiers who test positive for illegal drug use. Characterization of service normally will be under other than honorable conditions, but characterization a general (under honorable conditions) may be warranted.

e. 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).

7. SUMMARY OF FACT(S):

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

b. The applicant's AMHRR reflects tested positive for the wrongful use of marijuana while they were pregnant, which led to their involuntary discharge from the USAR. The applicant's AMHRR contains their discharge order from the USAR under the provisions of Army Regulation 135-178. They completed 3 years, 1 month, 20 days of USAR service this period and did not complete their 8-year USAR enlistment contractual obligation.

c. Army Regulation 135-178, Chapter 12 (Misconduct) stated a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances; to include, abuse of illegal drugs or alcohol. Illegal drug use is serious misconduct. Discharge action normally will be based upon commission of a serious offense. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug offense may be combined with one or more disciplinary infractions or incidents or other misconduct and processed for discharge. Commander will process separation all Soldiers who test positive for illegal drug use. Characterization of service normally will be under other than honorable conditions, but characterization a general (under honorable conditions) may be warranted.

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.

8. 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 the applicant had no mitigating behavioral health diagnoses. The applicant provided no

documents or testimony of an in-service 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. Response to Contention(s):

(1) The applicant contends they never received documents to appeal, and they want to appeal their discharge.

(2) The applicant contends during their pregnancy, they were unable to eat, and it was suggested they notify the NCO at the testing. This was the only positive drug test they ever received, but they were discharged. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(3) The applicant contends they feel because of major cutbacks at the time of their discharge and their positive testing for marijuana, they were turned away without a blink of an eye, without question or reasoning. They, as well as others were victimized due to the major cutback and to act to get rid of anyone occupying space that could potentially have been occupied by anyone else that was military occupational specialty (MOS) qualified or new personnel. The Board considered this contention but determined that the applicant's offense of abuse of illegal drug was a single incident which can serve as the basis for separation and characterization in accordance with AR 635-200. Therefore, a discharge upgrade is not warranted.

(4) The applicant contends they lacked the knowledge at the time, and they felt as though there were other veterans that could really use the benefits not knowing how much they really needed them then and now. The Board considered this contention but determined that the applicant's offense of abuse of illegal drug was a single incident which can serve as the basis for separation and characterization in accordance with AR 635-200. Therefore, a discharge upgrade is not warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant was not found to hold an in-service behavioral health condition that would mitigate or excuse the discharge. The Board considered the applicant's contention regarding this was the only positive drug test the applicant ever received and found that the totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority,

and the applicant was provided full administrative due process. Therefore, the applicant's Under Other than Honorable discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to an Honorable discharge.

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

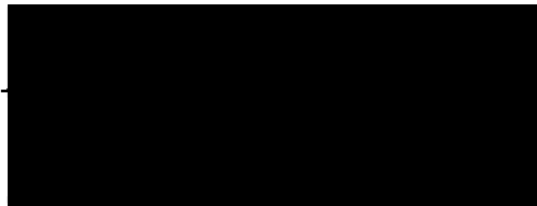
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

9. BOARD ACTION DIRECTED:

- a. Issue a New Separation Order: No
- b. Change Characterization to: No Change
- c. Change Authority to: No Change

Authenticating Official:

7/30/2024



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