

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 12 December 2020
- b. **Date Received:** 17 December 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

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

b. The applicant seeks relief contending, they are struggling financially due to having been homeless upon discharged, requesting the upgrade to pursue school/degree.

c. **Board Type and Decision:** In a records review conducted on 22 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's request, contentions, supporting documents, evidence, the applicant's length of service, quality and the elapsed time of the discharge. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 21 April 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 23 January 2020

(2) **Basis for Separation:** Wrongfully used marijuana.

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

(4) **Legal Consultation Date:** On 4 February 2020, the applicant waived the right to consult defense counsel.

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

(6) **Separation Decision Date / Characterization:** 5 March 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 23 November 2015 / 6 years

b. **Age at Enlistment / Education / GT Score:** 18 / High School Diploma / 95

c. Highest Grade Achieved / MOS / Total Service: E- 4 / Air Traffic Control Operator / 3 years, 9 months

d. Prior Service / Characterizations: NA

e. Overseas Service / Combat Service: NA

f. Awards and Decorations: AGCM, NDSM, GWOTSM, ASR, BAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 16 July 2015, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; on 23 November 2015, they enlisted in the Regular Army for 6 years as an PVT. The Enlisted Record Brief provides the applicant promoted to SPC on 23 November 2017.

(2) On 17 October 2019, the ASAP Officer, Fort Riley, KS, provides notification to the command for the positive test results (collected 27 September 2019) for wrongful use of marijuana, advising to initiate mandatory actions IAW AR 600-85, initiate a Suspend Favorable Personnel Actions (FLAG) refer the Soldier to ASAP Clinic for evaluation within 5 working days of receipt of the positive results, and initiate separation action with two serious incidents of alcohol or drug abuse.

(3) On 22 October 2019, they were counseled for their positive urinalysis results and informed they were being recommended for separation; the applicant agreed and noted they concurred. The same day, they were flagged, a Suspend Favorable Personnel Actions (FLAG), for drug abuse adverse action (UA) and on 23 January 2020, for a field initiated-involuntary separation (BA).

(4) On 31 October 2019, the Reports of Medical History and Examination, the applicant noted their foot surgery, which limits their walking and unable to run, positive urinalysis for marijuana; with Physician's Assistant at the Farrelly Health Clinic, Fort Riley, Kansas, provides the applicant was qualified for separation, with the Provider noting asymptomatic pes planus, no MEB conditions; and recommended continuing with Chapter separation.

(5) On 26 November 2019, a Mental Status Evaluation with a Licensed Clinical Social Worker at the Warrior Resiliency Program BAMC, provides the applicant has not deployed in the last 24 months and met behavioral health medical retention standards (IAW AR 40-501); their cognition and perceptions were not impaired, with a low risk of self-harm; The Provider noted their record does not contain substantial evidence that the applicant currently meets criteria, for a condition requiring referral to IDES, but has not yet received a diagnosis. Their BH and other medical diagnoses states, "See detailed note in HER, (AHLTA, Genesis)." Their follow-up with SUDCC was already scheduled [at the time of this appointment]. The applicant was psychiatrically cleared for administrative separation.

(6) On 23 January 2020, the company commander-initiated action to separate the applicant for wrongful use of marijuana under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse). The applicant acknowledged receipt of their separation notice.

(7) On 4 February 2020, the applicant elected to waive their rights to defense counsel and elected not to submit a statement on their behalf.

(8) On 25 February 2020, the battalion commander concurred with the separation and recommended a General (Under Honorable Conditions) characterization of service. On 5 March 2020, the appropriate authority approved the separation and directed the applicant be discharged with a General (Under Honorable Conditions) characterization of service and their separation orders were issued on 31 March, and later amended on 15 April 2020.

(9) A DD Form 214 (Certificate of Release or Discharge from active Duty) reflects the applicant was discharged accordingly on 21 April 2020, with 4 years, 9 months, and 7 days of service, characterized as General (Under Honorable Conditions). The applicant has not completed their first full term of service.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); DD Form 214 (Certificate of Release or Discharge from Active Duty); Residents Program Letter

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. Manual for Courts-Martial (2019 Edition), United States, states 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 orders and discipline in the Armed Forces. Article 112a (wrongful use of marijuana) states in subparagraph the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

h. 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): 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 there was administrative irregularity in the proper retention of official military records, specifically, the positive UA results collected in January 2020 [as provided by the Commander's Report.]

b. A review of the available evidence provides the applicant enlisted in the RA for 6 years and promoted to SPC. Their awards includes an Army Good Conduct Medal and Basic Aviation Badge. On 22 October 2019, they were flagged, a Suspend Favorable Personnel Actions (FLAG) for drug abuse adverse action (UA) and on 23 January 2020, for field-initiated involuntary separation (BA). They served for 3 years and 11 months of their 6-year contractual obligation prior to their indiscipline.

(1) The applicant tested positive for marijuana twice, in October 2019 and January 2020, consequently, separation actions were initiated IAW 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse) with their service characterized as General (Under Honorable Conditions). They elected to waive consultation with legal counsel and elected not to submit a statement on their behalf.

(2) The applicant received a separation physical and a mental health status evaluation and was qualified for separation, noting asymptomatic pes planus and no recommendations; however, they were already enrolled in SUDCC. They completed 4 years, 4 months, and 29 days of their 6-year 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. Response to Contention(s): The applicant seeks relief contending, they are struggling financially due to having been homeless upon discharged, requesting the upgrade to pursue school/degree. 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. Additionally, the Board considered this contention but does not grant relief to gain employment or enhance employment opportunities. However, the Board voted to grant relief based on the applicant's request, contention, supporting documents, and evidence and based on the applicant's length of service, quality, and the elapsed time of the discharge.

c. The Board determined the discharge is inequitable based on the applicant's request, contentions, supporting documents, evidence, the applicant's length of service, quality, and the elapsed time of the discharge. 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 request, contention, supporting documents, evidence, the applicant's length of service, quality, and the elapsed time of the discharge. 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 reentry 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:

2/6/2024

X [Redacted Signature]

Presiding [Redacted Name]

[Redacted Title]

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