

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 24 March 2021**b. Date Received:** 30 March 2021**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 to honorable and a change of the narrative reason for separation.

(2) The applicant seeks relief contending their discharge was inequitable because it was based off of an isolated incident due to the nature of their service connected disabilities having effected them mentally and physically at that time.

**b. Board Type and Decision:** In a records review conducted on 13 January 2025, and by a 3-2 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Depressive Disorder). 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. The Board determined the reentry code is proper and equitable and voted not to change it.

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Pattern of Misconduct / Army Regulation 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 3 January 2008

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 12 December 2007

(2) **Basis for Separation:** The applicant was informed of the following reasons:

- on 19 September 2007, received a Field Grade Article 15, for wrongfully use of marijuana
- counseled on failing to report to their appointed place of duty
- actions not becoming of a Soldier
- do not live up to the Army Values

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

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

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

**(6) Separation Decision Date / Characterization:** 18 December 2007 / General  
(Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. Date / Period of Enlistment:** 28 August 2006 / 4 years
- b. Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 95
- c. Highest Grade Achieved / MOS / Total Service:** E-3 / 52D10, Power Generator Equipment Repairer / 1 year, 6 months, 6 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** NDSM, ASR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 19 September 2007, reflects the applicant received nonjudicial punishment for, in that they did, at or near Fort Stewart, GA, between on or about 28 July 2007 and 28 August 2007, wrongfully use marijuana, a controlled substance, in violation of Article 112a, UCMJ. Their punishment consisted of a reduction in rank/grade from private two/E-2 to private/E-1, forfeiture of \$650.00 pay for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

**(2)** A DA Form 4856 (Developmental Counseling Form) dated 7 October 2007 reflects the applicant received counseling from their company commander notifying the applicant of their recommendation for separation from the Army for an Army Regulation 635-200, paragraph 14-12c(2) (Pattern of Misconduct). The company commander states since the applicant's behavior is not condoned by the Army it is in the best interest of the Army to separate them.

**(3)** Two DA Forms 4856 (Developmental Counseling Form) dated 6 November 2007, reflects the applicant received counseling for two occurrences of failure to report, on 26 October 2007 and 6 November 2007, and two occurrences of failure to follow the directive of a senior Noncommissioned Officer (NCO) and of another NCO. The applicant agreed with the information and signed both forms.

**(4)** A Medical Command Form 699-R (Report of Mental Status Evaluation) dated 7 November 2007, reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets retention requirement. The applicant has no Axis I (Psychiatric Conditions) diagnosis. The psychologist commented the applicants mental status was within normal limits, no signs of psychosis, and has no psychiatric disease or defect that warrants disposition through medical channels. The applicant is cleared for any administrative action deemed appropriate by command, such as separation from the military.

**(5)** A DD Form 2808 (Report of Medical Examination) dated 13 November 2007, reflects the examining physician marked "Abnormal" for ears, drums, lower extremities, and tattoos. The physician marked the applicant is qualified for service/chapter and has a temporary physical

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profile for their lower extremities. Item 77 (Summary of Defects and Diagnoses) reflects the applicant's right knee pain status post-surgery with a temporary profile.

(6) A memorandum, Rear Detachment, 4th Battalion, 64th Armor Regiment, 4th Brigade Rear Detachment, subject: Recommendation for Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12b, Patterns of Misconduct, dated 12 December 2007, reflects the applicant's company commander notified the applicant of initiating action to separate them for a Pattern of Misconduct as described above in paragraph 3c(2). The company commander recommends their service be characterized as general (under honorable conditions). On that same date, the applicant acknowledged receipt of their separation notice.

(7) In the applicant's memorandum, subject: Election of Rights for Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12b, Patterns of Misconduct, they acknowledged they have been advised by their consulting counsel of the basis for the contemplated action to separate them due to patterns of misconduct, and its effects; of the rights available to them; and of the effects of any action taken by them in waiving their rights. They requested consulting counsel and elected not to submit statements on their own behalf. They understand they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them.

(8) A memorandum, Rear Detachment, 4th Battalion, 64th Armor Regiment, 4th Brigade Rear Detachment, subject: Recommendation for Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12b, Patterns of Misconduct, dated 12 December 2007, reflects the applicant's company commander recommended the applicant be separated from the U.S. Army prior to expiration of their term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as further attempts of rehabilitation are not in the best interest of this Command or the U.S. Army; and therefore, request rehabilitation transfer be waived.

(9) A memorandum, 3<sup>rd</sup> Infantry Division (Rear)(Provisional), 3<sup>rd</sup> Infantry Division and Fort Stewart, subject: Recommendation for Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12b, Patterns of Misconduct, dated 18 December 2007, the separation authority approved the request to separation the applicant from the U.S. Army. The separation authority directed the applicant's service be characterized as General (Under Honorable Conditions) and further rehabilitative efforts are waived.

(10) On 3 January 2008 the applicant was discharged accordingly. Their DD Form 214 (Certificate of Release or Discharge from Active Duty) provides they completed 1 year, 6 months, and 6 days of net active service this period. Their DD Form 214 shows in:

- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12b
- item 26 (Separation Code) – JKA
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Pattern of Misconduct

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

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
- Department of Veterans Affairs (VA) Letter – Summary of Benefits

**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 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; and DoD Directive 1332.41 and Instruction 1332.28.

**d.** Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 June 2005, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

**(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 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

**(a)** When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

**(b)** Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

**(5)** 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 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

**(6)** Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

**(7)** 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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, (Pattern of Misconduct).

**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.** Manual for Courts-Martial, United States (2008 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 Article 112a (Wrongful Use, Possession, etc. of Controlled Substances).

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):**

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 wrongful use of marijuana; received developmental counseling for occurrences of failure to report and failure to follow directives; and was involuntarily separation for a pattern of misconduct. Their DD Form 214 provides they were discharged with a character of service of General (Under Honorable Conditions) for pattern of misconduct. They completed 1 year, 6 months, and 6 days of net active service this period; however, the applicant did not complete their contractual enlistment obligation 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 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 reflects no evidence of a physical or behavioral health diagnosis that warrants disposition medical channels at the time of their military service.

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 diagnosis: Depressive Disorder due to pain documented in-service.

(2) Did the condition exist, or experience occur during military service? **Yes.** Depression and pain were documented in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined, that it is more likely than not, using THC and not showing up for extra duty was secondary to the pain and depressive symptoms experienced after the knee injury for which they are now service connected.

(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 applicant's Depressive Disorder outweighed Failure to Report (FTR) to extra duty and use of controlled substances.

b. Prior Decisions Cited: None

c. Response to Contention(s): The applicant contends their discharge was inequitable because it was based off of an isolated incident due to the nature of their service connected disabilities having affected them mentally and physically at that time. The Board determined that this contention was valid and voted to upgrade the characterization of service due to Depressive Disorder outweighing the applicant's Failure to Report (FTR) to extra duty and use of controlled substances (THC).

d. The Board determined that the applicant's the discharge is inequitable based on the circumstances surrounding the discharge (Depressive Disorder) mitigates the applicant's FTRs and use of controlled substances (THC). 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. The Board determined the reentry code is proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on the circumstances surrounding the discharge (Depressive Disorder) mitigates the applicant's FTRs and use of controlled substances (THC).

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same rationale, 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.



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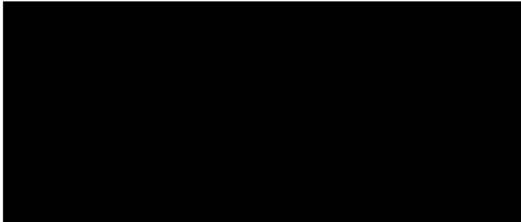
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**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: 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, paragraph 14-12a.

**Authenticating Official:**

1/31/2025



**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