

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

- a. **Application Date:** 1 November 2020
- b. **Date Received:** 2 November 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 to honorable.

(2) The applicant states they feel they followed all necessary protocols and policies and yet they were punished for doing so. Instead of receiving help from their leadership/chain of command they were discharged from the U.S. Army.

(3) They self-reported into the Army Substance Abuse Program (ASAP) on two different occasions. They did not know what help they needed or wanted at either time, but they never felt nor received any guidance or mentorship from their leadership. They only felt ostracized as if they were no longer worthy to be in the rank/grade of sergeant/E-5. Their anger, frustration, and confusion led to them being depressed.

**b. Board Type and Decision:** In a records review conducted on 26 January 2024, and by a 5-0 vote, the Board, based on the applicant's length and quality of service to include combat service and mitigating BH condition determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was inequitable and voted to change it to Honorable.

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

Board member names available upon request.

**3. DISCHARGE DETAILS:**

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

**b. Date of Discharge:** 30 January 2015

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 16 October 2015

(2) **Basis for Separation:** wrongfully used Tetrahydrocannabinol, a Schedule III controlled substance.

(3) **Recommended Characterization:** Honorable

**(4) Legal Consultation Date:** 22 October 2014

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

**(6) Separation Decision Date / Characterization:** 7 November 2014 / General (Under Honorable Conditions)

#### **4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 2 March 2012 / 4 years

**b. Age at Enlistment / Education / GT Score:** 26 / HS Graduate / 117

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 12N2O, Horizontal Construction Engineer / 5 years, 4 months, 22 days

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

**e. Overseas Service / Combat Service:** Germany, SWA / Afghanistan (14 May 2010 – 12 December 2010)

**f. Awards and Decorations:** ACM-CS, AAM-4, AGCM, NDSM, GWTSM, NCOPDR, ASR, OSR, NATOMDL

**g. Performance Ratings:** 1 July 2012 – 30 June 2013 / Fully Capable  
1 July 2013 – 30 June 2014 / Fully Capable  
1 July 2014 – 26 November 2014 / Fully Capable

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

**(1)** A memorandum, U.S. Army Criminal Investigation Command, subject: CID Report of Investigation – Initial Final, dated 1 April 2014, reflects the applicant as the named subject with the violation Article 112a, Uniform Code of Military Justice, Wrongful Use of Marijuana. The investigative summary states the applicant tested positive for Tetrahydrocannabinol during a unit urinalysis inspection conducted on 18 February 2014.

**(2)** A DD Form 2808 (Report of Medial Examination), dated 5 May 2014, reflects the applicant is qualified for service.

- item 77 (Summary of Defects and Diagnoses) reflects elevated blood pressure, multiple musculoskeletal pain, left shoulder, knees, ankle and Gastroesophageal Reflux Disease
- item 78 (Recommendations) – reflects, none – servicemember may to go to the Department of Veterans Affairs (VA), continue primary care

**(3)** A DA Form 3822 (Report of Mental Status Evaluation), dated 21 July 2014, reflects the applicant fit for full duty, including deployment.

**(a)** Section IV (Impressions) reflects the applicant can understand and participate in administrative proceedings, can appreciate the difference between right and wrong, and meets medical retention requirements (i.e., does not qualify for a Medical Evaluation Board).

(b) Section V (Diagnosis) reflects an Axis I (Psychiatric Condition) shows a diagnosis of insomnia.

(c) Section VIII (Additional Comments) reflects the applicant is currently enrolled in ASAP for cannabis abuse. There is no evidence of mental defects, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. The applicant was screened for PTSD and Traumatic Brain Injury, results are negative.

(4) A memorandum, 500th Engineer Company, 15th Engineer Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs [Applicant], dated 16 October 2014, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c(2), misconduct-abuse of illegal drugs, with a recommended characterization of service of honorable. On the same day the applicant acknowledged the basis for the separation and of the right available to them.

(5) A memorandum, 500th Engineer Company, 15th Engineer Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs [Applicant], the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states the Noncommissioned Officer should understand that drug use runs contrary to the Army Values.

(6) On 22 October 2014, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected to submit statements in their behalf. [Note, statements in the applicant's behalf are not in evidence for review.]

(7) A memorandum, 18th Military Police Brigade subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs [Applicant], dated 7 November 2014, the separation authority directed that the applicant be separated from the Army prior to the expiration of current term of service, and their service be characterized as General (Under Honorable Conditions).

(8) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 30 January 2015, with 5 years, 4 months, and 22 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Sergeant
- item 4b (Pay Grade) – E-5
- item 12i (Effective Date of Pay Grade) – 1 July 2012
- item 18 (Remarks) – in part
  - CONTINUOUS HONORABLE ACTIVE SERVICE 9 September 2009 – 1 March 2012
  - Member has completed first full term of service [Note: applicant has not completed their contractual reenlistment obligation of 4 years]

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** MSE/BHE as described in previous paragraph 4h(3).

**5. APPLICANT-PROVIDED EVIDENCE:** None

**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 DoD Instruction 1332.28.

**d.** Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 September 2011, 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 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

**e.** Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c(2), misconduct (drug abuse).

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DoD Instructions 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) dated 28 December 2012, provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components. 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, the Warrior Ethos, 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 Soldier who test positive for illicit drugs for the first time will be evaluated for dependency, disciplined, as appropriate, and processed for separation within 30 calendar days of the company commander receiving notification of the positive result from the ASAP. Retention should be reserved for Soldiers that show clear potential for both excellent future service in the Army and for remaining free from substance abuse. Soldiers diagnosed as drug dependent will be offered rehabilitation prior to separation.

h. Manual for Courts-Martial, United States (2012 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).

#### 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. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant tested positive for Tetrahydrocannabinol, a Schedule III controlled substance, during a unit urinalysis, an offense punishable under the Uniform Code of Military Justice with a punitive discharge. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions). The applicant completed 5 years, 4 months, and 22 days of net active service, completing their first full term of service; however, the applicant did not complete their 4-year reenlistment service 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. The applicant's Army Military Human Resource Record contains documentation of a diagnosis of Insomnia, during the applicant's term of 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 diagnoses/experiences: Chronic Adjustment Diagnosis (CAD) [Note-diagnosis of Adjustment Insomnia is subsumed under diagnosis of CAD].

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that VA service connection of 70% for Chronic Adjustment Diagnosis establishes that it began and/or occurred during military 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 the applicant has a mitigating Behavioral Health condition, Chronic Adjustment Disorder (CAD). As there is an association between CAD and use of drugs to self-medicate emotional symptoms, there is a nexus between his diagnosis of CAD and his wrongful use of marijuana.

(4) Does the condition or experience outweigh the discharge? **Yes**

c. Response to Contention(s):

(1) The applicant contends their anger, frustration, and confusion led to being depressed.

(2) The applicant contends they feel they followed all necessary protocols and policies and yet they were punished for doing so. Instead of receiving help from their leadership/chain of command they were discharged from the U.S. Army. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Chronic Adjustment Disorder (CAD) and the applicant's length and quality of service to include combat service fully outweighing the applicant's wrongful use of marijuana basis for separation.

(3) The applicant contends they self-reported into the ASAP on two different occasions. They did not know what help they needed or wanted at either time, but they never felt nor received any guidance or mentorship from their leadership. They only felt ostracized as if they were no longer worthy to be in the rank/grade of sergeant/E-5. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Chronic Adjustment Disorder (CAD) and the applicant's length and quality of service to include combat service fully outweighing the applicant's wrongful use of marijuana basis for separation.

d. The Board determined based on the applicant's BH condition, length and quality of service to include combat service that the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was 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 because the applicant's Chronic Adjustment Disorder (CAD) and the applicant's length and quality of service to include combat service mitigated the applicant's misconduct of wrongful use of marijuana. Thus, the prior characterization is no longer appropriate. The new characterization of service is Honorable.

(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.



**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210007858**

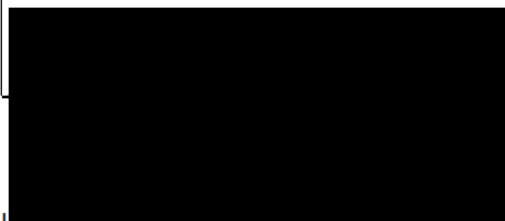
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / 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

**Authenticating Official:**

2/2/2024



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