

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 22 October 2020
- b. **Date Received:** 16 November 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 under honorable conditions (general). The applicant requests an upgrade to honorable, and a narrative reason change.

The applicant states in effect, there were numerous amounts of unfairness, mistreatment, and injustice during their time in their unit as an E-1 under the supervision of CPT S. and two different First Sergeants in one year. It still pains them to talk about their mistreatment while as a soldier today. The mistreatment they endured, and the evidence were already presented to their superiors, the same day they were counseled they were tasked to deliver food to the entire battalion from 0350 until 2000, they were in a non-stop convoy, without any proper rest in accordance with Army Regulations FM-22 4-19, FM-22 4-20 and FM-22 4-24. Due to their previous offense, they were manipulated, targeted, and pushed to do extra work by the Sergeants in their unit by proving their self on every mission to show if they had they skill or capability to stay in the Army, due to the overturned decision to not be processed out by LTC H.

While on a frontline mission from 0350 until 2000 that day they were still appointed to be on weapons guard from 2000 until 0400. The weather was fierce that night it was 18 degrees and below, and with the loss of sleep in accordance with Army Regulations FM-22 4-28 and FM-22 4-29 they stayed up for nine hours after their previous mission, after their shift was over there was no SSG to swap them out for shift change nor did they have heat provided by one of the generators. The SSG that was on duty arrived to the ECP to conduct their checks 25 minutes later and there was not a shift change set up to relieve them from duty. The training environment is for you to make mistakes and learn how to be resilient in your mistakes without extreme action. The SSG'S counseling showed an unjustifiable act of punishment. Relatively knowing the conditions of their stay, they had six days left with no comp days taken or leave for a six month period. They did not get the chance to switch to a new unit, as any soldier would get the opportunity to start fresh with a different company. They did not have enough time nor the knowledge to go to the inspector general's office to fight their case properly.

Even their transition period leaving the military was tough, they only had three days to clear and did not take the proper classes that were appointed. Being an E-1 at the time, they were subjected to pay for their own moving. They knew something was not right when the lady stamping their incomplete paperwork said, " this is not right what you all are doing to this soldier". They only had one flag their entire career, they never lacked determination of wanting to carry on the duties. They were selected to be the leading BOSS Representative for their unit, they had the highest PT Card, and was one of the most motivational soldiers that helped others. What is a mistake without a lesson? The best teacher in life is your own experience, they say everyone is defined by their reaction to any given situation, well who would you want to define you? Someone else or yourself?

b. Board Type and Decision: In a records review conducted on 31 July 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Adjustment Disorder, Mistreatment in service, and PTSD).

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.

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) / AR 635-200 / JKK / RE-4 / General (Under Honorable Conditions).

b. Date of Discharge: 20 March 2019

c. Separation Facts:

(1) Date of Notification of Intent to Separate: NIF

(2) Basis for Separation: NIF

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 23 August 2018 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 April 2017 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 88

c. Highest Grade Achieved / MOS / Total Service: E-3 / 92A10 Automated Logistical Specialist / 1 year, 11 months, 17 days.

d. Prior Service / Characterizations: None.

e. Overseas Service / Combat Service: None.

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides the applicant enlisted in the United States Army Reserve at the rank of E-1 with an active-duty obligation of 4 years on 16 February 2017.

(2) An Enlisted Record Brief (ERB) provides the applicant received a rank deduction to E-1 on 30 May 2018.

- Flagged with code B; effective 26 June 2018
- Suspension of a favorable personnel action

(3) A memorandum, Headquarters, 1ST Cavalry Division Sustainment Brigade, Fort Hood, Texas, subject: Separation under AR 635-200, Ch 14-12c(2), Misconduct-Abuse of illegal drugs, provides the applicant was directed to be separated from the army, but that separation be suspended for a period of six months. They appropriate authority directed a general, under honorable conditions characterization of service on 23 August 2018.

(4) A Certificate of Release or Discharge from Active-Duty document (DD Form 214) provides on 20 March 2019 the applicant was discharged from the army.

- Authority: 635-200, Chapter 14-12c
- Narrative Reason: Misconduct (Drug Abuse)
- Service Characterization: Under Honorable Conditions (general)
- Remarks: Member has not completed first term of service
- Net Service: 1 year, 11 months, and 17 days
- Signature: Unable to sign

i. Lost Time / Mode of Return: None.

j. Behavioral Health Condition(s): None.

(1) Applicant provided:

(2) AMHRR Listed:

5. APPLICANT-PROVIDED EVIDENCE: A DD Form 293 (Discharge Review) application, a two page statement, FM 6-22.5 regulations, three self-authored duplicate Sworn Statement documents, out processing documents and SFL-TAP document, NJP they received on 30 May 2018 for wrongfully using marijuana, Lab Results Report document that provides they tested positive for THC from a sample collected on 15 March 2018, a copy of their military identification card, A Developmental Counseling form that provides they were counseled to inform them of the initiation of the chapter process for drug abuse, a DA Form 268 shows they were flagged for drug abuse action on 28 March 2018 and a copy of their ERB in support of their petition.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their 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 provides the authorized types of characterization of service or description of separation.

(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 subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. It provides the ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

f. 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, misconduct (drug abuse).

g. Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (Flag)) provides the policies, operating rules and steps governing the suspension of favorable personnel actions. A flag is emplaced during some type of disciplinary or administrative action until that action is concluded. The Flag should be initiated within 3 working days after identification of the soldiers' unfavorable status and removed within 3 working days after determination of the final disposition. Commanders and general office staff will establish necessary internal controls to ensure requirements are met: DA Form 268 is prepared to reflect that favorable personnel actions are suspended; the Flag is input into HR systems without delay. Flag code "B" is a nontransferable code used when involuntary separation or discharge is initiated (field).

h. 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

- 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.
- RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.
- RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

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, and a narrative reason change. The applicant's DD-214 provides the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions discharge which is normally considered appropriate for a soldier discharged for drug abuse.

b. Based on the available evidence the applicant enlisted in the Army at the age of 18, thirteen months after their enlistment they received a NJP for wrongfully using marijuana, and they were processed for administrative separation. The appropriate authority directed and approved the separation on 23 August 2018, but with suspension of the separation for six months. March

c. A Review of the record provides administrative irregularity occurred in the proper retention of official records, specifically, the AMHRR is void of the applicant's entire separation packet to include documentation to support if the applicant consulted with counsel and if they received the required medical and mental health separation examinations. Due to the lack of evidence, we are unable to provide all the specific facts and circumstances surrounding the applicant's involuntary separation. Notwithstanding the lack of evidence, the record provides appropriate authority approved the separation and DD Form 214 shows they were discharged under the provisions of Army Regulation 635-200, Chapter 14 Misconduct (Drug Abuse) with an under honorable conditions (general) characterization of service on 20 March 2019.

d. Chapter 14 establishes policy and prescribes procedures for members being separated 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.

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: Adjustment Disorder, PTSD, and mistreatment in-service.

(2) Did the condition exist, or experience occur during military service? **Yes.** Adjustment Disorder, mistreatment, and in-service trauma resulting in post-service PTSD.

(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 basis for separation is mitigated based on the applicant's assertion of abuse combined with service connection for an in-service diagnosed Adjustment Disorder related to drug use.

(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 condition or experience outweighed the basis of separation.

b. Prior Decisions Cited: None.

c. Response to Contentions:

(1) The applicant contends there were numerous amounts of unfairness, mistreatment, and injustice during their time in their unit.

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 Adjustment Disorder, mistreatment, and in-service trauma resulting in post-service PTSD fully outweighing the applicant's drug abuse basis for separation.

d. The Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Adjustment Disorder, Mistreatment in service, and PTSD). 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 carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board concurred with the conclusion of the medical advising official that the applicant's medical diagnoses mitigate the basis of separation and warrant a change to the character and narrative reason for separation. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation was inequitable. The Board decided not to change the RE4 based on the medical diagnoses.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same reasons, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

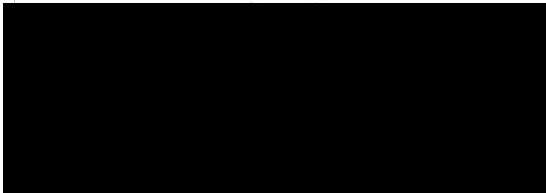
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:** No change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

8/8/2024



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