

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 17 January 2021**b. Date Received:** 18 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.

(2) The applicant seeks relief stating they tested positive in order to get out of the service. As medical marijuana is legal in most of United States, they feel as if their character of service should be changed to honorable. This was their only mistake, and they shouldn't be punished for the rest of their life based on this one questionable mistake.

**b. Board Type and Decision:** In a records review conducted on 14 June 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's TBI and PTSD mitigating his use of THC and disrespect towards a Noncommissioned officer. While the unmitigated conduct of assaulting an NCO (pushing him and using profane language) is serious, when considering the applicants in service factors (length, quality, and combat), it does not rise to a level which would lead to a General 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 no change to the reentry code. The remaining misconduct of assault to an NCO is not mitigated.

**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:** 28 July 2006**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** Undated

(2) **Basis for Separation:**

- on 15 July 2005, disrespectful in a noncommissioned officer (NCO)
- on 23 July 2005, assaulted an NCO
- on 22 March 2006, found positive for THC [Tetrahydrocannabinol] (marijuana) on a urinalysis test

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

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

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

**(6) Separation Decision Date / Characterization:** 7 July 2006 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 8 July 2002 / 5 years

**b. Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 97

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 31B1O, Military Police / 4 years, 21 days

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

**e. Overseas Service / Combat Service:** SWA / Iraq (7 February 2005 – 22 January 2006)

**f. Awards and Decorations:** NDSM, ICM, GWTSM, ASR

**g. Performance Ratings:** NA

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

**(1)** A DA Form 2627-1 (Summarized Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 25 July 2005, reflects the applicant received nonjudicial punishment for, on or about 15 July 2005, assaulting an NCO, by pushing them away with their hands and was disrespectful in language towards an NCO. Their punishment consisted of an oral reprimand and extra duty for 14 days. The applicant elected not to appeal.

**(2)** A DA Form 4856 (Developmental Counseling Form), dated 28 March 2006, reflects the applicant received counseling for wrongful use of a controlled or illegal substance. Key points of discussion states, the applicant tested positive for the presence of Marijuana or THC on a unit urinalysis conducted on 22 March 2006. They are being referred to Army Substance Abuse Program (ASAP) for further counseling. The applicant agreed with the information and signed the form.

**(3)** DA Form 2627 (Record of Proceedings under Article 15, UCMJ), dated 10 April 2006, reflects the applicant received nonjudicial punishment for, on or about 22 March 2006, wrongfully used marijuana. Their punishment consisted of reduction in rank/grade from specialist/E-4 to private first class/E-3, forfeiture of \$394.00, and extra duty and restriction for 14 days. The applicant elected not to appeal.

**(4)** A DA Form 3822 (Report of Mental Status Evaluation), dated 7 June 2006, reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets the retention requirements. The Remarks Section reflects a diagnosis of Axis I – substance abuse. The physician stated the evaluation revealed no evidence of any mental health condition that would explain the behavior that resulted in the initiation of this administrative action. The applicant is psychologically cleared for any administrative action deemed appropriate by command.

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(5) A memorandum, 411th Military Police Company, subject: Notification of Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, undated, 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, Commission of a Serious Offense, with a recommended characterization of service of general (under honorable conditions) for misconduct described in above paragraph 3c(2). The applicant acknowledged the notification.

(6) A memorandum, U.S. Army Trial Defense Service, Fort Hood, TX, subject: Notification of Separation und Army Regulation 653-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], undated, 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 their behalf are not in evidence for review.]

(7) A memorandum, 411th Military Police Company, subject: Notification of Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, undated, the applicant's company commander submitted a request to separate them prior to their expiration term of service to the separation authority.

(8) A memorandum, Headquarters, 89th Military Police Brigade, subject: Notification of Separation und Army Regulation 653-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 7 July 2006, the separation authority directed the approval of the request for administrative separation with a characterization of service being General (Under Honorable Conditions).

(9) The Enlisted Record Brief, dated 23 May 2006, reflects the applicant was advanced to the rank/grade of specialist/E-4 on 8 July 2004 and reduced to the rank/grade of private first class/E-3 on 13 March 2006.

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 28 July 2006, with 4 years and 21 days of net active service this period. They have not completed the first full term of service of their contractual obligation of 5 years.

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

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

(1) **Applicant provided:** None

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

**5. APPLICANT-PROVIDED EVIDENCE:** None submitted with application.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with 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 July 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 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, abuse of illegal drugs is serious misconduct; 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.

**(5)** 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 "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 15 October 2001, prescribed policies, and procedures to implement, administer, and evaluate the ASAP. 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, 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) When a unit commander, in consultation with the ASAP clinical staff, determines that rehabilitative measures are not practical and that separation action will be initiated, all Soldiers identified as illegally abusing drugs will be processed for administrative separation. Soldiers diagnosed as being drug dependent by a physician will be detoxified and then processed for administrative separation and be considered for disciplinary action under the UCMJ.

h. Manual for Courts-Martial, United States (2005 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 received nonjudicial punishment under the UCMJ on two occasions for assaulting an NCO, being disrespectful towards an NCO, and for wrongfully using marijuana, which led to their involuntary separation from the service. 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 4 years and 21 days of their 5-year service obligation and did not complete their first full term of service.

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? **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: PTSD (100%SC); TBI (10%SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection establishes that PTSD and TBI began or occurred during active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a BH condition, PTSD, which mitigates some of his misconduct. As there is an association between PTSD, self-medication with illicit drugs and oppositional behavior towards authority figures, there is a nexus between his diagnosis of PTSD, his wrongful use of THC and his disrespectfulness towards an NCO. PTSD does not mitigate the offense of assaulting an NCO as it does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the board determined that the applicant's TBI and the applicant's PTSD partially outweighed the applicant's medically mitigated offenses of wrongful use of THC and disrespectfulness towards an NCO. However, the applicant's PTSD does not outweigh the applicant's remaining unmitigated offense of assaulting an NCO. When considering the applicant's in service factors (length, quality and combat), the remaining misconduct does not rise to the level of a General discharge since the unit did not pursue this course following the incident in July 2005. Therefore, the current discharge inequitable.

**b. Response to Contention(s):**

(1) The applicant contends stating they tested positive in order to get out of the service. The Board considered this contention and determined a discharge upgrade is warranted based on the applicant's TBI and PTSD partially mitigating the applicant misconduct (wrongful use of THC and disrespectfulness towards an NCO). While the TBI and PTSD does not mitigate the offense of assaulting an NCO, as it does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, given the in service factors (length, quality, combat service), the assault does not rise to a level justifying a General discharge. The event occurred in July 2005 and the unit did not initiate separation until the THC use nine months later. Given that the THC use is mitigated it leads the Board to believe the unit did not see the assault as sufficient justification to pursue a General discharge initially. Thus, the prior characterization is no longer appropriate.

(2) The applicant contends stating as medical marijuana is legal in most of United States, they feel as if their character of service should be changed to Honorable. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the information outlined above in paragraph 9a (3-4) and 9b (1).

(3) The applicant contends stating this was their only mistake, and they shouldn't be punished for the rest of their life based on this one questionable mistake. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the information outlined above in paragraph 9a (3-4) and 9b (1).

**c.** The Board determined the characterization is inequitable based on the applicant in service factors (length, quality, combat), TBI, and PTSD partially mitigating the misconduct (wrongful use of THC and disrespectfulness towards an NCO). Therefore, the Board voted to grant partial 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) and no change to the reenlistment code. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

**d. Rationale for Decision:**

(1) The board voted not change the applicant's characterization of service Honorable because, the applicant's TBI and PTSD mitigate the offenses of wrongful use of THC and disrespectfulness towards an NCO. Thus, the prior characterization is no longer appropriate. The applicant's PTSD does not outweigh the applicant's remaining unmitigated offense of



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assaulting an NCO, however, given the service factors (length, quality, and combat) the misconduct does not rise to a level justifying a General discharge. Also, the assault occurred nine months prior to the separation and the unit chose not to initiate until the mitigated offense of THC use occurred.

(2) The Board voted not to change the applicant's 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 RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- e. Issue a New DD-214 / Separation Order: Yes
- f. Change Characterization to: Honorable
- g. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- h. Change RE Code to: No Change
- i. Change Authority to: AR 635-200, paragraph 14-12a

**Authenticating Official:**

10/8/2024

**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  
UOTH – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs