

1. Applicant's Name:

- a. **Application Date:** 15 April 2021
- b. **Date Received:** 15 April 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 honorable conditions. The applicant requests an upgrade to a medical release based on bodily injury and depression.

(2) The applicant seeks relief stating their depression was undiagnosed and in effect, untreated after losing both remaining grandparents along with the enormous stress of the job.

b. Board Type and Decision: In a records review conducted on 9 October 2024, and by a 4-1 vote, the Board denied the request upon finding the separation was both proper and equitable.

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

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: 22 April 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 10 March 2020

(2) **Basis for Separation:** between on or about 14 April 2019 and 14 May 2019, wrongfully used Marijuana.

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

(4) **Legal Consultation Date:** 11 March 2020

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

(6) **Separation Decision Date / Characterization:** 25 March 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 January 2017 / 5 years

b. Age at Enlistment / Education / GT Score: 27 / HS Graduate / 99

c. Highest Grade Achieved / MOS / Total Service: E-5 / 13B1O, Cannon Crewmember / 5 years, 6 months, 16 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: AAM-3, AGCM, GWTSM, KDSM, NCOPDR, ASR / The applicant's AMHRR reflects award of the NDSM, however, the award is not reflected on the DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A 1st Armored Brigade Combat Team Orders 057-031 dated 26 February 2019, reflects the Secretary of the Army has reposed special trust and confidence in the patriotism, valor, fidelity, and professional excellence of the applicant. In view of these qualities and the applicant's demonstrated leadership potential and dedicated service to the U.S. Army, they are, therefore, promoted from the rank/grade of corporal/E-4 to sergeant/E-5, effective 1 March 2019.

(2) A DA Form 4856 (Developmental Counseling Form) dated 3 June 2019, reflects the applicant received event oriented counseling for testing positive for tetrahydrocannabinol (THC) on a urinalysis on 14 May 2020. The applicant agreed with the information and signed the form.

(3) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 19 July 2019, reflects the applicant received nonjudicial punishment for, between on or about 14 April 2019 and on or about 14 May 2019, wrongfully used marijuana, a Schedule I controlled substance, in violation of Article 112a (Wrongful Use, Possession, Etc., of Controlled Substances), UCMJ. Their punishment consisted of a reduction in rank/grade of sergeant/E-5 to specialist/E-4, forfeiture of \$638.00 pay, extra duty for 45 days, and an oral reprimand. The applicant elected not to appeal.

(4) A DD Form 2807-1 (Report of Medical History) dated 2 October 2019 reflects that applicant marked "Yes" to the following, indicating they "Have You Had or Do You Now Have:" shortness of breath; a chronic cough or cough at night; painful shoulder, elbow or wrist; recurrent back pain or any back problems; swollen or painful joints; knee trouble; rectal disease, hemorrhoids or blood from the rectum; tumor, growth, cyst, or cancer; high or low blood pressure; nervous trouble of any sort; frequent trouble sleeping; received counseling of any type; depression or excessive worry; and used illegal drugs or abused prescription drugs. The applicant also marked "Yes" to "Currently in good health." Item 30 (Examiner's Summary and Elaboration of all Pertinent Data) reflects the examining physician comments; the applicant with history of prior heat exhaustion, previously evaluated and treated, currently stable and denies any issues; the applicant is currently stable and vision of 20/20; their shoulder, elbow or wrist has no recent changes, previously evaluation/treatment, currently stable and denies any recent changes; the applicant's blood pressure of 129/85; and the remaining conditions, the examiner states there is no records noted in Armed Forces Health Longitudinal Technology Application (AHLTA) and denies any symptoms.

(5) A DD Form 2808 (Report of Medical Examination) dated 2 October 2019 reflects the examining physician marked "Normal" for all condition examined and indicated the applicant is

qualified for service. Items 74b (Physical Profile), 77 (Summary of Defects and Diagnoses), and 78 (Recommendations) reflects no entries.

(6) A DA Form 3822 (Report of Mental Status Evaluation) dated 30 October 2019 reflects the applicant has no duty limitations due to behavioral health reasons and currently meets behavioral health medical retention standards.

- Section III (Pertinent Findings on Mental Status Evaluation) reflects the applicant was screened for depression and the behavioral health provider states the applicant's behavioral health condition does not constitute matters in extenuation of the misconduct for separation
- Section IV (Diagnoses) – reflects a Behavioral Health Diagnosis of "Adjustment Disorder"
- Section V (Follow-Up Recommendations) – reflects "No Follow-Up Needed."

(7) A memorandum, Charlie Company, 1st Battalion, 41st Field Artillery Regiment, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 10 March 2020, the applicant's company commander notified them of their intent to separate them for Misconduct-Abuse of Illegal Drugs, for between on or about 14 April 2019 and 14 May 2019, wrongfully used marijuana. The company recommended the applicant receive a General (Under Honorable Conditions) characterization of service. On that same day, the applicant acknowledged receipt of the foregoing notice and of the rights available to them.

(8) On 11 March 2020, the applicant completed their Election of Rights acknowledging that they have been advised by their consulting counsel of the basis for the contemplated action to separate them, and its effects; of the rights available to them; and the effect of any action taken by them in waiving their rights. They elected not to submit statements in their behalf and waived consulting counsel. They understood they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them and they may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(9) A memorandum, Charlie Company, 1st Battalion, 41st Field Artillery Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 12 March 2020, the applicant's company commander recommended they be separated from the Army prior to the expiration of their current term of service. The company commander described the applicant's rehabilitation attempts as they were enrolled into the Army Substance Abuse Program. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as disposition by any other means is not in the best interest of the Soldier, the unit, or the United States Armed Forces. The applicant received two Field Grade Article 15, for violations of Article 112a, UCMJ.

(10) A memorandum, Headquarters, 1st Armored Brigade Combat Team, 3rd Infantry Division, subject: Separation Under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 25 March 2020, the separation authority, having reviewed the applicant's separation packet, directed that the applicant be separated from the Army prior to the expiration of their current term of service. The separation authority directed the applicant's service be characterized as General (Under Honorable Conditions). The separation authority states after reviewing the rehabilitative transfer requirements they determined the requirements do not apply to this action.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210008966**

(11) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 22 April 2020, with 5 years, 6 months, and 16 days of net active service this period. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Specialist
- item 4b (Pay Grade) – E-4
- item 12i (Effective Date of Pay Grade) – 25 July 2019
- item 18 (Remarks) – in part,
 - Continuous Honorable Active Service – 20141007 - 20170123
 - MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) –General (Under Honorable Conditions)
- item 26 (Separation Code) – JKK
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(7) Applicant provided: On 15 November 2021 the Army Review Boards Agency requested the applicant provide their medical documents to support their mental health issues (bodily injury and depression), as of this date there has been no response.

(8) AMHRR Listed: Report of Mental Status Evaluation as described in previous paragraph 4h(6).

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

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 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) effective 19 December 2016 prescribed policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribed the policies, procedures, and the general provisions governing the separation of Soldiers before expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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.

(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)) 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. 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. 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.

h. Manual for Courts-Martial, United States (2019 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).

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 wrongfully use of marijuana and was involuntary separation from the Army. Their DD Form 214 provides they were discharged with a character of service of general (under honorable conditions) for misconduct (drug abuse). They completed 5 years, 6 months, and 16 days of net active service this period and did completed their first full term of service; however, they did not complete their 5 year reenlistment contractual obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense; to include abuse of illegal drugs; 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 does not reflect documentation of a diagnosis of depression, or other any physical condition that failed retention standards, nor did the applicant provide evidence of a diagnosis of depression or any such physical condition during 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 diagnoses/experiences: Applicant self-asserts depression; AHLTA indicates diagnosis of Adjustment DO, unspecified.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found applicant self-asserts depression while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the applicant was diagnosed with Adjustment DO, this condition arose as a result of the consequences of his misconduct. It did not contribute to his misconduct. However, applicant's self-assertion of depression merits consideration by the board.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's conditions outweighed the medically unmitigated list offenses.

b. Prior Decisions Cited: N/A

c. Response to Contentions: The applicant contends their depression was undiagnosed and in effect, untreated after losing both remaining grandparents along with the enormous stress of the job.

The Board acknowledged this contention during proceedings.

d. The Board determined that the discharge is, at this time, proper and equitable, in light of current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's BH diagnoses did not excuse or mitigate the offenses of Wrongfully used marijuana (two-time positive UA). The applicant was diagnosed with Adjustment DO; however, the condition arose as a result of the consequences of his misconduct. The Board's Medical Advisor opined, the applicant's self-assertion of depression merits consideration by the Board. One Board member considered the applicant's assertion of depression and cited the applicant's length and quality of service. However, the majority of the Board voted not to upgrade the discharge. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210008966

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, as the reason the applicant was discharged was both proper and equitable.

(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: No
- b. Change Characterization to: No change
- c. Change Reason / SPD code to: No change
- d. Change RE Code to: No change
- e. Change Authority to: No change

Authenticating Official:

10/16/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

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