

1. Applicant's Name:

- a. **Application Date:** 12 April 2021
- b. **Date Received:** 19 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, while in Afghanistan, the applicant became very depressed and it worsened when the applicant returned from deployment. At the same time, the applicant was struggling with the applicant's sexuality while being in the Army and was in fear of being ridiculed and discriminated. The applicant tried to seek out help by going to the platoon sergeant, but the platoon sergeant took it as a joke and told the applicant that the applicant would get over it. This put the applicant in a very depressive state of mind and the applicant's only solace was smoking marijuana resulting in the applicant's misconduct and ultimately getting discharged. Since the applicant was discharged from the Army, the applicant has sought out help with a psychotherapist and has been diagnosed with PTSD. Throughout the years after the applicant's discharge and until today, the applicant has continued with the applicant's psychotherapy to help the applicant with the applicant's PTSD and the struggles the applicant faced while serving in the Army due to the applicant's sexuality. The applicant has not used marijuana since being discharged. The applicant would like to get a Bachelors in Business Administration to further the applicant's career but due to the applicant's discharge, it is difficult to enroll in a university that is affordable.

c. **Board Type and Decision:** In a records review conducted on 4 September 2024, and by a 5-0 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) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 27 March 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 28 November 2011

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

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

(4) **Legal Consultation Date:** 28 November 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 27 January 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 20 November 2008 / 4 years

b. Age at Enlistment / Education / GT Score: 20 / Some College / 92

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92G Culinary Specialist / 3 years, 4 months, 8 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (16 February 2009 - 17 February 2010)

f. Awards and Decorations: AAM, NDSM, ACM-2CS, OSR, NATOMDL

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Electronic Copy of DD Form 2624, 4 October 2011, shows the applicant tested positive for THC 38 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 21 September 2011.

(2) Report of Medical History, 14 October 2011, the examining medical physician noted the applicant's medical conditions in the comments section: medical records do not substantiate the applicant was seen by behavior medicine, no referrals required, and no additional history provided.

(3) On 17 October 2011, the applicant was flagged for adverse action (AA), effective 17 October 2011.

(4) FG Article 15, 24 October 2011, for wrongfully using marijuana between on or about 21 August 2011 and 21 September 2011. The punishment consisted of a reduction from E-4 to E-1; forfeiture of \$733.00 pay per month for 2 months, \$333.00 pay per month for 2 months, (suspended); extra duty for 45 days; and restriction for 45 days (suspended).

(5) On 15 November 2011, the company commander requested to expedite a chapter for the applicant because the applicant was a high risk soldier who could pose a harm to themselves and others.

(6) Report of Result of Trial shows the applicant was tried in a Summary Court-Martial on 9 January 2012. The applicant was charged with three violations. The summary of offenses, pleas, and sentence:

(a) Violation of Article 92 - On or about 10 November 2011, the applicant wrongfully placed a pill-like substance into the applicant's urine specimen cup; plead not guilty.

(b) Violation of Article 107 - On or about 7 December 2011, the applicant with the intent to deceive, made to Sergeant C__ M__, an official statement to wit: the applicant had an Army Substance Abuse Program appointment at 1400, which statement was totally false and then known by the applicant to be false; plead not guilty.

(c) Violation of Article 112a - Between on or about 11 October 2011 and 10 November 2011, wrongfully used marijuana; plead not guilty.

(d) Sentence - Confinement for 22 days, with the recommendation of deferment for 4 days; and Forfeiture of \$795 pay.

(7) Record of Trial by Summary Court-Martial, 9 January 2012, shows the applicant was charged with three violations. The summary of offenses, pleas, findings, and sentence:

(a) Violation of Article 92 - On or about 10 November 2011, the applicant wrongfully placed a pill-like substance into the applicant's urine specimen cup; guilty, inconsistent with the plea.

(b) Violation of Article 107 - On or about 7 December 2011, the applicant with the intent to deceive, made to Sergeant C__ M__, an official statement to wit: the applicant had an Army Substance Abuse Program appointment at 1400, which statement was totally false and then known by the applicant to be false; guilty, inconsistent with the plea.

(c) Violation of Article 112a - Between on or about 11 October 2011 and 10 November 2011, wrongfully used marijuana; not guilty consistent with the plea.

(d) The sentence adjudged: Confinement for 22 days, with the recommendation of deferment for 4 days; and Forfeiture of \$795 pay.

(8) Confinement order, 9 January 2012, same as paragraph 4h(6)(d) above.

(9) On an unknown date, the applicant waived their rights to submit matters on their own behalf.

i. **Lost Time / Mode of Return:** Confinement for 22 days, NIF. This period is not annotated on the DD Form 214 block 29.

j. Behavioral Health Condition(s):

(1) **Applicant provided:** VA Rating Decision, 30 April 2021, shows the applicant was rated 70 percent disabled for PTSD with alcohol and cannabis disorders.

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 18 November 2011, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI, results not specified. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with cannabis use and referred to the Army Substance Abuse Program.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Self-Authored Statement; driver's license; and Emergency Medical Technician (EMT) Basic Certificate.

6. POST SERVICE ACCOMPLISHMENTS: The applicant worked as a construction worker. In the year 2013, the applicant became a certified EMT. In 2017, the applicant went to school and studied to become a professional colorist and hair stylist and graduated at the top of the class. Soon after the applicant's graduation, the applicant began working in Manhattan, NY for a well renowned hair styling company called Hair Bar NYC.

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), 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 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(2) 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.

(3) 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.

(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.

(5) Paragraph 14-3 prescribes 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.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing 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 under paragraph 14-12a or 14-12b as appropriate.

(7) 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 635-5-1 (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, 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 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 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.

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. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant served 3 years, 4 months, and 8 days. The applicant tested positive for marijuana and received an Report of Proceedings under Article 15, Uniformed Code of Military Justice with reduction in rank/grade from specialist/E-4 to private/E-1. The applicant was confined for 22 days. The applicant's DD Form 214 also shows the applicant was discharged 27 March 2012 under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, while in Afghanistan, the applicant became very depressed and it worsened when the applicant returned from deployment. At the same time, the applicant was struggling with the applicant's sexuality while being in the Army and was in fear of

being ridiculed and discriminated. The applicant tried to seek out help by going to the platoon sergeant, but the platoon sergeant took it as a joke and told the applicant that the applicant would get over it. This put the applicant in a very depressive state of mind and the applicant's only solace was smoking marijuana resulting in the applicant's misconduct and ultimately getting discharged. Since the applicant was discharged from the Army, the applicant has sought out help with a psychotherapist and has been diagnosed with PTSD.

(1) VA Rating Decision, 30 April 2021, shows the applicant was rated 70 percent disabled for PTSD with alcohol and cannabis disorders.

(2) The AMHRR shows the applicant underwent a mental status evaluation on 18 November 2011, which indicates the applicant could understand and participate in administrative proceedings and was able to recognize right from wrong. The applicant was diagnosed with cannabis use and referred to the Army Substance Abuse Program.

d. The applicant contends an upgrade would allow the applicant to get educational benefits towards a Bachelors in Business Administration. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

e. The applicant contends to have worked as a construction worker, is a certified EMT, and is a freelance professional colorist and hair stylist. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

f. 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 (70%SC).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection establishes diagnosis of PTSD began during service.

(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 and self-medication with illicit drugs, there is a nexus between his diagnosis of PTSD and his wrongful use of marijuana. The diagnosis of PTSD does not, however, mitigate placing a pill in the urine collection cup or making a false official statement 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.** Based on liberally considering all the evidence before the Board, the ADRB determined that PTSD did not outweigh the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends, in effect, while in Afghanistan, the applicant became very depressed and it worsened when the applicant returned from deployment. At the same time, the applicant was struggling with the applicant's sexuality while being in the Army and was in fear of being ridiculed and discriminated. The applicant tried to seek out help by going to the platoon sergeant, but the platoon sergeant took it as a joke and told the applicant that the applicant would get over it. This put the applicant in a very depressive state of mind and the applicant's only solace was smoking marijuana resulting in the applicant's misconduct and ultimately getting discharged. Since the applicant was discharged from the Army, the applicant has sought out help with a psychotherapist and has been diagnosed with PTSD.

The Board considered this contention and determined that PTSD mitigates some of his misconduct. As there is an association between PTSD and self-medication with illicit drugs, there is a nexus between his diagnosis of PTSD and his wrongful use of marijuana. The diagnosis of PTSD does not, however, mitigate placing a pill in the urine collection cup or making a false official statement as it does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(2) The applicant contends an upgrade would allow the applicant to get educational benefits towards a Bachelors in Business Administration.

The Board determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

d. The Board determined that the discharge is, at this time, proper and equitable, in light of the 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 based on the following reasons. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found insufficient evidence of in-service mitigating factors and the applicant's diagnosis of PTSD does not mitigate placing a pill in the urine collection cup or making a false official statement. The Board considered the severity of the combined misconduct in the applicant's file and based on a preponderance of evidence, the Board determined the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable.

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(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:

9/18/2024

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