

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

- a. **Application Date:** 10 September 2020
- b. **Date Received:** 15 September 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, a narrative reason change, a separation code change, and a reentry code change.

The applicant states, in effect they have served their country loyally.

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

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

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200 14-12c / JKQ / RE-3 / Under Honorable Conditions (General)

**b. Date of Discharge:** 11 October 2013

**c. Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** The applicant used marijuana between 18 June 2013 – 17 July 2013
- (3) **Recommended Characterization:** General, Under Honorable Conditions.
- (4) **Legal Consultation Date:** The applicant waived consulting with counsel 12 September 2013.
- (5) **Administrative Separation Board:** N/A
- (6) **Separation Decision Date / Characterization:** 25 September 2013 / General, Under Honorable Conditions.

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 26 July 2013 / 3 years
- b. **Age at Enlistment / Education / GT Score:** 19 / NIF / 106
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 (Specialist) / 25U1P Signal Support Systems Specialist / 4 years, 11 months, 14 days.
- d. **Prior Service / Characterizations:** 28 October 2008 – 25 July 2013 / HD
- e. **Overseas Service / Combat Service:** None / Afghanistan (15 December 2009 – 14 November 2010)
- f. **Awards and Decorations:** ACM-CS-2, AAM-2, AGCM, NDSM, GWTSM, ASR, NATOMEDAL
- g. **Performance Ratings:** N/A
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) An Enlistment/Reenlistment Document signed 26 July 2013 provides the applicant reenlisted for three years at the rank of Specialist (E-4); 1st reenlistment.

(2) On an unknown date the applicant's immediate commander notified them of their intent to separate them under the provisions of AR 635-200, Chapter 14-12c (Commission of a serious offense) for wrongfully using marijuana between 18 June 2013 – 17 July 2013. The commander recommended retainment. The applicant acknowledged the commander's notification and basis for separation, and their available rights. The applicant completed their election of rights and waived consulting with counsel on 12 September 2013 and elected to submit statements on their behalf.

(3) On an unknown date the applicant's immediate commander notified the Commander, Headquarters 2nd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, North Carolina of their recommendation to separate the applicant from the U.S Army prior to the expiration of current term of service. The initiating commander stated, "retaining the soldier would have an adverse impact on military discipline, good order and morale".

(4) On an unknown date the chain of command endorsed the commander's recommendation and recommended a general, under honorable conditions discharge. On 25 September 2013 the appropriate authority approved the separation and directed a characterization of service of general, under honorable conditions.

(5) A DD Form 214 shows on 11 October 2013 the applicant was discharged accordingly, they completed total active service of 4 years and 11 months and 14 days.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293 (Discharge Review) application, DD Form 214, a copy of their bachelor's degree in accounting and two copies of their complete Official Military Personnel file (OMPF) in support of their application.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant obtained their bachelor's degree in accounting 1 January 2020.

**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) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards

(5) 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.

e. 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.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

g. 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

h. 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.

**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 DD-214 shows the applicant received a general (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge which is normally appropriate for a soldier discharged for misconduct (serious offense).

b. Based on the available evidence the applicant enlisted in the army at the age of 19, during their enlistment they deployed to Afghanistan, received the Army Achievement Medal, the Army Good Conduct Medal and advanced to the rank of specialist. They reenlisted for three additional years on 26 July 2013 and at some point, they received a NJP, 20 days after reenlisting they were demoted to E-2. They were processed for administrative separation due smoking marijuana between 18 June 2013 – 17 July 2013.

c. A Review of the record provides administrative error occurred specifically the applicant received their Intent to separate them from their initiating commander with recommendation that they would be retained. A Commander's Report provides the initiating commander recommended separation from the Army prior to expiration of current term of service to the applicant's command team. The applicant waived consulting with counsel and the appropriate authority approved the separation. Evidence provides the applicant received the required medical and mental health separation examinations however the AMHRR is void of those examinations. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 11 October 2013; 76 days after they reenlisted.

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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found

the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

**(2)** Did the condition exist, or experience occur during military service? **N/A**

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **N/A**

**(4)** Does the condition or experience outweigh the discharge? **N/A**

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

**(1)** The applicant contends they served their country loyally. The Board determined that this contention was valid and voted to upgrade the characterization of service due to length and quality of service, to include combat service, post service accomplishments, and the prior period of honorable service mitigating the applicant's wrongful use of marijuana misconduct.

**c.** The Board determined based on the applicant's length and quality of service, to include combat service, post service accomplishments, and the prior period of honorable service, the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the characterization of service was inequitable and changed it to Honorable.

**d.** Rationale for Decision:

**(1)** The Board voted to change the applicant's characterization of service to Honorable because the applicant's length and quality of service, to include combat service, post service accomplishments, and the prior period of honorable service mitigated the applicant's misconduct of wrongful use of marijuana. Thus, the prior characterization is no longer appropriate.

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

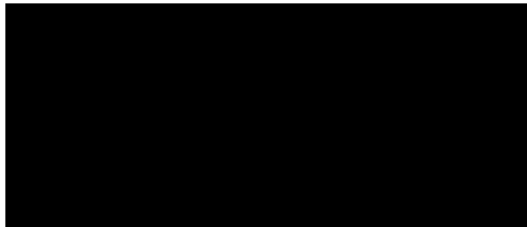
**(3)** The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

**Authenticating Official:**

2/2/2024



AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs