

1. Applicant's Name: [REDACTED]**a. Application Date:** 9 June 2021**b. Date Received:** 9 June 2021**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 General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

b. The applicant seeks relief contending, they were targeted for drug urinalysis as they were beginning to seek help for their substance abuse problem. The applicant provides they self-enrolled in SUDCC prior to the command-directed referral for SUDCC, however, previous issues with the platoon SGT caused them to switch their documents. They attempted to provide documents to the commander but due to past incidents with the applicant's spouse, the commander did not want to assist them. They were marked as AWOL, although they were attending an appointment, to clear them to get out [of the Army] faster. They spoke with the battalion commander, legal, and IG prior to exiting, about this wrongful conviction and provided documents.

c. Board Type and Decision: In a records review conducted on 4 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Chronic Adjustment Disorder). Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and 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 RE Code was proper and equitable and voted not to change it.

*Please see Section 9 of this document for more detail regarding the Board's decision.
(Board member names available upon request)*

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 6 April 2020**c. Separation Facts:****(1) Date of Notification of Intent to Separate:** NIF**(2) Basis for Separation:** NIF**(3) Recommended Characterization:** NIF**(4) Legal Consultation Date:** NIF

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 27 March 2018 / 2 years, 21 weeks

b. Age at Enlistment / Education / GT Score: 17 / Some College / 95

c. Highest Grade Achieved / MOS / Total Service: E-3 (PFC) / 89B10 Ammunition Specialist / 1 year, 11 months, 16 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 27 March 2018, with parental consent, at the age of 17, the applicant enlisted in the Regular Army (RA) for 2 years and 21 weeks as a private, PVT (E-1). The Enlisted Record Brief provides on 27 September 2018, they promoted to private second class, PV2 (E-2); and on 1 December 2018, to private first class, PFC (E-3). On 31 January 2020, although not in the record, the applicant received nonjudicial punishment (NJP) and was subsequently, reduced to PVT.

(2) Notwithstanding the missing records, on 25 March 2020, their separation orders were issued and later amended. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 6 April 2020, with the following:

- Authority: AR 635-200, Chapter 14-12c (2)
- Narrative Reason: Misconduct (Drug Abuse)
- SPD Code: JKK
- Reentry Code: RE-4
- Service Characterization: General (Under Honorable Conditions)
- Total NET Active Service Period: 1 year, 11 months, 16 days
- Remarks: Delayed Entry Program: 12 days (15 – 16 March 2018); member has not completed their first full term of service.
- Lost Time: Under 10 USC 972: 13 March – 6 April 2020
- Signature: Not available to sign.

i. Lost Time / Mode of Return: AWOL, 13 March – 6 April 2020, NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant stated they self-enrolled in SUDCC; however, received a positive urinalysis afterwards and was subject to a command-directed referral. There are no medical records in the record or provided by the applicant supporting their substance use disorder treatment.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: ACTS Online Application

6. POST SERVICE ACCOMPLISHMENTS: None provided with this application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases

in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 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) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. A Soldier 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. 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 14-12c (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 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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. 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) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

h. Army Regulation 631-10 (Absence, Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings) provides policies and procedures for reporting unauthorized absentees and deserters, the administering of absent without leave (AWOL) personnel and deserters, returning absentees and deserters to military control and the surrendering of military personnel to civilian law enforcement authorities. When a soldier returns from an absence that is or appears to be unauthorized, the unit commander informally investigates whether disciplinary action should be taken and if the soldier be charge with time lost.

(1) Classification of an absence is dependent upon such factors as the following:

- Order and instructions, written/oral, the Soldier received before/during absence
- Age, military experience, and general intelligence of the Soldier
- Number and type of contact the Soldier had with the military absent
- Complete or incomplete results of a court-martial decision if any

(2) An absence immediately following authorized leave is classified as AWOL. Should the absence subsequently be reclassified, the soldiers leave is corrected to reflect the reclassified absence, except if the absence is caused by the following:

- Mental incapacity
- Detention by civilian authorities
- Early departure of a mobile unit due to operational commitments

i. Manual for Courts-Martial (2019 Edition), United States, states 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 orders and discipline in the Armed Forces.

(1) Article 86 (absent without leave) states in the subparagraph, the maximum punishment consists of a dishonorable discharge, forfeiture of two-thirds pay for six months, and confinement for six months.

(2) Article 112a (wrongful use of a schedule I, II, or III controlled substance) states in the subparagraph, the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement for five years.

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. A review of the records provides there was an administrative irregularity in the proper retention of official military records, specifically the referral to ASAP [a two-part mandatory clinical assessment, required within 4 days of the first positive urinalysis], the separation package, and their medical/mental separation examinations. Based on this, the specific facts and circumstances surrounding their separation, are unknown.

(1) The available evidence provides the applicant enlisted in the RA with parental consent at age 17, promoted to PFC, and served for 1 year, 11 months, and 16 days of their 2 year-21 week contractual obligation. Although not in the record, they received NJP, for a

positive drug test (in violation of Article 112a, UCMJ (wrongful use of schedule I, II, or III substance)) and consequently, was reduced to PVT in January 2020. Moreover, the applicant was AWOL from 13 March – 6 April 2020. Notwithstanding the missing separation package, the applicant was separated under the provisions of AR 635-200, Chapter 14c (2), Misconduct (Drug Abuse), with a General (Under Honorable Conditions) characterization of service. The separation documents were requested from the applicant; however, nothing additional was provided.

(2) The applicant contends, they were targeted for drug urinalysis as they were beginning to seek help for their substance abuse problem. They self-enrolled in SUDCC prior to the command-directed referral for SUDCC, however, previous issues with the platoon SGT caused them to switch their documents. The applicant further attempted to provide documents to the commander but due to past incidents with the applicant's spouse, the commander did not want to assist them. They were marked as AWOL, although they were attending an appointment, to clear them to get out [of the Army] faster. Lastly, the applicant spoke with the battalion commander, legal, and IG prior to exiting, about this wrongful conviction and provided documents.

b. 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.

c. 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: Chronic Adjustment Disorder (CAD-70% Service Connected). Note: The diagnoses of Adjustment Disorder (DO), Bereavement and Adjustment DO with mixed anxiety and depressive symptoms is subsumed under the diagnosis of CAD.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The applicant's diagnosis of CAD would be mitigating. As there is an association between CAD and self medication with illicit substances, there is a nexus between the diagnosis of CAD and the wrongful use of marijuana. Note-diagnosis of Adjustment DO, Bereavement and Adjustment

DO with mixed anxiety and depressed mood is subsumed under diagnosis of Chronic Adjustment DO.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition did outweigh the basis of separation.

b. Response to Contention(s): The applicant contends, they were targeted for drug urinalysis as they were beginning to seek help for their substance abuse problem. The applicant provides they self-enrolled in SUDCC prior to the command-directed referral for SUDCC, however, previous issues with the platoon SGT caused them to switch their documents. They attempted to provide documents to the commander but due to past incidents with the applicant's spouse, the commander did not want to assist them. They were marked as AWOL, although they were attending an appointment, to clear them to get out [of the Army] faster. They spoke with the battalion commander, legal, and IG prior to exiting, about this wrongful conviction and provided documents. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Chronic Adjustment Disorder fully outweighing the applicant's basis for separation (wrongful use of marijuana).

c. The Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Chronic Adjustment Disorder). Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and 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 RE Code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Chronic Adjustment Disorder 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 rationale, 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.

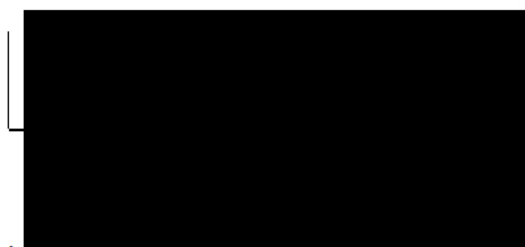
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210010548

10. BOARD ACTION DIRECTED:

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

Authenticating Official:



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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