

1. Applicant's Name:

- a. **Application Date:** 7 April 2021
- b. **Date Received:** 7 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 (under honorable conditions). The applicant requests an upgrade to honorable and a change in the reentry code.

(2) The applicant seeks relief stating they understand the conduct they exhibited was not correct, and they are confident to show improvements of their integrity and honest characteristics. If they can get an upgrade they will have a better opportunity to do more with their citizenship. They are determined to enlist and make a positive impact.

b. Board Type and Decision: In a records review conducted on 26 July 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.

(Board member names available upon request)

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: 23 December 2019

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 28 October 2019

(2) **Basis for Separation:** wrongfully used marijuana, a Schedule I controlled substance between on or about 23 December 2018 and on or about 22 January 2019.

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

(4) **Legal Consultation Date:** 30 October 2019

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

(6) **Separation Decision Date / Characterization:** 11 December 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 13 June 2017 / 4 years, 22 weeks
- b. **Age at Enlistment / Education / GT Score:** 18/ HS Graduate / 105
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 92F1O, Petroleum Supply Specialist / 2 years, 6 months, 11 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Two DA Forms 4856 (Developmental Counseling Form) dated 11 March 2019 reflects the applicant received event-oriented counseling to notify them of the suspension of favorable personnel actions (Flag) for Drug Abuse Adverse Action and Involuntary Separation. The Key Points of Discussion reflects on 8 March 2019, the command was notified that the applicant had a positive urinalysis for marijuana, as a result, they will be flagged for Involuntary Separation. The applicant agreed with the information and signed the form.

(2) A DA Form 3822 (Report of Mental Status Evaluation) dated 3 April 2019, reflects the applicant has no duty limitations due to behavioral health reasons and currently meets behavioral health medical retentions standards.

- Section IV (Diagnoses) – reflects a Behavioral Health Diagnosis of Adjustment Disorder with Depression
- Section V (Follow-Up Recommendations) – reflects a recommendation to follow-up as already scheduled with Substance Use Disorder Clinical Care
- Section VI (Recommendations and Comments for Commander) – reflects the behavioral health provided commented the applicant meets medical retention requirements, does not qualify for a Medical Evaluation Board, and is cleared for administrative separation process

(3) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 5 April 2019 reflects the applicant received nonjudicial punishment for, between 23 December 2018 and on or about 22 January 2019, wrongfully used marijuana, a Schedule I controlled substance, in violation of Article 112a, UCMJ. Their punishment consisted of a reduction in rank/grade from private first class/E-3 to private/E-1, forfeiture of \$840.00 pay for 2 months, and extra duty for 45 days. The applicant elected not to appeal.

(4) DA Form 4856 dated 16 October 2019 reflects the applicant received event oriented counseling to notify them of a Flag for Adverse Action and recommendation for UCMJ. The Key Points of Discussion reflects the applicant is being flagged for Adverse Action and recommended for UCMJ due to being under the influence of alcohol while on duty and drinking under the age of 21. The applicant agreed with the information and signed the form.

(5) A memorandum, Headquarters and Headquarters Company, 63rd Expeditionary Signal Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2),

Misconduct-Abuse of Illegal Drugs, [Applicant], dated 28 October 2019, the applicant's company commander notified them of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, for misconduct (serious offense), wrongfully used marijuana, a Schedule I controlled substance between on or about 23 December 2018 and on or about 22 January 2019. The company recommended the applicant receive a General (Under Honorable Conditions) characterization of service. On the same day, the applicant acknowledged the basis for the separation and of the right available to them.

(6) In the applicant's memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 30 October 2019, the applicant acknowledged that they have been advised by their consulting counsel of the basis for the contemplated action to separate them for a Misconduct-Abuse of Illegal Drugs under Army Regulation 635-200, Paragraph 14-12c, and its effects; of the rights available to them; and the effect of any action taken by them in waiving their rights.

(a) They elected not to submit statements in their behalf and requested consulting counsel.

(b) 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.

(7) A memorandum, Headquarters and Headquarters Company, 63rd Expeditionary Signal Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 13 November 2019, the applicant's company commander submitted a request to separate them prior to their expiration current term of service. The company commander states dispositions by any other means is not in the best interest of the Soldier and the U.S. Army.

(8) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 27 November 2019 reflects the applicant received nonjudicial punishment for on or about 15 October 2019, possessed an alcoholic beverage at a time when they were under the age of 21 years, in violation of Article 134 (Drunkness), UCMJ. The applicant elected not to appeal.

(9) A memorandum, Headquarters, 3rd Infantry Division Artillery, subject: Separation Under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 11 December 2019, the separation authority, having reviewed the applicant's separation packet, directed that the applicant be separated from the Army prior to the expiration of 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 are waived, as the transfer will serve no useful purpose or produce a quality Soldier.

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 28 October 2018, with 4 years, 9 months, and 16 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 12 April 2019
- item 18 (Remarks) – MEMBER HAS NOT 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: None

(8) AMHRR Listed: Report of Mental Status Evaluation as described in previous paragraph 4h(2).

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Certificate of Naturalization
- DD Form 214

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.

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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

g. 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 the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides the applicant received nonjudicial punishment for wrongfully used marijuana in violation of Article 112a, UCMJ, and was involuntary separation from the Army. The DD Form 214 provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct (drug abuse). The applicant completed 2 years, 6 months, and 11 days of net active service this period and did not complete their first full term of service.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense; 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. 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 no mitigating Behavioral Health diagnoses on the applicant. The applicant provided no documents or testimony of a 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**

c. Response to Contention(s):

(1) The applicant contends they understand the conduct they made wasn't correct and they are confident to determine to show improvements of their integrity and honest characteristics. The Board considered this contention and determined that a change to the applicant's characterization of service/RE code is not warranted due to the applicant's three separate incidents of misconduct which included two-time drug use (marijuana) and possessing an alcoholic beverage under the age of 21.

(2) The applicant contends if they can get an upgrade they will have a better opportunity to do more with their citizenship. They are determined to enlist and make a positive impact. The Board considered this contention and determined that a change to the applicant's characterization of service/RE code is not warranted due to the applicant's three separate

incidents of misconduct which included two-time drug use (marijuana) and possessing an alcoholic beverage under the age of 21.

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 because, despite applying liberal consideration of all the evidence before the Board, the applicant was not found to hold an in-service behavioral health condition that would mitigate or excuse the discharge. The Board considered the applicant's contention regarding the applicant's determination to enlist and make a positive impact and found that the totality of the applicant's record does not warrant a discharge upgrade. 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. Therefore, the applicant's General, Under Honorable Conditions discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to an Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same reasons, 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210010843

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:

8/8/2024

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