

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

- a. **Application Date:** 5 November 2020
- b. **Date Received:** 4 January 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 a change to their reentry code.

b. The applicant seeks relief contending, they made a horrible decision when they were in and have regretted it ever since. They enjoyed being involved in something bigger than them and would like to be given another chance to do it the correct way, to have a career that they enjoy.

c. **Board Type and Decision:** In a records review conducted on 14 June 2024, the board carefully considered the applicant's request, supporting documents, evidentiary record, and published Department of Defense guidance for liberal consideration of discharge upgrade. Based on the preponderance of the evidence, the board voted 3-2 that the current narrative reason code is inequitable. Therefore, the board voted to grant relief and change the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The board determined that the uncharacterized discharge and reentry code are proper and equitable per Regulation.

**3. DISCHARGE DETAILS:**

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

b. **Date of Discharge:** 28 May 2020

**c. Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** 1 April 2020
- (2) **Basis for Separation:** Wrongful use of marijuana
- (3) **Recommended Characterization:** General (Under Honorable Conditions)
- (4) **Legal Consultation Date:** On 28 April 2020, they waived their right to defense counsel.
- (5) **Administrative Separation Board:** NA
- (6) **Separation Decision Date / Characterization:** 11 May 2020 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 30 April 2019 / 3 years and 21 days
- b. **Age at Enlistment / Education / GT Score:** 21 / High School Diploma / 89
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 92G10 Culinary Specialist / 1 year, 29 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 14 January 2019, the applicant enlisted in the Regular Army for 3 years and 21 days as a PVT. The Enlisted Record Brief provides the applicant promoted to PV2 on 30 October 2019. On 13 March 2020, they were flagged, Suspend Favorable Personnel Actions (FLAG), for field-initiated involuntary separation (BA).

(2) On 23 January 2020, the applicant accepted nonjudicial punishment for failing to report. Punishment imposed included: reduction to private (E1), suspended; extra duty for 7 days; restriction to the limits of the company area, dining/medical facility, and place of worship for 14 days. On 5 February 2020, vacation of suspension was imposed due to the applicant breaking restriction. Reduction to PVT was vacated.

(3) On 5 February 2020, the company commander had probable cause to believe the applicant used illicit drugs, therefore ordered a command referred blood draw and urinalysis. The applicant was detained by the Military Police (MP) on a suspicion, during a vehicle search at the main gate and was tested accordingly. On 21 February, the commander was informed of the applicant's positive urinalysis (marijuana). The record provides sworn statements from the applicant, MPs and the two Soldiers who accompanied the applicant on post, providing further details of the incident.

(4) On 6 and 28 February 2020, the applicant completed their medical assessment, history, and examination at Kamish Clinic, Fort Wainwright, AK, which indicates the following:

- (a) Their history, block 29 lists the following explanations of "yes" answers:
  - 10c: They coughed up blood when they was really sick and had a bad nosebleed in their sleep
  - 10f: They had this when they was at home
  - 11f: They were in basic and AIT
  - 12a: They always have left should pain because of what happened to them in high school
  - 12i: hard to explain
  - 13f: When they was younger, about 3 years of age
  - 14c: They are in god health, just pain here and there from previous events that have happened

- 17f: all the time
- 20: for their hernia when they were younger

(b) Their history, block 30a provides the examiner's notes:

- 10c: Occurred in 2018 prior to military service. No record found in AHLTA/HAIMS. SM may follow up with PCM or VA provider as needed.
- 10f: Occurred multiple times in 2017 prior to military service. No record found in AHLTA/HAIMS. SM may follow up with PCM or VA provider as needed.
- 11f: sees Optometry for issue. SM may follow up with Optometry as needed.
- 12a: Reports history of rotator cuff injury prior to military service. No record found in AHLTA/HAIMS. SM may follow up with PCM or VA provider as needed.
- 13f: Reports hernia surgery in 2002. No record found in AHLTA/HAIMS. SM may follow up with PCM or VA provider as needed.
- 14c: SM may follow up with PCM or VA provider as needed.
- 17f: SM sees Behavioral Health for issues. SM may follow up with Behavioral Health.
- 20: Reports hernia surgery in 2002. No record found in AHLTA/HAIMS. SM may follow up with PCM or VA provider as needed.

(c) The applicant was seen for their medical examination and determined to be qualified for service, with the provider noting to follow up with their primary care manager (PCM)/Veterans Affairs (VA) as needed.

(5) On 13 March 2020, the applicant completed their mental status evaluation at Kamish Behavioral Health Clinic, Fort Wainwright, AK, which shows no evidence of an impairing behavioral health (BH) condition. The applicant is cleared for any administrative or judicial actions deemed appropriate by command. There are no mitigating psychological factors that diminish the applicant's ability to make deliberate choices, know right from wrong or adhere to the former. They should be subject to the normal channels of counseling and discipline including UCMJ if warranted for misconduct. The applicant meets medical retention requirements of Chapter 3, AR 40-501. The medical record does not contain evidence of a documented change in diagnosis from boardable to non-boardable BH condition within the last 90 days. They are cleared for separation IAW AR 635-200. The discharge is characterization as General (Under Honorable Conditions).

(6) On 1 April 2020, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), for wrongful use of marijuana on or about 6 January – 5 February. They recommended a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of their separation notice, elected to waive their right to counsel, and elected to submit a statement on their behalf.

(a) On 4 May 2020, their platoon sergeant (SSG) provided a character statement, indicating the applicant's previous month of performance stating they demonstrated initiative, respect, and teamwork. The applicant has adapted to working with different military occupations, with minimal supervision, while demonstrating passion to complete their assigned tasks, and the ability to follow orders. Their attitude towards their leaders has been respectful, rendering the proper customs and courtesies among the platoons. SSG support the Army's zero tolerance policy for drugs and asked the applicant their reason for using, wherein they revealed the loss of a family member, which is not a reason to do drugs, but SSG felt sympathy for them. The applicant understand that they made a mistake, has maintained resilience, and is always

motivated to help anyone and be a team player. SSG believes in their potential and the applicant's ability to bounce back and be an asset to the Army, requesting a second chance for them.

(b) On 6 May 2020, the battalion commander concurred with the recommendation to separate, with a General (Under Honorable Conditions) characterization of service.

(c) On 11 May 2020, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(7) On 15 May 2020, their separation orders were issued. A DD Form 214 reflects the applicant was discharged accordingly on 28 May 2020, with 1 year, 4 months, and 16 days of service; the member has not completed their first full term of service.

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 (Application for the Review of Discharge)

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted for 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 provides the basic authority for the separation of enlisted personnel.

(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.

(5) 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 (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 14-12c, Misconduct (Serious offense).

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 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. 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. 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 (failure to report) states in the subparagraph, the maximum punishment consists of a bad conduct discharge, forfeiture of two-thirds pay and allowances for one month, and one month confinement.

(2) Article 112a (wrongful use of marijuana) states in the subparagraph, the maximum punishment consists of dishonorable 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 a change to their reentry code. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available evidence provides the applicant enlisted in the RA as a PVT, promoted to PV2, and served for 8 months and 23 days prior to their misconduct. They received nonjudicial punishment for failing to report and was subsequently demoted to PVT, after violating restriction. They were flagged for involuntary separation IAW AR 635-200, Chapter 14-12C, Misconduct (Serious Offense) for wrongful use of marijuana and discharged, with a

General (Under Honorable Conditions) characterization of service.

(1) The applicant completed a mental status evaluation and a medical examination and was qualified for service and separation. They were recommended to follow-up with their PCM/VA as needed.

(2) They served 1 year and 29 days of their 3 year, 21 day contractual obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense 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 BH 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**

b. Response to Contention(s):

(1) The applicant seeks relief contending, they made a horrible decision when they were in and have regretted it ever since. They enjoyed being involved in something bigger than them and would like to be given another chance to do it the correct way, to have a career that they enjoy. The board considered this contention during proceedings and voted not to change the applicant's characterization because General (Under Honorable Conditions) is the proper characterization, since the applicant was discharged for wrongful use of marijuana. However, the board determine that the narrative reason for separation is inequitable and determine relief is warranted.

(2) Their platoon sergeant contends support for the Army's zero tolerance policy for drugs and asked the applicant their reason for using, wherein they revealed the loss of a family member, which is not a reason to do drugs, but SSG felt sympathy for them. The applicant



realizes they made a mistake, has maintained resilience, and is always motivated to help anyone and be a team player. SSG believes in their potential and the applicant's ability to bounce back and be an asset to the Army, requesting a second chance for them. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade to the narrative reason change being granted based on the information outlined above in paragraph 9b (1).

**c.** The board determined that the discharge is, at this time, proper and equitable considering the current evidence of record. However, the applicant may request a personal appearance hearing to address 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.

**d.** Rationale for Decision:

**(1)** The board voted not to change the applicant's characterization of service because there were no mitigating factors for the board to consider. Since the applicant was discharged for wrongful use of marijuana, General (Under Honorable Conditions) is proper and equitable. 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.

**(2)** 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 Misconduct (Minor Infractions) and the separation code to JKN. Thus, the prior separation code is no longer appropriate.

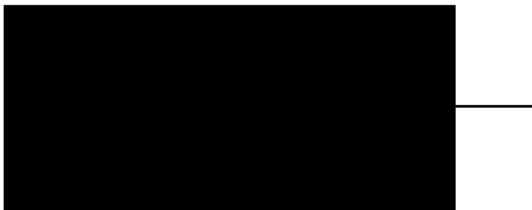
**(3)** The reentry code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, paragraph 14-12a

**Authenticating Official:**

8/14/2024



**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