

1. Applicant's Name: [REDACTED]

a. **Application Date:** 14 December 2020

b. **Date Received:** 13 January 2021

c. **Counsel:** [REDACTED]

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 and a narrative reason change.

b. The applicant states in effect through counsel, the applicant committed minor misconduct early in their career that ended their military career. Their characterization of service is not reflective of their character as a person and may have long lasting connotation in the future. The applicant has rehabilitative potential and is deserving of a second chance to serve their country. A change to their characterization of service to honorable and a reentry code 3 will assist them with future recruiters in obtaining a waiver to re-enter into the military.

c. The applicant states in effect, they were young and made an immature decision that was out of their character. They were excelling in their MOS training and have a strong desire to continue to serve their country. They went home during holiday break and had an experimental (one time) drug use, which was inexcusable. When they returned to Fort Sam Houston, they received a field grade Article 15, two demotions, a pay cut, oral reprimand, and confinement to quarters for 45 days. They were ashamed of themselves, couldn't sleep but completed their punishment with no further conduct issues. Their commander told them they were being administratively separated; they spoke to JAG, but they were no help. They are asking for another chance to stay with their unit to serve their state and their country and to save their firefighting career. They have been trying to contact someone about their status in the guard and to see if they could be retained. They got an ID that worked, but a week later they tried to use it but could not, to find they had been separated effective 30 March 2020, which was after they received an ID card. The applicant states they were not notified or given a chance to speak with a commander before being separated from ARNG.

d. **Board Type and Decision:** In a records review conducted on 24 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable, therefore, the Board voted to grant relief in the form of a change to the reentry code to RE-3. The Board voted no change to characterization of service, the narrative reason for separation or the corresponding separation code of JKK.

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 / JKK / RE-4 / General (Under Honorable Conditions).

b. **Date of Discharge:** 30 March 2020

c. Separation Facts:

- (1) Date of Notification of Intent to Separate:** 16 March 2020
- (2) Basis for Separation:** Wrongfully used Tetrahydrocannabinols (THC) a Schedule I controlled substance.
- (3) Recommended Characterization:** General, Under Honorable Conditions.
- (4) Legal Consultation Date:** The applicant waived legal consult on 17 March 2020
- (5) Administrative Separation Board:** N/A
- (6) Separation Decision Date / Characterization:** 19 March 2020 / General, Under Honorable Conditions.

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 2 July 2019 / 8 Years [ARNG]
- b. Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 124
- c. Highest Grade Achieved / MOS / Total Service:** E-3 / None / 8 months, 29 days.
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** None
- g. Performance Ratings:** N/A
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) An Enlistment/ Reenlistment Document provides the applicant enlisted in the Army National Guard at the rank of private (E-2) for 8 years on 19 December 2018.

(2) Orders 9183039, provides the applicant was ordered to initial active-duty training with a basic training report date of 2 July 2019; AIT report date was 16 September 2019.

(3) A memorandum, Army Substance Abuse Program subject: Confirmed positive urinalysis test results, dated 13 January 2020 provides the applicant's command was notified regarding the applicant testing positive for THC, with the requirement that the applicant be referred to the Army Substance Abuse Clinic (ASAP) for evaluation within 5 days. Command could not inform the applicant of the positive results or question the applicant until they received a response from CID.

(4) A Developmental Counseling Form dated 31 January 2020 provides the applicant was counseled to inform them they tested positive for THC (marijuana) from a urinalysis that was conducted on 3 January 2020.

(5) On 3 February 2020 the applicant was counseled informing them that the Army National Guard liaison concurred with their pending UCMJ and separation actions.

(6) On 10 February 2020, the applicant was counseled for violating Bravo Company Policy and Army Regulation on 8 February 2020 after they were witnessed off post during phase 4 and while pending UCMJ and chapter. The infraction was added to their UCMJ packet; a memorandum for record signed by a Staff Sergeant provides the applicant was seen off post in civilian clothes while in phase 4, hold over status and while pending UCMJ and separation actions

(7) A Report of Mental Status Evaluation document dated 19 February 2020, provides the applicant received a separation mental health evaluation that psychologically cleared them for any administrative action deemed appropriate by command.

(8) A Report of Medical Examination document provides the applicant received a separation medical assessment/examination.

(9) Record of Proceedings UCMJ document provides the applicant received a NJP for violating Article 112a of the UCMJ. They wrongfully used tetrahydrocannabinols (THC) a schedule one controlled substance on or about 31 December 2019 – 1 January 2020.

(10) On 10 March 2020 the applicant's immediate commander requested administrative separation action and recommended a general characterization of service. The applicant was not in training; class ended, and they were pulled for administrative action. AIT graduation was 24 January 2020; their hold over status started the same day

(11) A memorandum, Bravo Company, 232d Medical Battalion, JBSA Fort Sam Houston, Texas subject: Separation under AR 635-200, Chapter 14-12c (misconduct-abuse of illegal drugs) dated 16 March 2020 provides the applicant's immediate commander notified them of their intent to separate them for wrongfully using THC. The commander recommended a General (under honorable conditions) characterization of service. 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 17 March 2020.

(12) On 18 March 2020 the applicant's immediate commander provided a memorandum for the applicant to clear the military installation. The memorandum provides the applicant did not meet graduation requirements for the 68W Health Care Specialist.

(13) On 18 March 2020 the chain of command endorsed and concurred with the commander's recommendation. On 19 March 2020 the appropriate authority approved the separation and directed a characterization of service of General (under honorable conditions).

(14) A DD Form 214 shows the applicant was transferred to the ARNG of Ohio. On 30 March 2020 the applicant was discharged, they completed a total active service of 8 months and 29 days.

(15) A NGB Form 22, shows the applicant was separated from the ARNG of Ohio with an effective date of 30 March 2020.

- Authority and Reason: NGR 600-200 Para 6-35I (1) Alcohol/Other Drug Abuse
- Net Service: 1 year, 3 months and 12 days
- Character of Service: Uncharacterized
- Reenlistment Eligibility: RE 3

- NGB Form 22 was mailed to individuals last known address

(16) Orders 0000457289 dated 15 June 2020, provides the applicant was terminated from the Ohio Army National Guard (OHARNG) due to involuntary separation with a termination dated of 30 March 2020.

i. Lost Time / Mode of Return:

j. Behavioral Health Condition(s): None

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Through counsel an application for Review of Discharge (DD Form 293), a DD Form 214, separation packet, seven enclosures of documentation, 3 photographic images, 2 letters in regard to a congressional inquiry, an emergency medical training (EMT) certificate and four letters of recommendation from family members and employers that describes the applicants work ethic, personal care for others, and desire to re-enter the military and serve their country.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their 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 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) 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.

(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 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.

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

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 waiverable and nonwaiverable 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 waiverable. Eligibility: Ineligible unless a waiver is granted.

- 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.

h. Appendix 12, Maximum Punishment Chart in the Manual for Courts-Martial provides that wrongful use of marijuana includes a punitive discharge, confinement from 2-5 years, and total forfeiture or pay.

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 provides the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge which is normally considered appropriate for a soldier discharged for drug abuse.

b. Based on the available evidence the applicant enlisted Army National Guard at the age of 19; at the rank E-2. The applicant was on active-duty orders to complete basic training and advanced individual training (AIT) they completed basic training and advanced to AIT and was promoted to the rank of E-3 on 19 December 2019. They were projected to graduate AIT on 24 January 2020, while home on holiday leave the applicant smoked marijuana, their command was notified of their positive urinalysis 11 days before the applicant was set to graduate AIT. They received a non-judicial punishment (NJP) on 4 March 2020 and received a rank deduction to E-1. They applicant was processed for administrative separation 12 days after they received their NJP for smoking marijuana.

c. The applicant was notified of the intent to separate them for misconduct (abuse of illegal drugs), they acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. They waived to consulting with counsel and received the required medical and mental health separation examinations. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 30 March 2020.

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, a voting member, 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. Prior Decisions Cited: None

c. Response to Contention(s): NA

a. The Board determined the Board determined the discharge is inequitable, therefore, the Board voted to grant relief in the form of a change to the reentry code to RE-3. The Board voted no change to characterization of service, the narrative reason for separation or the corresponding separation code of JKK. However, the applicant may request a personal appearance hearing to address further 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 contentions that the discharge was improper or inequitable.

b. 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 has no record of a Behavioral Health diagnosis that could excuse or mitigate the offenses of wrongfully using Tetrahydrocannabinols (THC) a Schedule I controlled substance. Based on the current evidence, the Board determined that 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. The Board determined that the character of service the applicant received upon separation was equitable but the RE Code warrants upgrade, although misconduct drug abuse is serious the Board decided it was a one-time use and no other misconduct reported.

(1) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.

(2) The RE code will change to RE-3

2. BOARD ACTION DIRECTED:

a. **Issue a New DD-214 / Separation Order:** Yes

b. **Change Characterization to:** No change

c. **Change Reason / SPD code to:** No change

d. **Change RE Code to:** RE-3

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210011279

e. Change Authority to: No change

Authenticating Official:

6/10/2025

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