

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210012059

1. Applicant's Name: [REDACTED]

a. Application Date: 26 March 2021

b. Date Received: 6 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.

(2) The applicant seeks relief stating they were given a general (under honorable conditions) under protest. They were using Hemp which was helping them with their Post-Traumatic Stress Disorder (PTSD). They found nothing wrong since Hemp contained no marijuana (THC). Their urinalysis came out negative for THC. After serving their country in combat and to return to being set up by the system they believe their character of service should be upgraded.

b. Board Type and Decision: In a records review conducted on 9 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the discharge (MST). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The reentry code will not change.

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: 12 March 2021

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) does not contain their case file for approved separation.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 February 2020 / 6 years

b. Age at Enlistment / Education / GT Score: 23 / HS Graduate / 95

c. Highest Grade Achieved / MOS / Total Service: E-5 / 25U2O, Signal Support System Specialist / 6 years, 8 months, 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: NA

f. Awards and Decorations: ACM, AGCM-2, NDSM, NCOPDR, ASR

g. Performance Ratings: 1 June 2019 – 13 December 2019 / Qualified
14 December 2019 – 17 September 2020 / Not Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 28 February 2019, the applicant was awarded the Army Achievement Medal for exceptionally meritorious service as a forward signal support specialist in support of Operation Spartan Shield from 28 July 2018 to 21 April 2019.

(2) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 17 September 2020, reflects the applicant received nonjudicial punishment for on or about 12 April 2020, wrongfully possession of marijuana, a Schedule I controlled substance, in violation of Article 112a, UCMJ. Their punishment consisted of a reduction in rank/grade from sergeant/E-5 to specialist/E-4, forfeiture of \$1,317.00 pay for 2 months, and extra duty for 45 days. The applicant elected to appeal and submit additional matters. On 22 September 2020, the brigade judge advocate opined the proceedings were conducted in accordance with law and regulation and the punishment imposed were not unjust nor disproportionate to the offense committed. The brigade command, after consideration of all matters presented in the appeal, denied the applicant's appeal.

(3) A DA Form 2166-9-1 (NCO Evaluation Report) covering the period 14 December 2019 through 17 September 2020, reflects in –

- Part I(i) (Reason for Submission) – Relief for Cause
- Part IV(c) (Character) – the applicant's rater marked "Did Not Meet Standard" and commented "servicemember was found in possession of THC"
- Part IV(d) (Presence) – the applicant's rater marked "Did Not Meet Standard" and commented "failed to present for daily duties, resulting in the subordinate SPC [specialist] assuming roles and responsibility of the NCO"
- Part IV(e) (Intellect) – the applicant's rater marked "Did Not Meet Standard" and commented "showed no expertise in resolving the Company communication readiness by failing to install any capabilities in over 5 months"
- Part IV(f) (Leads) – the applicant's rater marked "Did Not Meet Standard" and commented "failed to lead [applicant's] subordinate by example or other junior enlisted Soldiers across the Company"
- Part IV(g) (Develops) – the applicant's rater marked "Did Not Meet Standard" and commented "neglected to establish a Company communications program in training Platoon commo [communications] representatives or training any Soldiers on commo [communications] equipment"
- Part IV(h) (Achieve) – the applicant's rater marked "Did Not Meet Standard" and commented "failed to perform as the Company Forward Signal Support NCO by not ensuring the Company had communications capabilities during training missions"
- Rater Overall Performance – the applicant's rater commented "[Applicant] is the lowest rated NCO I have worked with in my career based on [applicant's] illegal activities, failure to perform as an NCO in [applicant's] assigned duty, and for passing [applicant's] responsibilities on to [applicant's] subordinate Specialist"
- Part V (Senior Rater Overall Potential) – the applicant's senior rater rated the applicant's potential as "Not Qualified" and commented –
- NCO Refuses to sign

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- Senior rater directed the relief for cause based on Soldier being demoted to specialist
- [Applicant] failed to perform in [applicant's] assignment as the Company Forward Signal Support NCO following opportunities granted for direct development by [applicant's] and myself
- [Applicant] holds no potential for development, or capable of holding a critical leadership billet

(4) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 12 March 2021, with 6 years, 8 months, and 12 days of net active service this period. The applicant did completed their first full term of service. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Specialist
- item 4b (Pay Grade) – E-4
- item 12i (Effective Date of Pay Grade) – 17 September 2020
- item 18 (Remarks) in part – Continuous Honorable Active Service: 1 July 2014 through 6 February 2020
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKK [Misconduct (Drug Abuse)]
- item 27 (Reentry Code) – 4 [Nonwaiverable Disqualification]
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: On 12 October 2021 the Army Review Boards Agency requested the applicant provide their medical documents to support their mental health issues (PTSD and TBI), as of this date there has been no response.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- 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 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) 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), 19 December 2016, 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) 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) Paragraph 1-16 (Counseling and Rehabilitative Requirements) stated Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier.

(5) 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.

(6) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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 "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 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)) 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. 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. 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.

h. 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 12a (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 an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation. The applicant's AMHRR reflects the applicant received nonjudicial punishment for wrongful possession of marijuana and was involuntary separation from the Army. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions). The applicant completed 6 years, 8 months, and 12 days of net active service this period and completes their first full term of service; however, the applicant did not complete their 6 years contractual reenlistment 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. The applicant's AMHRR does not reflect documentation of a diagnosis of PTSD, nor did the applicant provide evidence of a diagnosis of PTSD, during their military service.

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? **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: PTSD due to MST (100%SC).

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, PTSD, and a mitigating BH experience, MST. As both PTSD and MST are associated with self-medication with illicit substances, there is a nexus between these two conditions and the applicant's wrongful use and possession of marijuana.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's condition or experience outweighed the listed basis for separation for the aforementioned reasons.

b. Prior Decisions Cited:

c. Response to Contentions:

(1) The applicant contends they were given a general (under honorable conditions) under protest. They were using Hemp which was helping them with their PTSD. 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 PTSD due to MST fully outweighing the applicant's drug abuse basis for separation.

(2) The applicant contends they found nothing wrong since Hemp contained no marijuana (THC). Their urinalysis came out negative for THC. 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 PTSD due to MST fully outweighing the applicant's drug abuse basis for separation.

(3) The applicant contends after serving their country in combat and to return to being set up by the system they believe their character of service should be upgraded. 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 PTSD due to MST fully outweighing the applicant's drug abuse basis for separation.

d. The Board determined the discharge is inequitable based on the circumstance surrounding the discharge (MST). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The reentry code will not change.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service based on the following reasons. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length, Quality) and concurred with the conclusion of the medical advising official that the applicant's (PTSD, MST) does mitigate the applicant's drug abuse (possession, use). Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warrants an upgrade but no change to the RE Code due to the applicant's BH condition.

(2) The Board voted to change the applicant's narrative reason for discharge to Secretarial Authority, with a corresponding separation code to JFF, as the reason the applicant was discharged was both improper and inequitable.

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

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** No change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

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6/25/2025



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