

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 10 January 2021
- b. **Date Received:** 22 February 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable. The applicant did not provide further explanation of their request.

b. **Board Type and Decision:** In a records review conducted on 26 July 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder (PTSD) outweighed the applicant's wrongful use of marijuana on two occasions basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE Code was proper and equitable and voted not to change it.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 5 August 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** Undated

(2) **Basis for Separation:** Wrongful use of marijuana on two occasions

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

(4) **Legal Consultation Date:** Waived on 29 June 2011

(5) **Administrative Separation Board:** Waived on 29 June 2011

(6) **Separation Decision Date / Characterization:** 13 July 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 26 July 2005 / 6 years (1st Reenlistment); On 16 July 2009, they extended their enlistment by 3 months.

b. Age at Enlistment / Education / GT Score: 20 / High School Diploma / 88

c. Highest Grade Achieved / MOS / Total Service: E-4 / 74D10 Chemical Operations Specialist / 7 years, 10 months, 20 days

d. Prior Service / Characterizations: RA (10 September 2003 – 25 July 2005) / HON

e. Overseas Service / Combat Service:

- Korea / None (26 February 2004 – 29 March 2005)
- SWA / Iraq (5 April 2008 – 20 April 2009)

f. Awards and Decorations: ICM-CS-2, ARCOM-2, AAM-2, AGCM-2, NDSM, KDSM, ICM-CS, GWOTSM, NCOPDR, ASR, OSR-2, COA-6

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 26 July 2005, the applicant completed their first reenlistment for 6 years as a SPC, with 1 year, 10 months, and 16 days of prior service; they executed a three month extension.

(2) The Enlisted Record Brief provides they were deployed to Iraq (Operation Iraqi Freedom) for a little over a year (5 April 2008 – 20 April 2009) and previously in Korea for a year. On 22 March 2011, the applicant was flagged, Suspend Favorable Personnel Actions (FLAG), for field-initiated involuntary separation (BA).

(3) The Army Substance Abuse Program (ASAP) Manager, Joint Base Lewis-McChord, WA, notified the command of the applicant having tested positive for marijuana on 22 February 2011 and provided the commander with the required actions IAW AR 600-85, such as referring the Soldier for evaluation/assessment within the required timeframe.

(4) On 12 April 2011, the applicant accepted nonjudicial punishment (NJP) for wrongful use of marijuana on or about 24 January – 22 February, in violation of Article 112a, UCMJ. Their punishment imposed reduction to PV2; forfeiture of \$822.00 pay, suspended, to be automatically remitted if not vacated before 9 October 2011; extra duty for 45 days; restriction to the limits of company area, dining/medical facility, and place of worship for 45 days. They did not appeal.

(5) On 18 May 2011, the applicant completed their medical assessment and history for their separation examination at, the Brigade Aid Station, JBLM, indicating their assessment provides the applicant's overall health is worse since their last physical, making note of their lower back pain.

(a) Block 29 of the medical history, lists the following explanations of "yes" answers:

- 12c: Going on about a year
- 12f: Stepped wrong on a run
- 21: 2004 car wrecked

(b) Block 30a of the medical history, provides the examiner's notes:

- 12c: Pt states that when [they] was deployed in 2008, [they] stated to experience lower back pain from wearing IBA all the time. Now c/o lower back pain. Taking Flexeril and Naproxen.
- 12e: c/o bilateral foot cramps on a daily basis
- 21: Experienced minor concussion from car wreck in 2004. Denies only residual pain

(c) They completed their medical examination and was qualified for service, with no diagnoses or recommendations listed.

(d) On 24 May 2011, the applicant completed their mental status examination at Behavioral Health Services, JBLM, with no diagnoses or recommendations listed; the applicant was fit for full duty, including deployment. Their cognition had no obvious impairments; cooperative behavior; normal perceptions; unlikely to be impulsive; not considered dangerous. The applicant could understand and participate in administrative proceedings; can appreciate the difference between right and wrong; and meets medical retention requirements. The provider additionally noted, the applicant was currently in treatment with ASAP.

(6) The Army Substance Abuse Program (ASAP) Manager, JBLM, notified the command of the applicant having tested positive for marijuana on 26 May 2011 and provided the commander with the required actions IAW AR 600-85, such as referring the Soldier for evaluation/assessment within the required timeframe. As a result, on 15 June 2011, the suspension of their \$822.00 forfeiture of pay, was vacated and executed.

(7) Although undated, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), for having wrongfully used marijuana twice, on 22 February and 26 May 2011, recommending a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of their separation notice, waived their right to defense counsel, and elected not to submit a statement on their behalf.

(8) Although undated the battalion commander concurred. On 13 July 2011, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(9) On 27 July 2011, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 5 August 2011, with 8 years, 1 month, and 7 days of total service. The applicant has completed their first full term of service; they were unable to sign.

i. **Lost Time / Mode of Return:** NIF (20 – 25 July 2011) / NIF

j. **Behavioral Health Condition(s):**

(1) Applicant provided: Effective 28 March 2013, the applicant has been awarded a 50% service-connected disability compensation for Post Traumatic Stress Disorder (PTSD), which indicates since there is a likelihood of improvement, the assigned evaluation is not considered permanent and is subject to a future review examination.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; Application for Correction of Military Record (unsigned); Partial Veterans Affairs (VA) Final Decision

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

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

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

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

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

the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

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

d. Army Regulation 635-200 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.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse).

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86

(Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

h. Manual for Courts-Martial (2008 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. Article 112a (wrongful use of marijuana, a controlled substance) states in subparagraph the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

i. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered, medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

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 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 completed their first enlistment as a SPC, with 1 year, 10 months, and 16 days of prior service, deployed to Iraq for one year, and served for 4 years, 7 months, and 26 days, prior to their misconduct. The applicant was flagged for involuntary separation, for wrongful use of marijuana and received nonjudicial punishment, which imposed a demotion to PV2, restriction and extra duty, suspending the forfeiture of pay; however, the suspension was later vacated and executed, due to the applicant having wrongfully used marijuana again. They were involuntarily separated IAW AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse) and recommended for a General (Under Honorable Conditions) characterization of service. The applicant waived their right to defense

counsel and elected not to submit a statement on their behalf.

(1) The applicant completed both a medical and mental status evaluation, which provided the applicant was qualified for service and fit for full duty. There were no diagnoses listed on either report, although on the mental evaluation, the provider indicated the applicant was currently in treatment with ASAP. Additionally, the applicant submitted evidence of having been rated by the VA, 50% service-connected disability for PTSD.

(2) They served 5 years and 10 days of their 6 year, 3-month 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? **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: Post Traumatic Stress Disorder (PTSD).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection establishes diagnosis of PTSD began during 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 Behavioral Health condition, PTSD. As there is an association between PTSD and self-medication with illicit drugs, there is a nexus between the applicant's diagnosis of PTSD and the applicant's wrongful use of marijuana on two occasions.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s): None submitted with this application.

c. The Board determined the discharge is inequitable based on the applicant’s PTSD outweighed the applicant’s wrongful use of marijuana on two occasions. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE Code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant’s characterization of service to Honorable because the applicant’s PTSD mitigated the applicant’s misconduct of wrongful use of marijuana on two occasions. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same reasons, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

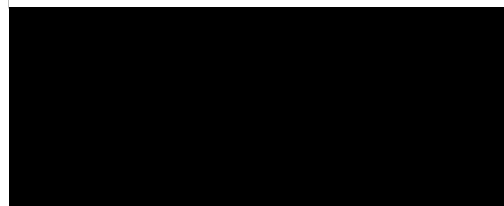
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

8/8/2024



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