

1. Applicant's Name:

- a. **Application Date:** 14 April 2021
- b. **Date Received:** 19 April 2021
- c. **Counsel:** None.

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is under honorable conditions (general). The applicant requests an upgrade to honorable, and a narrative reason change.

The applicant states in effect, they were harassed multiple times and it led them to act out of character. They had profiles that limited them from exercising and going to the field, but multiple times they were made to go to the field and do PT despite their profiles. They lashed out at their superior because they were continuously harassing them to exercise which was against their profile. They were made fun of and harassed in their unit because they stated the infantry was not for them. They went to the chaplain multiple times with their grievances, and nothing happened, they tried every right course of action to get out of the infantry or switched to another unit.

They passed multiple drug screens, their platoon sergeant said "why don't you pop hot for us, and we can get you out the Army" that is when they started smoking. All the harassment made them want to commit suicide because they tried to do the right thing, it was nothing they could do they felt hopeless and started smoking.

Since the Army, they have applied to multiple fields and their military conduct is holding them back. They are trying to become a certified nursing assistant; they want to help people and give them hope and a sense of dignity in un-dignifying circumstances. The classification of their discharge is holding them back. They know they made mistakes, but they tried so hard to go the right route, but the door was slammed in their face so many times. They are extremely sorry for their actions, and they have been paying for them for the last 5 years. They just want to have a professional career and be a productive citizen.

b. **Board Type and Decision:** In a records review conducted on 27 September 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more detail regarding the Board's decision.
(Board member names available upon request)*

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 23 March 2017

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 2 February 2017

(2) Basis for Separation: On 6 March 2016 and on or about 9 March 2016 the applicant wrongfully used tetrahydrocannabinol.

(3) Recommended Characterization: General, under honorable conditions.

(4) Legal Consultation Date: 7 February 2017

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 17 February 2017 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 11 April 2016 / 3 years, 16 weeks.

b. Age at Enlistment / Education / GT Score: 20 / High School Diploma / 106

c. Highest Grade Achieved / MOS / Total Service: E-2 / 11B10 Infantryman / 11 months, 7 days.

d. Prior Service / Characterizations: None.

e. Overseas Service / Combat Service: None.

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) Three Developmental Counseling Forms provides between 28 September 2016 – 29 November 2016 the applicant failed to report (FTR) to their place of duty and disrespected two senior noncommissioned officers; racially charged verbal insults.

(2) A Lab Results Report provides the applicant tested positive for THC; urinalysis was collected on 30 September 2016.

(3) Two Personnel Action documents provides the applicant's duty status changed from present for duty (PDY) to absent without leave (AWOL) on 5 October 2016. The applicant's duty status changed from AWOL to PDY on 10 October 2016.

(4) A memorandum dated 18 October 2016 provides the applicant's immediate commander was notified that they tested positive for THC.

(5) A Sworn Statement dated 29 November 2016 provides the applicant stated they were on profile and could not do stretches for physical training (PT). Their profile was reviewed, and it was determined that they could do the exercises; the applicant refused and became disrespectful by using profanity and racial slurs.

(6) A Lab Results Report provides the applicant tested positive for THC; urinalysis was collected on 30 November 2016.

(7) A memorandum dated 16 December 2016 provides the applicant's immediate commander was notified that they tested positive for THC.

(8) On 2 February 2017 the applicant's immediate commander notified them of their intent to separate them for abuse of illegal drugs. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they consulted with counsel and completed their election of rights.

(9) A Commanders Report dated 2 February 2017 provides the applicant received a non-judicial punishment on 12 December 2016 for failure to report to their appointed place of duty four times, for being AWOL, being disrespectful in language toward a superior noncommissioned officer twice and for wrongfully using tetrahydrocannabinol. Punishment consisted of reduction to E-1, forfeiture of \$783 pay for two months, extra duty and company restriction for 45 days.

(10) On 8 February 2017 the chain of command endorsed and concurred with the commander's discharge recommendation and on 17 February 2017 the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

(11) A Certificate of Release or Discharge from Active-Duty document provides the applicant was discharged on 23 March 2017, they completed 11 months, and 7 days of their contractual obligation.

i. **Lost Time / Mode of Return:** AWOL; 20161005 – 20161010 / Returned to duty.

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

(1) **Applicant provided:** None.

(2) **AMHRR Listed:** Cannabis Abuse

5. APPLICANT-PROVIDED EVIDENCE: A DD Form 293 (Discharge Review) application, and statement on why they are requesting a change and a Department of Veteran Affairs letter that shows they are 50% service connected for VA disabilities.

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.

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

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, and a narrative reason change. 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 discharge which is normally considered appropriate for a soldier discharged for drug abuse.

b. Based on the available evidence the applicant enlisted in the Army at the age of 20, five months into their contractual obligation they tested positive for THC, and they were command referred to ASAP. Two months later they tested positive for THC a second time and were subsequently processed for administrative separation.

c. The applicant was notified of the intent to separate them for misconduct-drug abuse and acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. The separation notification memorandum provides administrative error; the applicant was not an active duty service member on 6 March 2016 – 9 March 2016. The applicant consulted with counsel and the appropriate authority approved the separation. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 23 March 2017.

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? **Yes.** The applicant was diagnosed with Adjustment Disorder (DO) with mixed anxiety and depressed mood, a potentially mitigatable behavioral health (BH) condition.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the diagnosis of Adjustment DO with mixed anxiety and depressed mood was made while he was on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the applicant was diagnosed with Adjustment DO with mixed emotions and conduct while on active duty, this condition arose as a result of the consequences of the applicant's misconduct and did not lead or contribute to said misconduct.

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

b. Response to Contention(s):

(1) The applicant contends they were harassed multiple times which let them to act out of character. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends their platoon sergeant suggested they "pop hot" to get out of the Army. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner. Therefore, a discharge upgrade is not warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. 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's Adjustment DO with mixed emotions and conduct which arose as a result of the consequences of the applicant's misconduct did not excuse or mitigate the offense of Drug Abuse. The Board also considered the applicant's contention regarding the applicant's assertion that the platoon sergeant suggested they "pop hot" to get out of the Army and found that totality of the applicant's record does not warrant a discharge upgrade. The Board noted there were multiple acts of misconduct in the file to include FTR, AWOL, disrespect using profanity, and made racial slurs. The discharge was consistent with the procedural and substantive requirements of the

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regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

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

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

10/1/2024

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs