

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

a. **Application Date:** 16 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 the period under review is under other than honorable conditions. The applicant requests an upgrade to general (under honorable conditions).

b. The applicant seeks relief contending, in effect, an upgrade of the discharge would assist the applicant with obtaining medications the applicant was placed on while serving in the military. It has been very difficult for the applicant to sustain because of money and mental health issues. The applicant marked the PTSD and other mental health boxes on the DD Form 293.

c. **Board Type and Decision:** In a records review conducted on 9 October 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service and the circumstances surrounding the discharge (Anxiety Disorder, unspecified). Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General (Under Honorable Conditions).

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

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 18 March 2020

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 18 February 2020, the applicant was charged with violating Article 112a:

- Specification 1: wrongfully used marijuana between on or about 26 July 2019 and 26 August 2019
- Specification 2: wrongfully used amphetamines between on or about 15 August 2019 and 26 August 2019
- Specification 3: wrongfully used marijuana between on or about 24 August 2019 and 24 September 2019
- Specification 4: wrongfully used marijuana between on or about 22 September 2019 and 22 October 2019

(2) **Legal Consultation Date:** 19 February 2020

(3) **Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

**(4) Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** 24 September 2020 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 20 August 2018 / 3 years and 16 weeks

**b. Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 96

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 1 year, 6 months, and 29 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** NDSM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** Charge sheet as described in previous paragraph 3c.

**(2)** Orders 062-0028, 2 March 2020, shows the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 18 March 2020 from the Regular Army.

**(3)** The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, Chapter 10, with a narrative reason of in lieu of trial by court-martial. The DD Form 214 was authenticated with the applicant's electronic signature.

**i. Lost Time / Mode of Return:** None

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** None

*The ARBA's medical advisor reviewed DoD and VA medical records.*

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the 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), 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 (Active Duty Enlisted Administrative Separations), 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 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

**(5)** Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

**(6)** Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

**(7)** Paragraph 10-8b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

**(8)** Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

**e.** Army Regulation 635-5-1 (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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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.

**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 general (under honorable conditions). The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 1 year, 6 months, and 29 days. The applicant wrongfully used marijuana and amphetamines. The applicant's DD Form 214 indicates the applicant was discharged on 18 March 2020 under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions.

c. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

d. The applicant contends an upgrade of the discharge would assist the applicant with obtaining medications the applicant was prescribed while serving in the military. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

e. Analyst notes, the applicant marked the PTSD and other mental health boxes on the DD Form 293. The applicant annotated in section four of the DD Form 293 that medical, mental health, and mental clinic documents were submitted in support of the applicant's claim. The applicant did not provide these documents with their application. The Military Review Boards (MRB) representative emailed the applicant on 16 July 2024 requesting medical evidence to support the applicant's claim of PTSD. As of 5 August 2024, the MRB representative, received no medical evidence.

f. 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: Anxiety Disorder, unspecified.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found diagnosis of Anxiety DO, unspecified was made while applicant was on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that The applicant has a significant history of pre-service Cannabis Dependence as well as pre-service diagnoses of ADHD, PTSD and TBI. As these conditions all existed prior to service, they do not fall under the purview of liberal consideration. The diagnosis of Anxiety DO, unspecified, however, is a diagnosis made while the applicant was on active duty and, therefore, falls under the purview of liberal consideration. Given the applicant's history of significant cannabis addiction prior to entering the Army, the advisor does not feel that the diagnosis of Anxiety DO, unspecified, mitigates all his misconduct drug abuse. However, it is the BH Advisor's opinion that the diagnosis of Anxiety DO, unspecified, partially mitigates the applicant's misconduct drug abuse given the association between Anxiety DO and self-medication with illicit drugs.

(4) Does the condition or experience outweigh the discharge? **No.** The diagnosis of Anxiety DO, unspecified, partially mitigates the applicant's misconduct drug abuse given the association between Anxiety DO and self-medication with illicit drugs. The applicant's length of service outweighs the remaining medically unmitigated drug misconduct.

b. Prior Decisions Cited: None

c. Response to Contention: The applicant contends an upgrade of the discharge would assist the applicant with obtaining medications the applicant was prescribed while serving in the military.

The Board determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare, or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

d. The Board determined that the characterization of service was inequitable based on the applicant's length of service and circumstances surrounding the discharge (Anxiety Disorder, unspecified). Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General (Under Honorable Conditions).

e. Rationale for Decision:

(1) The Board voted to upgrade the characterization to General (Under Honorable Conditions) based on partial medical mitigation. The applicant's diagnosis of Anxiety Disorder, unspecified, partially mitigates the applicant's misconduct drug abuse (one-time use of amphetamines). The Board determined the applicant's length of service outweighed the remaining misconduct (multiple use of marijuana). The Board voted not to change the narrative reason or RE code, as they are proper and equitable.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, 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.

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

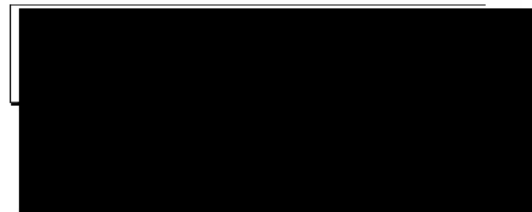
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## 10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

## Authenticating Official:

10/16/2024



### Legend:

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

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

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

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