

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 11 May 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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the applicant had honorable service until the applicant began to use marijuana to cope with mental health issues and the applicant had difficulties adjusting to the military due to an adjustment disorder.

b. **Board Type and Decision:** In a records review conducted on 18 October 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, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 1 March 2019

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 1 October 2018

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully used marijuana between on or about 9 October 2017 and 9 November 2017 and between 1 January 2018 and 31 January 2018. The applicant also wrongfully possessed some amount of marijuana on or about 9 November 2017.

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

(4) **Legal Consultation Date:** 28 December 2018

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 11 January 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 25 April 2016 / 3 years, 39 weeks

b. Age at Enlistment / Education / GT Score: 21 / HS Graduate / 101

c. Highest Grade Achieved / MOS / Total Service: E-3 / 15Y10, AH – 64D ARM/AV SYS
/ 2 years, 10 months, 4 days

d. Prior Service / Characterizations: NA

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) The applicant's separation packet contains an Electronic Copy of DD Form 2624, 28 November 2017, which reflects the applicant tested positive for THC 33, during a Probable Cause Testing (PO) urinalysis testing, conducted on 9 November 2017.

(2) The applicant's separation packet contains DD Form 2624, which reflects the applicant tested positive for THC, during a Rehabilitation Testing (RO) urinalysis testing, collected on 29 January 2018.

(3) A Report of Mental Status Evaluation (MSE), 15 August 2018, reflects the applicant could understand and participate in administrative proceedings and appreciate the difference between right and wrong. The MSE reflects the applicant had a history of behavioral health diagnosis.

(4) Commander's Report, 8 January 2019, reflects on 7 February 2018, the applicant received a Field Grade Article 15 and was found guilty of two specifications in violation of 112a, UCMJ. The punishment consisted of reduction to private/E-2; forfeiture of \$918.00 pay, suspended, and extra duty for 45 days.

(5) DA Forms 4187 (Personnel Action) reflects the applicant's duty status changed from Present for Duty (PDY) to Absent Without Leave (AWOL), effective 5 February 2019 and from AWOL to PDY, effective 7 February 2019.

(6) The applicant was counseled on multiple occasions for various forms of misconduct.

i. Lost Time / Mode of Return: AWOL X 3 days (5 February 2019 – 7 February 2019)

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(2) **AMHRR Listed:** See MSE as described in item 4h (3).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, DA Form 2807-1 (Report of Medical History)

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), 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 600-85 defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes: Results of command-directed drug or alcohol testing that are inadmissible le under the MRE; Results of a drug or alcohol test collected solely as part of a safety mishap investigation undertaken for accident analysis and the development of countermeasures; Information concerning drug or alcohol abuse or possession of drugs incidental to personal use, including the results of a drug or alcohol test, collected as a result of a Soldier's emergency medical care solely for an actual or possible alcohol or other drug overdose; A Soldier's self-referral to BH for SUD treatment; Admissions and other information concerning alcohol or other drug abuse or possession of drugs incidental to personal use occurring prior to the date of initial referral to treatment and provided by Soldiers as part of their initial entry into SUD treatment; Drug or alcohol test results, if the Soldier voluntarily submits to a DoD or Army SUD treatment before the Soldier has received an order to submit for a lawful drug or alcohol test; and, the results of a drug or alcohol test administered solely as a required part of a DoD or Army SUD treatment program.

e. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(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.

(5) Paragraph 14-3 prescribes 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) Paragraph 14-12c (2), terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing 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 under paragraph 14-12a or 14-12b as appropriate.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

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.

The applicant was separated under the provisions of Chapter 14, paragraph 14-12c (2), AR 635-200 with a general (under honorable conditions) discharge.

The applicant contends the applicant had honorable service until the applicant began to use marijuana to cope with mental health issues and the applicant had difficulties adjusting to the military due to an adjustment disorder. The applicant's AMHRR contains an MSE, 15 August 2018, which reflects the applicant could understand and participate in administrative proceedings and appreciate the difference between right and wrong. The MSE reflects the applicant had a history of behavioral health diagnosis. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant's separation packet contains two DD Forms 2624 (Specimen Custody Document for Drug Testing), one coded "RO" which indicates "Rehabilitation Testing" and the other coded "PO" which indicates "Probable Cause." The government introduced these documents into the discharge process, revealing the applicant had self-referred to the Army Substance Abuse Program (ASAP) for substance abuse. The Rehabilitation Testing is limited use information as defined in AR 600-85. Use of this information mandates award of an honorable discharge.

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: the applicant held in-service diagnoses of Adjustment Disorder with Depressed Mood, Other Recurrent Depressive Disorders, and Major Depressive Disorder (MDD). Post-service, he is service connected for Somatoform Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder with Depressed Mood, Other Recurrent Depressive Disorders, and Major Depressive Disorder (MDD).

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that documentation consistently reflects the applicant obtained his initial positive UA due to frustration with disciplinary action rather than psychological symptoms related to Adjustment or Depressive Disorders. Additionally, while the applicant's current service connection is acknowledged, in-

service documentation does not reflect a physical or health issue resulting in psychological distress to support the diagnosis existed in-service. Lastly, although the applicant has developed Schizophrenia, this is due to ongoing drug use and diagnosed well beyond the expected timeframe if he was experiencing symptoms in-service; initial symptoms present no more than 2 years before a final diagnosis.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the board's application of liberal consideration, the board determined the applicant's conditions (adjustment disorder with depressed mood, other recurrent depressive disorders, and MDD) did not outweigh the basis for separation - wrongful use of marijuana (on multiple occasions), possession of marijuana, Absent Without Leave (AWOL), disrespect toward an NCO, multiple FTR, arrested for IPV, altercation with a police officer and confinement.

(5) Response to Contention(s): The applicant contends the applicant had honorable service until the applicant began to use marijuana to cope with mental health issues and the applicant had difficulties adjusting to the military due to an adjustment disorder. The board considered this contention and voted to maintain the current characterization due to insufficient mitigating circumstances that may outweigh the applicant's misconduct - wrongful use of marijuana (on multiple occasions), possession of marijuana, Absent Without Leave (AWOL), disrespect toward an NCO, multiple FTR, arrested for IPV, altercation with a police officer and confinement.

b. 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.

c. Rationale for Decision:

(1) The board voted not to change the applicant's characterization of service because, there were no mitigating factors for the board to consider which might outweigh the applicant's misconduct - wrongful used of marijuana (on multiple occasions), possession of marijuana, Absent Without Leave (AWOL), disrespect toward an NCO, multiple FTR, arrested for IPV, altercation with a police officer and confinement. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210013467

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:

11/20/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs