

1. Applicant's Name: [REDACTED]**a. Application Date:** 2 June 2021**b. Date Received:** 2 June 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 and changes to their narrative reason and separation code.

b. The applicant seeks relief contending, they should have received the original discharge, which started in August 2020. The doctor started a Chapter 5-17, due to their Adjustment Disorder and their drug abuse (marijuana). The command team never initiated their packet although they told the applicant they had. While in waiting for their team to initiate their chapter, the applicant received an Article 15 for a failed urinalysis due to their marijuana use and during the hearing, the Battalion Commander was unaware of the Chapter 5-17 packet initiation and agreed to initiate their separation after their hearing. Once the Chapter 5-17 was submitted, the applicant was told they could no longer be separated under this chapter because the condition is considered acute after six months, in which that time had passed. As a last resort, the applicant agreed to sign a Chapter 14 but felt it was not right that one mistake in three years of Honorable service, justified a General discharge, which was the same mistake that the applicant sought help for (August 2020). Their command team failed the applicant, yet they were faced with repercussions.

c. Board Type and Decision: In a records review conducted on 14 March 2025, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Major Depressive Disorder (MDD) that mitigates the basis of separation - wrongful use of marijuana. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable. The Board determined the narrative reason, SPD code and reentry code were proper and equitable and voted not to change them.

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: 19 May 2021

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 12 April 2021

(2) Basis for Separation: On or about 7 December 2020 – 7 January 2021, they wrongfully used marijuana (THC).

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

(4) Legal Consultation Date: On 13 April 2021, they waived their right to counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 19 April 2021 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 9 April 2018 / 3 years, 29 weeks

b. Age at Enlistment / Education / GT Score: 22 / Associate Degree / 100

c. Highest Grade Achieved / MOS / Total Service: E-4 (SPC) / 91A10 M1 Abrams Tank System Maintainer / 3 years, 1 month, 11 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Kuwait, 15 March – 19 November 2019 (8 months, 5 days)

f. Awards and Decorations:

- Army Achievement Medal (3rd Award)
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 9 April 2018, they enlisted in the Regular Army (RA) for 3 years and 29 weeks as a private first class, PFC (E-3). The Enlisted Record Brief provides on 1 March 2020, they promoted to specialist, SPC (E-4). On 26 February and 16 March 2021, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and field-initiated involuntary separation (BA).

(2) On 23 February 2021, The Army Substance Abuse Program (ASAP) Coordinator, informed the command of the applicant's positive urinalysis for marijuana and provided the required actions IAW AR 600-85, such as refer the Soldier to Behavioral Health for evaluation/assessment within five duty days; initiating their FLAG; and to comply with regulatory guidance AR 635-200. On 24 February and 16 March 2021, they were counseled for their positive urinalysis and advised separation would be initiated under the provisions of AR 635-200, Chapter 5-17.

(3) On 17 and 25 March 2021, the applicant completed their medical assessment, history, and examination (MHE) at DiRaimondo Clinic, Fort Carson, CO, provides their health has worsen since their last physical as they have been diagnosed with asthma induced by exercise and have had two severe right ankle sprains. They have been unable to fully run since September 2020 due to their injury. The provider medically cleared them for separation,

summarized the two diagnoses as exercise-induced bronchospasm and right ankle sprain, and did not provide further recommendations.

(4) On 18 March 2021, the applicant accepted nonjudicial punishment in violation of Article 112a, UCMJ (wrongful use of controlled substance, marijuana), for having wrongfully used marijuana on or between 7 December 2020 – 7 January 2021. They did not appeal. The punishment imposed a reduction to PFC; forfeiture of \$1,118 pay per month for 2 months, suspended, to be automatically remitted if not vacated, on or before 16 June 2021; extra duty for 45 days.

(5) On 14 April 2021, 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. They recommended an General (Under Honorable Conditions) characterization of service in which the battalion commander concurred with. The applicant acknowledged receipt of their separation notice. For the election of rights, they waived their right to legal and declined to submit a statement on their behalf.

(6) On 19 April 2021, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service. On 12 May 2021, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 19 May 2021, with 3 years, 1 month, and 25 days of total service.

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

j. **Behavioral Health Condition(s):** Adjustment Disorder, Occupational Problem

(1) **Applicant provided:** None

(2) **AMHRR Listed:** On 1 April 2010, the applicant completed a mental status evaluation at Embedded Behavioral Health, Fort Carson, CO, which indicated a BH diagnosis of Adjustment Disorder, occupational problem; although they did not have a BH condition that causes the applicant to fail medical retention standards IAW AR40-501. The medical record does not contain substantial evidence that they met criteria for a condition requiring referral to IDES but has not yet received a diagnosis. Had the command initiated it in a timely manner as suggested by the applicant's BH provider, a chapter 5-17 for Adjustment Disorder would have also been appropriate for them (from a clinical standpoint).

5. **APPLICANT-PROVIDED EVIDENCE:** Application for the Review of Discharge

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 (Active Duty Enlisted Administrative Separations), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) Chapter 3 provides 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.

(a) 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.

(b) 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.

(2) 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.

(3) 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 (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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

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. 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.

(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. 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.

(2) 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.

(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 (2019 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 a schedule II controlled substance) states in the subparagraph, the maximum punishment consists of a bad conduct discharge, forfeiture of all pay and allowances, and confinement for five years.

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 changes to their narrative reason and separation code. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The available evidence provides the applicant enlisted in RA, promoted to SPC, and served for 2 years, 10 months, and 17 days prior to the misconduct which led to their discharge. They received NJP for wrongful use of marijuana and was consequently demoted to PFC. Separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), with a General (Under Honorable Conditions) characterization of service. The applicant elected to waive their right to legal and declined to submit a statement on their behalf. They completed a mental status evaluation and was determined to be psychiatrically cleared for separation, although they were diagnosed with an Adjustment Disorder, occupational problem without further recommendations. Medically, they were diagnosed with exercise-induced bronchospasm and a right ankle sprain; they were qualified for service/separation. The applicant served 3 years, 1 month, and 11 days of their 3 year-29 week 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: Major Depressive Disorder (MDD), Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 50 percent SC for MDD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has a BH condition that mitigates their misconduct as outlined in the Basis of Separation. The applicant is 50 percent Service Connected for MDD and given the nexus between MDD and the use of substances to self-medicate, the applicant's misconduct characterized by wrongful use of marijuana is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition or experience outweighed the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contention(s): The applicant seeks relief contending, they should have received the original discharge, which started in August 2020. The doctor started a Chapter 5-17, due to their Adjustment Disorder and their drug abuse (marijuana). The command team never initiated their packet although they told the applicant they had. While in waiting for their team to initiate their chapter, the applicant received an Article 15 for a failed urinalysis due to their marijuana use and during the hearing, the Battalion Commander was unaware of the Chapter 5-17 packet initiation and agreed to initiate their separation after their hearing. Once the Chapter 5-17 was submitted, the applicant was told they could no longer be separated under this chapter because the condition is considered acute after six months, in which that time had passed. As a last resort, the applicant agreed to sign a Chapter 14 but felt it was not right that one mistake in three years of Honorable service, justified a General discharge, which was the same mistake that the applicant sought help for (August 2020). Their command team failed the applicant, yet they were faced with repercussions. The Board considered this contention during proceedings and determined that the applicant's MDD and Adjustment Disorder mitigated the applicant's use of illicit drugs and voted to upgrade the characterization of discharge to Honorable. The SPD code, narrative reason, and re-entry code were found to be proper and equitable.

d. The Board determined that the applicant's MDD and Adjustment Disorder mitigated the basis of separation, Wrongful Use of Marijuana, and granted relief in the form of an upgrade to Honorable discharge. The narrative reason, SPD code, and re-entry code were determined to be proper and equitable.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on the applicant's MDD and Adjustment Disorder, which outweighed the applicant's misconduct – wrongful use of marijuana. Thus, the prior characterization is no longer appropriate

(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.

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AR20210013955

(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: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

3/18/2025



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