

1. Applicant's Name: [REDACTED]**a. Application Date:** 6 May 2021**b. Date Received:** 20 May 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 Honorable, a narrative reason change, and changes to both of the separation and reentry codes.

b. The applicant seeks relief contending, the discharge they received was unjust for the offense they committed. and the separation board that was held was premeditated. At one point in their military career, they committed an offense (positive urinalysis) which led to their discharge. They have accepted full responsibility for their actions and suffered the consequences for their unfavorable act. Therefore, their Under Other than Honorable Conditions was inequitable as it appears none of the board members were properly referred to act as voting members for their separation proceedings. Possibly, there may have been a different outcome if these errors had not been made. Since their separation from the military, the applicant's role as a civilian has created a time of personal and professional growth. They have finished a degree (Associate Degree) and began their career as a Trucking Driver Instructor, at a local Community College. Further, they would graduate with their bachelor's degree in August 2021 and will pursue their Master's in Business Administration in the fall.

c. Board Type and Decision: In a records review conducted on 20 December 2024, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions). The Board determined the reentry code is proper and equitable and voted not to change it.

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

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 19 June 2012**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 18 November 2011

(2) Basis for Separation: On or between 7 September – 7 October 2011, the applicant wrongfully used marijuana.

(3) Recommended Characterization: Under Other than Honorable Conditions

(4) Legal Consultation Date: 19 April 2012

(5) Administrative Separation Board: See sections **4.h.3** and **4.h.3** to ascertain the details of the applicant's administrative separation board and whether one was administered.

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 April 2010 / Indefinite (4th Reenlistment)

b. Age at Enlistment / Education / GT Score: 44 / Bachelor's Degree / NIF

c. Highest Grade Achieved / MOS / Total Service: SSG (E-6) / 11B10 Infantryman / 14 years, 5 months, 15 days

d. Prior Service / Characterizations:

(1) 1 year, 6 month, 27 days: National Guard Bureau (NGB), 5 January 2001 – 1 August 2002 / Under Other than Honorable Conditions

(2) 7 years, 8 months, 13 days: Regular Army (RA), 23 July 2002 – 5 April 2010 / Honorable

e. Overseas Service / Combat Service: 2 years, 28 days

(1) SWA / Iraq, 9 October 2004 – 24 September 2005 (11 months, 16 days)

(2) SWA / Iraq, 24 October 2007 – 5 December 2008 (1 year, 1 month, 12 days)

f. Awards and Decorations:

- Iraq Campaign Medal w/Two Campaign Stars
- Army Commendation Medal (3rd Award)
- Army Achievement Medal (2nd Award)
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Global war on Terrorism Service Medal
- Noncommissioned Officer-Professional Development Ribbon (2nd Award)
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Multinational Force and Observers Medal
- Combat Infantry Badge
- Expert Infantryman Badge
- Parachutist Badge

g. Performance Ratings: SSG, 1 October 2010 – 30 September 2011 / Amongst the Best; They exceeded the standard in Competence, Leadership, Training, Responsibility and Accountability.

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 6 April 2010, the applicant completed their fourth reenlistment in the Regular Army indefinitely as a SSG, with 12 years, 6 months, and 17 days of prior total service. Previous periods of service provides, they served over two years in Iraq (2004-2005; 2007-2008). On 18 November 2011, 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 the wrongful use of marijuana on or between 7 September – 7 October 2011. They recommended an Under Other than Honorable Conditions characterization of service. The applicant acknowledged receipt of their separation notice.

(2) On 18 April 2012, the senior paralegal documented an administrative error in the applicant's separation. The applicant was notified of the separation action initiated for commission of a serious offense, signed by LTC, Commander, (STB, 2-1 AD). This notification identified the Commander, Brigade Modernization Command, as the separation authority in accordance with AR 635-200, Chapter 1-19.2. The Commander, Brigade Modernization Command, has taken action as an intermediate commander by making a recommendation concerning the discharge and characterization of service for this separation action. As the General Court-Martial Convening Authority for the Sergeant Major Academy and under the authority of AR 635-200, Chapter 1-19, the Commander, 1st Armored Division and Fort Bliss, TX, has referred this separation action to a standing administrative separation board. By this action, the Commander, 1st Armored Division and Fort Bliss, TX, assumes responsibilities as the separation authority. Pursuant to AR 635-200, Chapters 2-2 and 2-4, there is no requirement to notify the Soldier of the separation authority. Notification of the separation authority is provided in order to facilitate the submission and routing of matters. This memorandum serves as notification to the applicant of the change in approval authority for this separation action.

(3) On 19 April 2012, defense counsel provides on some date after initiation of this separation process, the staff judge advocate (COL) referred the applicant's administrative separation action to the Standing Administrative Separation Board selected MG on 13 January 2011. This referral was made pursuant to the delegation of authority granted by MG (Senior Commander, Fort Bliss, by memorandum, dated 13 January 2011). This board, however, has not taken place.

(a) On 7 March 2011, BG (Commander, Brigade Modernization Command), the separation authority in the applicant's administrative separation action, recommended that "[the applicant] be issued a Other than Honorable conditions discharge certificate." Again, this recommendation was made without a board being given an opportunity to hear this case. Counsel has requested from government counsel within the last two days whether the board members were given a copy of the recommendation by BG but have not received an answer. If board members have received a copy, this was an improper procedure in that this recommendation may influence their decision and would deny the applicant their due process rights under AR 635-200. Even if the recommendation has not been shown to the board members, the recommendation shows a predisposition by the separation authority and one that would taint their decision as to characterization of service decision should the board recommend an Other than Honorable characterization of service. Counsel has contacted government counsel about these concerns and requested a withdrawal of this administrative separation and re-initiation by LTC.

(b) On 18 April 2012, SFC, Senior Paralegal NCO, United States Army Sergeants Major Academy, issued a memorandum for record indicating, "the Commander, 1st Armored Division and Fort Bliss, assumes responsibilities as the separation authority," for the applicant's administrative separation process. Though the change of separation authority to Command, 1AD and Fort Bliss, TX is the recommendation made by counsel to government counsel, it is the

position of the applicant through counsel that SFC lacks the authority to make this change. Because of the appearance of a predisposition of the current separation authority, BG, and a possibility that the current board members have seen their recommendation, counsel for the applicant requests this separation action be withdrawn and re-initiated by LTC, with new board members being appointed. Again, because of the possibility of an appearance of predisposition by BG, defense counsel also requests, 1AD and Fort Bliss, TX be designated as the separation authority in any subsequent administrative separations.

(4) On 20 May 2012, under AR 635-200, Chapter 2-6a, the applicant, through defense counsel, identified legal issues for consideration by the separation authority and argued for a re-initiation of the separation process. If the re-initiation is not granted, the applicant submitted that the characterization of service should be no less favorable than a General (Under Honorable Conditions). They addressed this memorandum through Commander, Brigade Modernization Command to Commander, 1st Armored Division, but maintained the separation authority in this administrative separation to be Commander, Brigade Modernization Command.

(a) On 18 November 2012, LTC initiated separation against the applicant by memorandum indicating that LTC was recommending an Other Than Honorable characterization of service. Paragraph 2 of the memorandum reads, "The separation authority in this case is the Commander, Brigade Modernization Command." Paragraph 2 also reads, "The separation authority may direct that their service be characterized as Honorable or Under Honorable Conditions," and does not mention that the separation authority may direct Other than Honorable characterization.

(b) At some point approximately at the beginning of April 2012, COL, Staff Judge Advocate (1AD and Fort Bliss), referred the applicant's administrative separation to Standing Administrative Separation Board and designated MAJ, CPT, and MSG to serve as voting members on the board. In paragraph 1a of the memorandum, the separation action, "is referred to the Standing Administrative Separation Board selected by [MG] on 13 January 2011." This referral document authorized in paragraph 1d COL to replace members of the board if they are found to be unavailable IAW the selection advice approved on 13 January 2011. The Selection of Standing Enlisted Separation Board, dated 13 January 2011, references that selected board members per that advice will be placed on orders for all enlisted separation boards initiated after 1 February 2011. An 18 January 2012 document was provided to counsel at the board proceeding on 15 May 2012. This document, also included as an enclosure, lists all board members which sat on the applicant's board either as a primary or alternate member. This document is not listed on either initiation document, dated 18 November 2011 nor the board referral document.

(c) Paragraph 2-4(4), AR 635-200 requires the Soldier to be advised of the least favorable characterization of service or description of separation they could receive. Also required in para. 2-4 is that the separation authority is not bound by the recommendation of the initiating or intermediate commanders; however, the separation authority will not authorize the issuance of a type of discharge or character of service less favorable than that recommended by the board. A sample format can be viewed in AR 635-200, Figure 2-3, as to what an initiation document is to contain when Other than Honorable characterization is sought and a board procedure is to be used. Paragraph 2 of the sample format reads, "I am recommending that you receive a(n) (characterization of service. The intermediate commander/s and the separation authority are not bound by my recommendation as to characterization of service. The separation authority in your case is (cite unit designation of separation authority). The separation authority may direct that your service be characterized as Honorable, Under Honorable Conditions, Under Other than Honorable Conditions..."

(d) In this instance, the separation authority can compare the notification attached as an enclosure with the two sample formats included in AR 635-200. The respondent's notification was that of the notification procedure, and because of such, the worst characterization of service they should receive is General, Under Honorable Conditions. The respondent was notified that the separation authority in their separation was Commander, Brigade Modernization Command. The only document presented to the respondent which suggests that Commander, First Armored Division to be the separation authority in this case is a memorandum for record by SFC, Senior Paralegal NCO for the Sergeants Major Academy.

(e) Far greater a concern after now having sit through the board proceedings with the applicant, is the fact that it appears none of the board members were properly referred to act as voting members for this proceeding. The applicant's referral document made two references to the 13 January 2011 memorandum and how to approve alternate members when needed. Government counsel used a memorandum, dated 18 January 2012, both to seat primary members to replace them with alternative members. If the intent was to refer this proceeding the board based on the 18 January 2012 memorandum, then there would be no need to reference the 13 January 2011 memorandum for directions on approving for alternate members. It would only need to reference the 18 January 2012 memorandum because it contains such instruction.

(f) The applicant requested a re-initiation of the entire administrative separation process clearly indicating who their separation authority was. In the alternative, because the improper format was used for this notification if the command truly sought an Other than Honorable, the applicant requested a characterization of service no less favorable than General (Under Honorable Conditions).

(5) Notwithstanding the missing documents, a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 19 June 2012, with 14 years, 5 months, and 15 days of total service. Their electronic signature was provided and the applicant has completed their first full term of service.

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

j. **Behavioral Health Condition(s):** None

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Applicant for the Review of Discharge; Self-Authored Statement; Associates of Arts in Teaching; Master of Business Administration Acceptance Letter; Awards and Recognitions; Partial Separation Package; Four Character Letters are as follows:

a. The immediate supervisor contends, they have worked alongside the applicant for nearly three years now, with a working relationship built on trust which speaks strongly to their character. The applicant serves as the Lead Truck Driving Instructor, where they led the first Odessa College Truck Driving program from an idea to what it is today, as one of the colleges' most revenue generating department. They are someone who is dependable, on-time, willing to show up and go all in. They have additionally been accepted in the Leadership Institute, a program for upcoming leaders at the college, as the applicant cares about the students they serve and the team they led.

b. On 5 May 2021, Paster, Christian Faith Center, contends the applicant has been a member since January 2013 and has faithfully attended service. They have volunteered in the Children's ministry, greeting people on the welcome team, and in the operation of cameras during worship services. The applicant has proven to be of high moral character and shown a strong work ethic, with a particular emphasis on excellence. Their dependability and leadership skills prompted the church along with the applicant's spouse, leaders of a small group where they teach and led members of their congregation.

c. On 10 and 18 May 2021, former colleagues contends, the applicant's talent, skills, and knowledge of their profession are unsurpassed. They selflessly sacrificed the applicant's time on countless occasions, in order to life the weight off their struggling peers back, always demonstrating the highest level of character and integrity. Since they have left the Army, the applicant has been an outstanding community leader and role model volunteering at the local church and actively participating in various community organizations. Further the applicant has the utmost character and was a great contributor to their communities. They are spiritually grounded and their military background molded an already instilled ability to approach obstacles and overcome through tenancy and sheer focus.

6. POST SERVICE ACCOMPLISHMENTS: The applicant's role as a civilian has created a time of personal and professional growth. They have finished a degree (Associate Degree) and began their career as a Trucking Driver Instructor, at a local Community College. Further, they would graduate with their bachelor's degree in August 2021 and will pursue their Master's in Business Administration in the fall.

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 waiverable. Eligibility: Ineligible unless a waiver is granted.

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

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

standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

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

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

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

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

h. Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 112a (wrongful use of 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, a narrative reason change, and changes to both of the separation and reentry codes. A review of the record provides administrative irregularity in the proper retention of records, specifically the AMHRR is void of some of the separation proceedings, the outcome of their administrative separation board proceedings, and a mental health and/or medical examinations required for this separation type.

b. The available evidence provides the applicant completed their fourth reenlistment as SSG, with 12 years, 6 months, and 17 days of prior active and inactive service. The applicant wrongfully used marijuana on or about 7 September – 7 October 2011 and separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), with an Under Other than Honorable Conditions. Although the record is missing the election of rights, the applicant through defense counsel, requested a re-initiation of their entire administrative separation process which clearly identified who their separation authority was. In the alternative, because the improper format was used for the applicant's notification, if the command truly sought an OTH, the applicant requested a characterization of service no less

favorable than General (Under Honorable Conditions).

c. While the separation authority approval is missing from the record, they received an Under Other than Honorable Conditions characterization of service, which resulted in a reduction to the lowest enlisted grade. They served 14 years, 5 months, and 15 days of total service and was on an indefinite contractual obligation.

d. 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.

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 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 was diagnosed in-service with an Adjustment Disorder. Post-service, he is service connected for combat related PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed in-service with an Adjustment Disorder. The trauma underlying the service connected PTSD occurred in-service, prior to the misconduct.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the service connected PTSD, trauma occurring prior to the misconduct, and nexus between trauma and substance use, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, it was determined that the applicant's VA service connected PTSD outweighed the basis of separation – wrongful use of marijuana.

b. Prior Decisions Cited: None

c. Response to Contentions: The applicant seeks relief contending, the discharge they received was unjust for the offense they committed and the separation board that was held was premeditated. At one point in their military career, they committed an offense (positive urinalysis) which led to their discharge. They have accepted full responsibility for their actions and suffered the consequences for their unfavorable act. Therefore, their Under Other than

Honorable Conditions was inequitable as it appears none of the board members were properly referred to act as voting members for their separation proceedings. Possibly, there may have been a different outcome if these errors had not been made. Since their separation from the military, the applicant's role as a civilian has created a time of personal and professional growth. They have finished a degree (Associate Degree) and began their career as a Trucking Driver Instructor, at a local Community College. Further, they would graduate with their bachelor's degree in August 2021 and will pursue their Master's in Business Administration in the fall. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's drug abuse basis for separation.

(1) Defense counsel contends a violation of the applicant's due process for a proper administrative separation board aforementioned in sections **4.h.3** and **4.h.3** of this document. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's drug abuse basis for separation.

(2) Character letters are detailed in section **5.a-c**, by their immediate supervisor, pastor, and former colleagues/friends. The Board acknowledged this contention.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions). The Board determined the reentry code is proper and equitable and voted not to change it.

e. Rationale for Decision:

f. The Board voted to change the applicant's characterization of service. Based on liberally considering all the evidence before the Board, it was determined that the applicant's VA service connected PTSD outweighed the basis of separation – wrongful use of marijuana. With medical mitigation, and in consideration of the applicant's length of service, to include combat, and quality, the Board voted to upgrade the discharge to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions). The Board determined the reentry code is proper and equitable and voted not to change it.

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

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

10. BOARD ACTION DIRECTED:

a. **Issue a New DD-214:** Yes

b. **Change Characterization to:** Honorable

c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

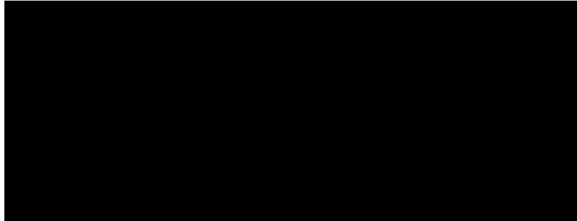
AR20210015263

d. Change RE Code to: No Change

e. Change Authority to: AR 635-200

Authenticating Official:

1/2/2025



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