

1. Applicant's Name: [REDACTED]**a. Application Date:** 30 December 2021**b. Date Received:** 13 January 2022**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, through counsel, an upgrade to honorable and a narrative reason change.

The applicant's counsel seeks relief contending, in effect, the applicant was unjustly discharged for wrongful use of a controlled substance because the infraction was the result of undiagnosed and untreated post-traumatic stress disorder (PTSD). It was inequitable to fail to consider, as a mitigating factor, the applicant's PTSD and other mental health issues which were created by sexual harassment and blatant racial discrimination the applicant faced. The applicant used marijuana to self-medicate pain and depression. The sexual harassment, trauma at Guantanamo Bay, repeated racist interactions, and the betrayal by the applicant's superiors contributed to the extreme stress and anxiety which characterizes the applicant's PTSD.

a. Board Type and Decision: In a records review conducted on 22 January 2025, and by a 4-1 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the discharge (MST and PTSD diagnosis). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable. There is no change to the narrative reason or re-entry code as both were proper and equitable. *Please see Section 9 of this document for more detail regarding the Board's decision.*

2. 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: 22 June 2015**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 21 May 2015

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully used marijuana between on or about 5 December 2014 and on or about 5 January 2015.

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

(4) Legal Consultation Date: 1 June 2015

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 3 June 2015 / General (Under Honorable Conditions)

3. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 9 October 2012 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 25 / HS Graduate / 95
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 2 years, 8 months, 14 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Received orders for duty at Guantanamo Bay, Cuba and AF.
- f. **Awards and Decorations:** AAM, NDSM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) FG Article 15, 12 March 2015, reflects the applicant wrongfully used marijuana between on or about 5 December 2014 and on or about 5 January 2015. The punishment consisted of reduction to private/E-1; forfeiture of \$773 pay per month for 2 months; and extra duty and restriction for 40 days.

(2) A search of the Army criminal file indexes revealed no records pertaining to the applicant.

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

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

(1) **Applicant provided:** Department of Veteran Affairs (VA), Rating Decision, 5 June 2017, reflects, in part, the applicant was granted service-connection for PTSD (also claimed as MST, hypervigilance, depression, anxiety, insomnia and alcohol abuse/substance abuse) with an evaluation of 70 percent, effective 29 August 2016.

- (2) **AMHRR Listed:** None

4. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Counsel's Brief with 10 exhibits (112 total pages)

5. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

6. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder

(PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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

(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.

(7) 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, paragraph 12c(2), misconduct (drug abuse).

7. 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 and a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's counsel requests the applicant's narrative reason for the discharge be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with a general (under honorable conditions). The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." Army Regulation 635-8, Separation Processing and Documents, governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be listed in tables 2-2 or 2-2 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant's counsel contends the applicant was unjustly discharged for wrongful use of a controlled substance because the infraction was the result of undiagnosed and untreated PTSD. The applicant's AMHRR is void of a PTSD diagnosis. The applicant provides VA, Rating Decision, 5 June 2017, which reflects, in part, the applicant was granted service-connection for PTSD (also claimed as MST, hypervigilance, depression, anxiety, insomnia and alcohol abuse/substance abuse) with an evaluation of 70 percent, effective 29 August 2016.

The applicant's counsel contends it was inequitable to fail to consider, as a mitigating factor, the applicant's PTSD and other mental health issues which were created by sexual harassment and blatant racial discrimination the applicant faced. A search of the Army criminal file indexes revealed no records pertaining to the applicant and there is no evidence in the AMHRR the applicant sought assistance or reported the discrimination.

The applicant's counsel contends the applicant used marijuana to self-medicate pain and depression. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant's counsel states the applicant had honorable service. The Board will consider the applicant service accomplishments and the quality of service according to the DODI 1332.28.

The applicant's counsel states the applicant's discharge is preventing the applicant receiving veteran benefits and is causing employment challenges. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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. The Board does not grant relief to gain employment or enhance employment opportunities.

8. 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: PTSD, Depression, and Alcohol and Marijuana Dependence. MST in BCT and racial discrimination.

(2) Did the condition exist or experience occur during military service? **Yes.** MST in BCT, racial discrimination, resulting PTSD dx.

(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 misconduct occurred after the trauma and nexus between trauma and substance use, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's condition or experience outweighed the listed basis for separation for the aforementioned reason(s).

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant's counsel contends the applicant was unjustly discharged for wrongful use of a controlled substance because the infraction was the result of undiagnosed and untreated PTSD.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's Drug Abuse charges.

(2) The applicant's counsel contends it was inequitable to fail to consider, as a mitigating factor, the applicant's PTSD and other mental health issues which were created by sexual harassment and blatant racial discrimination the applicant faced.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's Drug Abuse charges.

(3) The applicant's counsel contends the applicant used marijuana to self-medicate pain and depression.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to PTSD mitigating the applicant's Drug Abuse charges.

d. The Board determined the discharge is inequitable based on the circumstances surrounding the discharge (MST and PTSD diagnosis). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable. There is no change to the narrative reason or re-entry code as both were proper and equitable.

e. Rationale for Decision:

(1) The Board voted to upgrade the discharge to Honorable based on the medical diagnosis of PTSD and MST that mitigate the basis of separation. The Board determined the reason for the discharge was accurate based on the fact the applicant stated he is still using marijuana to alleviate pain. The Board voted to retain the RE-4 due to the applicant's medical diagnosis that requires a waiver for reenlistment.

(2) The Board voted not to change the applicant's reason for discharge as the reason was both proper and equitable.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20220004584

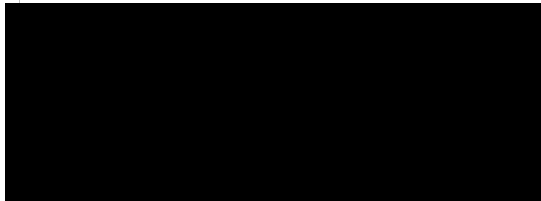
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

9. BOARD ACTION DIRECTED:

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

1/23/2025



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