

1. Applicant's Name:

- a. **Application Date:** 9 August 2022
- b. **Date Received:** 16 August 2022
- 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 and a change to their reentry code.

b. The applicant seeks relief contending, their discharge was inequitable because it was based on one isolated incident in 26 months of service with no other adverse action. They tried to take leave twice on two separate occasions for deaths in their family and was denied. They have never been in trouble/written up before this incident and the applicant is an Armed Forces Service Medal recipient.

c. **Board Type and Decision:** In a records review conducted on 18 October 2024, and by a 4-1 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, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 1 April 2021

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 22 December 2020

(2) **Basis for Separation:** On or between 30 October – 30 November 2020, they wrongfully used marijuana

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

(4) **Legal Consultation Date:** Waived counsel on 5 January 2020

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

(6) **Separation Decision Date / Characterization:** 10 March 2021 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 12 February 2019 / 4 years

b. Age at Enlistment / Education / GT Score: 24 / 1-year Diploma / 91

c. Highest Grade Achieved / MOS / Total Service: E-3 (PFC) / 25U10 Signal Operations Support Specialist / 2 years, 1 month, 20 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, AFISM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 12 February 2019, the applicant enlisted in the Regular Army (RA) for 4 years as a private second class, PV2 (E-2). One year later, The Enlisted Record Brief provides they were promoted to private first class, PFC (E-3). On 18 December 2020, the applicant was flagged, Suspend Favorable Personnel Actions (FLAG), for drug abuse adverse action (UA) and field-initiated involuntary separation (BA).

(2) On 18 December 2020, the Supervisory Drug Testing Coordinator, Joint Base Lewis-McChord, WA, informed the command of the applicant's positive urinalysis for marijuana and provided the required actions IAW AR 600-85, such as notifying local CID, 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.

(a) The applicant was counseled by their company commander and command referred for a Substance Use Disorder (SUD) evaluation for their marijuana use, with their performance and behavior rated "Excellent." The provider indicated there was "No enrollment in mandatory SUD treatment at this time."

(3) On 22 December 2020, 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 wrongful use of marijuana on or about 30 October – 30 November 2020. They recommended an General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of their separation notice. On 5 January 2021, they elected to waive their right to counsel and declined to provide a statement on their behalf.

(a) The commander's report in section 2.o. (statement on likelihood of other outcomes), they noted: "In addition to the service member not wanting to continue service, [the applicant] shows no remorse nor any inclination [they] would learn from this incident."

(b) In section 2.s. (favorable communications/recommendations), the commander provides, "Prior to this incident, [the applicant] was recommended for promotion and received accolades from [their] supervisor stating [they were] the best worker there."

(4) The same day, the applicant completed their medical assessment, history, and examination (MHE) for separation at OKUBO Clinic, Joint Base Lewis-McChord, WA, provides on their assessment, while on active duty, the applicant did not seek medical care for their broken tibia bone and they would be seeking disability with Veterans Affairs (VA) for their left tibia and ACL flares.

- (a) Their medical history, block 29 lists the following explanations of “yes” answers:
- 12c: lower back pain when waking up and getting day started
 - 12i: torn ACL in high school, little flares here and there
 - 12n: broke tibia in left leg in basic training and AIT
 - 17f: depression loss of Dad and brother
 - 22: advised for surgery for broken tibia

(b) Their medical history, block 30a, provides the examiner noted the applicant’s history of a left tibia stress fracture and an ACL (anterior cruciate ligament) tear EPTS (existing prior to service). The provider recommended the applicant to follow-up with their PCM (primary care manager) qualified them for separation.

(5) On 11 January 2021, they received nonjudicial punishment (NJP) in violation of Article 112a, UCMJ (wrongful use of schedule II substance), for wrongful use of marijuana on or about 30 October – 30 November 2020, which they did not appeal. Their punishment imposed a reduction to PV2; forfeiture of \$971.00 pay, suspended, to be automatically remitted if not vacated on or before 10 July 2021; and extra duty for 45 days.

(6) On 10 March 2021, the separation approval authority approved the discharge, with a General (Under Honorable Conditions). On 15 March 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 1 April 2021, with 2 years, 3 months, and 4 days of total service. Their electronic signature was provided and the applicant has not completed their first full term of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: On 24 February 2021, the applicant completed a mental status evaluation (MSE) at Rainer Embedded Behavioral Health, Joint Base Lewis-McChord, WA, which indicated a BH diagnosis of: Unspecified Cannabis-Related Disorder and deferred to their medical record. They could understand and participate in administrative proceedings and could appreciate the difference between right and wrong; and prohibiting alcohol was recommended. They did not have a BH condition that caused them to fail medical retention standards IAW AR 40-501. They were psychiatrically cleared and recommended to maintain the scheduled appointment (24 March 2021) with BH.

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; Honor Graduate Certificate; Certificate of Signal Regimental Affiliation; Enlisted Record Brief; Training Completion Certificate; Security Training Certificate; Bureau of Security and Investigative Services (BSIS)

6. POST SERVICE ACCOMPLISHMENTS: None provided 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) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 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.

(5) 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 (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,

marijuana) 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 a change to their reentry code. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available evidence provides the applicant enlisted in the RA, promoted to PFC, and served for 1 year, 10 months, and 6 days prior to the misconduct which led to their separation. They were flagged for having wrongfully used marijuana in violation of Article 112a, UCMJ, received NJP and was subsequently demoted to PV2. Although the applicant was command referred for a SUD evaluation, the provider indicated mandatory enrollment was not necessary then. 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. They elected to waive their right to defense counsel and elected not to submit a statement on their behalf.

(1) The applicant completed both of their medical and mental examinations which provided they were qualified for separation. Medically, the applicant was diagnosed with a history of a left tibia stress fracture and an ACL tear EPTS. The provider's recommended the applicant follow-up with their PCM as needed. Their MSE revealed the applicant had an unspecified cannabis-related disorder and was psychiatrically cleared IAW AR 40-501; the provider recommended for the applicant to keep their appointment with BH.

(2) They served 2 years, 1 month, and 20 days of their 4 year 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 which were void of a diagnosis. However, the applicant asserts OBH which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant marked OBH.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is an absence of diagnoses, conditions, or experiences for mitigation.

(4) Does the condition or experience outweigh the discharge? **No.** Despite applying liberal consideration, the board concurred with the Board's Medical Advisor's opine and determine that there were no in-service diagnoses or symptoms which may outweigh the applicant's misconduct - wrongfully used marijuana.

b. Response to Contention(s): The applicant seeks relief contending, their discharge was inequitable because it was based on one isolated incident in 26 months of service with no other adverse action. They tried to take leave twice on two separate occasions for deaths in their family and was denied. They have never been in trouble/written up before this incident and the applicant is an Armed Forces Service Medal recipient.

The board considered this contention during proceedings and ultimately determined that in accordance with Army Regulation 635-200, in pertinent part, stipulates circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization. Therefore, the board determined that the discharge was proper and equitable and did not warrant a discharge upgrade.

c. The board determined that the discharge is, at this time, proper and equitable, considering 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.

d. 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. The applicant was discharged for misconduct (drug abuse) - wrongful use of marijuana, therefore an uncharacterized discharge is proper and equitable. Additionally, the applicant lacked in-service factors and post-service accomplishments that may outweigh the discharge. 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

AR20220011507

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