

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 30 August 2022
- b. **Date Received:** 7 September 2022
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable, a change of their separation code, reentry code, the narrative reason for separation, and an appearance before the Board.

(2) The applicant requests relief stating they were shown some leniencies due to their outstanding professional character and work ethic. Their platoon sergeant recommended their retention on active duty, and they provided character letters from other Soldiers and their own apology letter, all of which were part of their separation packet.

(3) They were able to land a new career working as a civilian with the Department of Defense. They would like their character of service upgraded so they can use their education benefits. They are currently attending college for business and management. They would appreciate a second chance at life and be able to use their GI Bill for education to further their career.

b. Board Type and Decision: In a telephonic personal appearance conducted on 10 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length, quality of service and post-service accomplishments. 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), with a corresponding separation code of JKN, and the reentry code to RE-3.

Please see Section 10 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) / Army Regulations 635-200, Paragraph 14-12c(2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 15 March 2015

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 8 October 2014

(2) **Basis for Separation:** Wrongfully used marijuana

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

(4) Legal Consultation Date: 29 October 2014

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 November 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 15 November 2011 / 5 years, 7 weeks

b. Age at Enlistment / Education / GT Score: 22 / HS Graduate / 91

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42A10, Human Resources Specialist / 3 years, 4 months, 1 day

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Alaska / None

f. Awards and Decorations: NDSM, ASR, OSR [Note: No individual Decorations Awards]

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, U.S. Army Criminal Investigation Command, subject: Law Enforcement Report – Initial Report, dated 21 May 2014, reflects the applicant as the named subject with offenses of Wrongful Possession and Use of Marijuana (Article 112a, Uniform Code of Military Justice (UCMJ)), with occurrence between on or about 31 December 2013 and on or about 1 January 2014. The Investigative Summary states the investigation determined the applicant committed the offense of Wrongful Use and Possession of Marijuana when they provided a urine sample during a unit urinalysis inspection, which tested positive for Tetrahydrocannabinol (THC), the active ingredient in Marijuana. The applicant was interviewed and admitted to smoking Marijuana while on leave.

(2) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 12 June 2014, reflects the applicant received nonjudicial punishment for, between on or about 24 December 2013 and on or about 7 January 2014, wrongfully used marijuana, in violation of Article 112a, UCMJ. Their punishment consisted of a reduction in rank/grade from specialist/E-4 to private two/E-2; forfeiture of \$858.00 for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(3) A DA Form 3822 (Record of Mental Status Evaluation) dated 23 September 2014, reflects the applicant fit for full duty, including deployment. Section IV (Diagnoses) reflects no psychiatrist diagnosis or condition on Axis I (Psychiatric Conditions) and no diagnosis on Axis II (Personality & Intelligence Disorders). The behavioral health provider stated the applicant has demonstrated no cognitive impairments which would limit them from participation in administrative proceedings. The applicant meets medical retention standards and does not

warrant disposition through medical channels regarding behavioral health. They are cleared to participate in administrative proceedings.

(4) A memorandum, Headquarters, 425th Brigade Special Troops Battalion, subject: Separation under Army Regulation 635-200, Chapter 14-12c(2), Misconduct (Drug Abuse), dated 8 October 2014, reflects the applicant's notification of initiating actions to separate them for Misconduct-Abuse of Illegal drugs. The reason for the proposed actions is for wrongfully used marijuana. The company commander recommended the applicant's service be characterized as general (under honorable conditions). On the same date, the applicant acknowledged receipt of separation notice and of the rights available to them.

(5) In the applicant's memorandum, subject: Separation under Army Regulation 635-200, Paragraph 14-12c Commission of a Serious Offense, dated 29 October 2014, the applicant states they have advised by their consulting counsel of the basis for the contemplated action to separate them for Commission of a Serious Offense; and its effect; of the rights available to them, and the effect of any action taken by them in waiving their rights. They elected to submit statements in their own behalf, consisting of –

(a) In the applicant's memorandum, subject: Letter of Apologize for Misconduct and Request for Retention, dated 10 October 2014, they respectfully request to be retained in the Army and addresses the ways in which their service has made them an asset to the U.S. Army. They apologize for their poor decision in consuming an illegal substance. If they are able to be retained, they will live by the Army Values and Soldier's Creed and will not allow peer pressure to get the best of them again.

(b) In a 3rd party statement, subject: Recommendation Letter for Retention of [Applicant], and Suspension of Separation for Service, dated 10 October 2014, a senior noncommissioned officer attests to the applicant's character and recommends retention in the U.S. Army.

(6) A memorandum, Headquarters and Headquarters Company, 1st Battalion, 502nd Infantry Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c(2), Misconduct (Drugs Abuse), dated 3 November 2014, reflects the applicant's company commander recommended the applicant be separated from the Army prior to the expiration of their current term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as in face of the Command's emphasis to discourage this particular type of misconduct, the applicant willfully committed this misconduct, which was prejudicial to good order and discipline within the Armed Forces.

(7) A memorandum, Headquarters, 4th Brigade Combat Team (Airborne), 25th Infantry Division, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 17 November 2014, the separation authority reviewed the separation packet of the applicant and after careful consideration of all matters, directed the applicant be separated from the Army prior to the expiration of their current term of service. The separation authority directed their service be characterized as General (Under Honorable Conditions) and states after reviewing the rehabilitative transfer requirements, they determined the requirements do not apply to this action.

(8) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 15 March 2015, with 3 years, 4 months, and 1 day of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private Two
- item 4b (Pay Grade) – E-2
- item 12i (Effective Date of Pay Grade) – 12 June 2014
- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKK
- item 27 (Reentry Code) - 4
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

i. Lost Time / Mode of Return: NA

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE:

- two DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States), with letters
- Case Files for Approved Separation
- four 3rd Party Character Statements
- Civilian Employment documents
- Excerpts of Service Record
- DD Form 214
- Letter, dated 29 May 2024, attesting to their post-military endeavors and continued growth, and their military service and adversity

6. POST SERVICE ACCOMPLISHMENTS: Civilian employment with the Department of Defense.

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

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. 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. 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.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 September 2011, 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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; 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. 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.

(5) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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.

f. 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).

g. 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 DoD Instructions 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.

h. Manual for Courts-Martial, United States (2012 Edition) stated, 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 order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment under the UCMJ for wrongfully using marijuana and was involuntarily discharged from the U.S. Army. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions). The applicant completed 3 years, 4 months, and 1 day of net active service. The applicant did not complete their first full term of service of 5 years, 7 months.

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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. The applicant submitted the following additional document(s):

b. The applicant presented the following additional contention(s): Applicant and character witness provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.

c. Counsel / Witness(es) / Observer(s): Witness [REDACTED]

10. 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(1) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(2) Does the condition or experience outweigh the discharge? **N/A**

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends being shown some leniencies in regard to the characterization of the applicant's service due to the applicant's outstanding professional character and work ethic. The applicant's platoon sergeant recommended retention on active duty, and the applicant provided character letters from other Soldiers and an apology letter, all of which were part of the separation packet.

The Board considered this contention along with the totality of the applicant's records.

(2) The applicant contends being able to land a new career working as a civilian with the Department of Defense.

The Board acknowledged the applicant's Post Service accomplishments.

(3) The applicant contends an upgrade to the characterization of service will enable the use of education benefits. The applicant is currently attending college for business and management

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.

d. The Board determined the discharge is inequitable based on the applicant's length, quality of service and post- service accomplishments. 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), with a corresponding separation code of JKN and the re-entry code to RE-3.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge

upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length and Quality of service) and post-service accomplishments and concurred that the factors mitigated the applicant's misconduct. The Board also noted it was a one-time drug use. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were inequitable. Thus, the prior characterization is no longer appropriate.

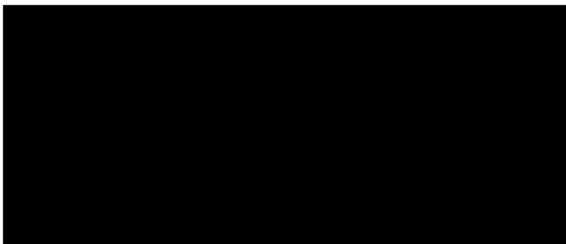
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will change to RE-3.

11. 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
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:



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