

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 5 January 2023
- b. **Date Received:** 5 January 2023
- 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, change in their separation code and their narrative reason for separation.

(2) The applicant seeks relief stating they served honorably. They tested positive during a unit urinalysis for synthetic marijuana. They are not a drug user, nor have they ever been a drug user. It happened in December 2020, when they were with their spouse at a house party and they ate a cookie, not knowing that the cookie contained marijuana. They believe their character of discharge should be changed because the whole thing was not their fault, they did not know the cookie contained marijuana. This whole thing was just an accident.

b. Board Type and Decision: In a records review conducted on 31 January 2024, and by a 5-0 vote, the Board determined the discharge is inequitable, regardless of the applicant's knowledge or lack thereof of THC ingestion, based on the applicant's diagnosis of Unspecified Depressive and Anxiety Disorders and Adjustment Disorder, Generalized Anxiety Disorder and PTSD secondary to MST/IPV mitigating the use of marijuana. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Secretarial Authority, with a corresponding separation code of JFF. Based on the applicant's medical diagnosis the Board determined the reentry code was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / Army Regulation 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 22 December 2022

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** on or before 13 July 2022 when applicant acknowledged receipt

(2) **Basis for Separation:** between on or about 7 November 2021 and 7 December 2021, the applicant used marijuana

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

(4) **Legal Consultation Date:** On 21 July 2022, the applicant waived their right to seek legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 9 September 2022 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 26 October 2020 / 3 years, 30 weeks

b. Age at Enlistment / Education / GT Score: 20 / HS Graduate / 101

c. Highest Grade Achieved / MOS / Total Service: E-2 / 92F10, Petroleum Supply Specialist / 2 years, 1 month, 27 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Electronic Copy of DD 2624, dated 21 January 2022, reflects the applicant tested positive for THC8 26 during an inspection random (IR) urinalysis conducted on 7 December 2021.

(2) A memorandum, Forward Support Company, 2nd Battalion, 10th Special Forces Group (Airborne), subject: Separation under Army Regulation 635-200, Paragraph 14-12c, (Commission of Serious Offense) [Applicant], undated, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, for between on or about 7 November 2021 and 7 December 2021, used marijuana, with a recommended characterization of service of general (under honorable conditions). On 13 July 2022 the applicant acknowledged the basis for the separation and of the right available to them.

(3) On 21 July 2022, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected to not to submit statements in their behalf.

(4) A memorandum, Forward Support Company, 2nd Battalion, 10th Special Forces Group (Airborne), subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], dated 26 July 2022, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states retaining the Soldier would have an adverse impact on the unit's morale and readiness.

(5) A memorandum, Headquarters, 1st Special Forces Command (Airborne) subject: Administrative Separation Under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 9 September 2022, the separation authority, having

reviewed the applicant's separation packet, directed that the applicant be separated from the Army prior to the expiration of current term of service. The separation authority directed the applicant's service be characterized as General (Under Honorable Conditions).

(6) The Enlisted Record Brief, dated 18 November 2022, reflects the applicant was advanced to the rank of private first class/E-3 on 26 October 2021, was later reduced to the rank of private two/E-2 on 19 July 2022.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 22 December 2022, shows in:

- item 4a (Grade, Rate or Rank) – Private Two
- item 4b (Pay Grade) – E-2
- item 12c (Net Active Service This Period) – 2 years, 1 month, 27 days
- item 12i (Effective Date of Pay Grade) – 19 July 2022
- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200
- item 26 (Separation Code) – JKQ [Misconduct, Commission of a Serious Offense]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

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

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

5. **APPLICANT-PROVIDED EVIDENCE:** None

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with application.

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 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence 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. Paragraph 14-12c (Commission of a Service Offense), stated 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 (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.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, misconduct (serious offense).

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 DoD Instruction 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)) 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.

8. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides the applicant tested positive for the use of marijuana. The DD Form 214, signed by the applicant, provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct (serious offense) rather than a discharge under other than honorable conditions, which is normally considered appropriate. They completed 2 years, 1 month, and 27 days of their contractual obligation. The applicant has not completed their first full term of service.

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 DoD guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: the applicant held in-service diagnoses of Unspecified Depressive and Anxiety Disorders and Adjustment Disorder. Post-service, he is service connected for Generalized Anxiety Disorder (GAD) but recently diagnosed with PTSD secondary to MST/IPV.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Unspecified Depressive and Anxiety Disorders and Adjustment Disorder. Post-service, he is service connected for Generalized Anxiety Disorder (GAD) but recently diagnosed with PTSD secondary to MST/IPV.

(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 nexus between trauma and substance use, the basis for separation is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Unspecified Depressive and Anxiety Disorders and Adjustment Disorder. Post-service, he is service connected for Generalized Anxiety Disorder (GAD) and PTSD secondary to MST/IPV outweighed the drug abuse basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends they served honorably. The Board determined that this contention was valid and voted to upgrade the characterization of service due to Unspecified Depressive and Anxiety Disorders and Adjustment Disorder. Post-service, he is service connected for Generalized Anxiety Disorder (GAD) and PTSD secondary to MST/IPV outweighed the drug abuse basis for separation.

(2) The applicant contends they tested positive during a unit urinalysis for synthetic marijuana. They are not a drug user, nor have they ever been a drug user. It happened in December 2020, when they were with their spouse at a house party and they ate a cookie, not knowing that the cookie contained marijuana. The Board considered this contention and voted to upgrade based on the applicant's medical diagnosis and nexus between trauma and substance abuse, regardless of knowledge of ingestion.

(3) The applicant contends they believe their character of discharge should be changed because the whole thing was not their fault, they did not know the cookie contained marijuana. This whole thing was just an accident. The Board considered this contention and voted to upgrade based on the applicant's medical diagnosis and nexus between trauma and substance abuse, regardless of knowledge of ingestion.

c. The Board determined the discharge is inequitable, regardless of the applicant's knowledge or lack thereof THC ingestion, based on the applicant's diagnosis of Unspecified Depressive and Anxiety Disorders and Adjustment Disorder, Generalized Anxiety Disorder and PTSD secondary to MST/IPV mitigating the use of marijuana. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Secretarial Authority, with a corresponding separation code of JFF. Based on the applicant's medical diagnosis the Board determined the reentry code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because diagnosis of Unspecified Depressive and Anxiety Disorders and Adjustment Disorder, Generalized Anxiety Disorder and PTSD secondary to MST/IPV outweighed the use of marijuana. Thus, the prior characterization is no longer appropriate.

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(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The RE code will not change, based on the applicant's medical diagnosis the Board determined the reentry code is proper and equitable.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** RE-1
- e. **Change Authority to:** AR 635-200

Authenticating Official:

2/8/2024



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