

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 2 January 2023
- b. **Date Received:** 12 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.

(2) The applicant requests relief stating in the interest of equity, to change their character of service to honorable, taking in consideration the context and history of their service, discharge, and post-discharge experience.

(3) They had a difficult time dealing with the passing of their grandmother who was like a mother to them. They did not realize it during this time, but they started to fall into a state of depression that worsen through the following year. Then with the breakup with their fiancé and their pending deployment to Kuwait, they felt a profound sense of being lost and isolated. It was during this time, in a moment of weakness, they made the mistake of turning to marijuana as an escape from their thoughts and the turmoil they felt. They were unable to break away from their reliance on marijuana to lessen the mental strain they experienced. Ultimately, they tested positive for marijuana, and this led to their discharge from the Army.

(4) They humbly ask the Board to consider the guidelines set forth in the Kurta and Wilkie memorandums. They genuinely believe their circumstances and the facts surrounding their service meet the requisite consideration laid out in the Kurta memorandum. They had experienced a prolonged period of manic depression and was mentally unwell in 2015.

(5) While they did not receive an official diagnosis of depression or a mental diagnosis, at the time of their use of marijuana, their medical records and post-discharge diagnosis indicate they were suffering from manic depression and mentally and emotionally ill before and after their discharge. They believe while the mistake they made is a blemish on their service record, the majority of their record shows their dedication to the Army and to our country.

b. Board Type and Decision: In a records review conducted on 2 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, as well as the circumstances surrounding the discharge (Major Depressive Disorder (MDD)), 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. The Board determined the reentry code is proper and equitable and voted not to change it. Please see Section 9 of this document for more detail regarding the Board's decision. 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: 9 December 2015

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 29 October 2015

(2) Basis for Separation: as the result of a urinalysis, conducted 9 September 2015, tested positive for marijuana, a Schedule I controlled substance.

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

(4) Legal Consultation Date: 12 November 2015

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: NIF / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 September 2013 / 4 years

b. Age at Enlistment / Education / GT Score: 22 / 60 Semester Hours or More College Credit / 118

c. Highest Grade Achieved / MOS / Total Service: E-4 / 68Y10, Eye Specialist / 2 years, 2 months, 17 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, GWTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, 221st Optometry Detachment, 10th Combat Support Hospital, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs [Applicant], dated 29 October 2015, 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(2), misconduct-abuse of illegal drugs, with a recommended characterization of service general (under honorable conditions) for, as the result of a urinalysis, conducted 9 September 2015, tested positive for marijuana, a Schedule I controlled substance. On the same day the applicant acknowledged the basis for the separation and of the right available to them.

(2) In a Psychiatry medical document, dated 2 November 2015, the applicant's chief complaint is depression.

(3) In a Medical Record, dated 5 November 2015, the applicant made a chief complaint as they reported dealing with feeling irritable and having anger issues because they are feeling frustrated at work. The applicant denied he had any sort of need to smoke (anxiety, feeling overwhelmed, stressed, likes the effects). They do not seem to have a lot of insight and lacks introspection.

(4) On 12 November 2015, 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 not to submit statements in their behalf.

(5) A memorandum, 221st Optometry Detachment, 10th Combat Support Hospital, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs [Applicant], the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states they applicant enrolled in the Army Substance Abuse Program on 14 September 2015. The commander does not consider it feasible or appropriate to accomplish other disposition as the applicant has had multiple positive urinalysis for marijuana in the past 3 months. They have shown an inability to make sound decisions in accordance with Army Values. The separation is in the best interest of the Army and the Soldier.

(5) A memorandum, Headquarters, 10th Combat Support Hospital, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs [Applicant], undated, the separation authority directed that the applicant be separated from the Army prior to the expiration of current term of service, and their service be characterized as Genera (Under Honorable Conditions).

(6) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 9 December 2015, with 2 years, 2 months, and 17 days 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) – 5 November 2015
- item 18 (Remarks) –
 - Continuous Honorable Active Service – 20130923 - 20150908
 - Member has not completed first full term of service

i. Lost Time / Mode of Return: NA

j. Behavioral Health Condition(s):

(1) Applicant provided:

- an excerpt of a Medical Record, reflecting the applicant's chief complaint as dealing with feeling irritable and having anger issues because they are feeling frustrated at work
- an excerpt of a Psychiatry Record, reflecting the applicant's chief complaint as depression

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with letter and appendixes
- Appendix A – Discharge Records
- Appendix B – Service Decorations, Citations, Commendations and Remarks, reflecting their awards of the AAM, NDSM, GWTSM, ASR and four Certificate of Achievements
- Appendix C – Health Records, Testimony
- Appendix D – Death Certificate, reflecting the applicant's ability to interpret the Korean language
- Appendix E – Statement from Friends, Employers, Fellow Servicemen, attesting to the applicant's character and post-discharge accomplishments
- Appendix F – Academic Records, Admission, reflecting the applicant's acceptance into college and then into the College of Optometry
- Appendix G – Kurta and Wilkie Memorandums

6. POST SERVICE ACCOMPLISHMENTS: acceptance into college and then into the College of Optometry.

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), 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.

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).

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 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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) dated 28 December 2012, provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components. 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, the Warrior Ethos, 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 Soldier who test positive for illicit drugs for the first time will be evaluated for dependency, disciplined, as appropriate, and processed for separation within 30 calendar days of the company commander receiving notification of the positive result from the ASAP. Retention should be reserved for Soldiers that show clear potential for both excellent future service in the Army and for remaining free from substance abuse. Soldiers diagnosed as drug dependent will be offered rehabilitation prior to separation.

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 tested positive for marijuana and was involuntarily separated. 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 2 years, 2 months, and 17 days of net active service and did not complete their first full term of service of 4 years.

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. The applicant's AMHRR provide no documentation of a diagnosis of a mental health condition during the applicant's military service.

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

9. BOARD DISCUSSION AND DETERMINATION:

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Major Depressive Disorder (MDD).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that VA service connection of 70% for MDD establishes that the condition began and/or occurred during active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, MDD. As there is an association between MDD and self-medication with illicit drugs, there is a nexus between his diagnosis of MDD and his wrongful use of THC.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition outweighed the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends in the interest of equity, their request to change their character of service to honorable, should take into consideration the context and history of their service, discharge, and post-discharge experience. The Board determined that this contention was valid and voted to upgrade the characterization of service due to MDD mitigating the applicant's wrongful drug abuse charges.

(2) The applicant contends they were unable to break away from their reliance on marijuana to lessen the mental strain they experienced. Ultimately, they tested positive for marijuana, and this led to their discharge from the Army. The Board determined that this contention was valid and voted to upgrade the characterization of service due to MDD mitigating the applicant's wrongful drug abuse charges.

(3) The applicant contends they humbly ask the Board to consider the guidelines set forth in the Kurta and Wilkie memorandums. They genuinely believe their circumstances and the facts surrounding their service meet the requisite consideration laid out in the Kurta memorandum. They had experienced a prolonged period of manic depression and was mentally unwell in 2015.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to MDD mitigating the applicant's wrongful drug abuse charges.

(4) The applicant contends while they did not receive an official diagnosis of depression or a mental diagnosis, at the time of their use of marijuana, their medical records and post-discharge diagnosis indicate they were suffering from manic depression and mentally and emotionally ill before and after their discharge.

The Board determined that this contention was valid and voted to upgrade the characterization of service due to MDD mitigating the applicant's wrongful drug abuse charges.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service, as well as the circumstances surrounding the discharge (Major Depressive Disorder (MDD)), 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. The Board determined the reentry code is proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service based on the following reasons: Based on the available information, it is the opinion of the Agency's BH Advisor that the applicant has a mitigating BH condition, MDD. As there is an association between MDD and self-medication with illicit drugs, there is a nexus between his diagnosis of MDD and his wrongful use of THC. The Board agreed on the medical opine that the applicant's BH diagnosis (MDD) is a mitigating condition for the drug use. The Board also found sufficient evidence of in-service mitigating factors (Length, Quality). 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.

(2) The Board voted to change the applicant's characterization of service to Honorable because the applicant's MDD outweighed the applicant's misconduct of wrongful use of THC. Thus, the prior characterization is no longer appropriate.

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

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** No change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

2/7/2024

