

1. Applicant's Name: [REDACTED]**a. Application Date:** 29 December 2022**b. Date Received:** 4 January 2023**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (under honorable conditions). The applicant requests, through counsel, an upgrade to honorable, and changes to the RE code from 4 to 1 and narrative reason to Secretarial Authority.

b. The applicant seeks relief contending, in effect, the applicant's discharge is inequitable. The applicant was over looked for promotion to private (E-1) (private two (PV2/E-2) and private first class (PFC/E-3). The applicant was transferred to special forces selection without notice and after completion of the course the applicant was transferred to Fort Lewis, WA. These administrative issues caused the applicant to experience regular marital stress. After several years of professional and personal stress, the applicant's spouse pressured the applicant to try marijuana while on leave. The applicant reported their drug use to the Army's behavioral health clinic and sought help for what they assumed was depression. The applicant also reported their use to the unit but was not immediately tested. During a mandatory drug test on 31 October 2019, the applicant tested positive for marijuana. Before and immediately after the applicant's positive test, the applicant completed a prime for life certification to help confront the possibility of a substance abuse program problem and sort counselling one to two times per month with their wife regarding both marital and professional stress. The applicant's service shows the applicant completed many military courses, received numerous awards and decorations, the highest Army physical fitness test scores in the unit, the highest rifle score, and volunteered for assignment to Germany. Since being discharged the applicant has not used drugs since the singular-use instance in September 2019, employed and is enrolled at Divers Institute of Technology and on track to complete a technical degree as a commercial diver.

c. Board Type and Decision: In a telephonic personal appearance conducted on 5 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, 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 to 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) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 15 May 2020

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 31 March 2020

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully used marijuana between on or about 1 October 2019 and on or about 31 October 2019.

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

(4) Legal Consultation Date: On 1 April 2020, the applicant waived the right to consult with counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 8 April 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 July 2016 / 6 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 111

c. Highest Grade Achieved / MOS / Total Service: E-4 / 15T10, UH-60 Helicopter Repairer / 3 years, 9 months, 21 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany / None

f. Awards and Decorations: ARCOM, AAM, AGCM, NDSM, ASR, OSR, Basic Aviation Badge

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Electronic Copy of DD 2624, dated 8 November 2019, shows the applicant tested positive for tetrahydrocannabinol (THC) 76 (marijuana) during an unit Inspection Random (IR) urinalysis conducted on 31 October 2019.

(2) Developmental Counseling Form, dated 13 November 2019, shows the applicant was informed that they were flagged for adverse action (AA) on 31 October 2019. (Analyst notes - The counselor states the DA Form 268 (Report to Suspend Favorable Personnel Actions (Flags)) was attached to the counseling, however there is no record of an AA flag other than it being mentioned in this counseling).

(3) DA Form 268, dated 4 October 2015, shows the applicant was flagged for drug abuse adverse action (UA), effective 31 October 2019.

(4) CID Law Enforcement Report, Initial-Final, dated 4 December 2019, shows that the applicant tested positive for THC, the active ingredient in marijuana, during a unit urinalysis inspection. The applicant was advised of their rights, which the applicant waived and stated they consumed marijuana at their residence due to family issues.

(5) FG Article 15, dated 11 December 2019, shows the applicant wrongfully used marijuana between on or about 1 October 2019 and on or about 31 October 2019. The punishment consisted of reduction to private (PVT/E-1); forfeiture of \$840.00 pay per month for 2 months, suspended, to be automatically remitted if not vacated on or before 15 June 2020; extra duty and restriction for 45 days, 30 suspended, to be automatically remitted if not vacated on or before 15 June 2010; and an oral reprimand.

(6) The applicant provided two developmental counseling forms, dated 11 February and 9 March 2020, showing the applicant's duty performance was good, was working on personal issues with the squad leader, and was applying for jobs outside of the military.

(7) A Report of Mental Status Evaluation (MSE), dated 24 March 2020, shows the applicant met behavioral health medical retention standards. The applicant had been screened for PTSD and TBI with negative results. The applicant was enrolled in the Substance Use Disorder Clinical Care (SUDCC) for marijuana use and evaluation. The applicant did not meet the criteria for a behavioral health condition. The applicant acknowledged that marital stressors played a role in their use of marijuana and that they discontinued use to seek a more positive form of treatment at the Embedded Behavioral Health clinic. The applicant was cleared for the separation process from a behavioral health perspective and could proceed with participation in administrative proceedings. No diagnosis was listed.

(8) Developmental Counseling Form, dated 31 March 2020, shows the applicant was informed that they were flagged for involuntary separation/field initiated (BA) on 31 March 2020.

(9) DA Form 268, dated 31 March 2020, shows the applicant was flagged for involuntary separation/field initiated (BA), effective 31 March 2020.

(10) The applicant's Enlisted Record Brief (ERB), dated 18 May 2020, shows the applicant was ineligible for reenlistment due to pending separation (9V). The applicant was promoted to the grades of E-2 effective 25 January 2017, E-3 effective 25 July 2017, and specialist (SPC/E-4) effective 25 June 2018. The applicant was reduced from E-4 to E-1 effective 18 December 2019.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: MSE as described in previous paragraph 4h.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Legal Brief with exhibits A through F.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has not used drugs since the singular-use instance in September 2019. The applicant is employed with Security Services Northwest, is enrolled at Divers Institute of Technology and on track to complete a technical degree as a commercial diver.

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

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

(1) 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) 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.

(4) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(5) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

(6) 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 (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, 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

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, through counsel, an upgrade to honorable, and changes to the RE code from 4 to 1 and narrative reason to Secretarial Authority. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 3 years, 9 months, and 21 days during which the applicant served 9 months and 13 days of foreign service. During a mandatory drug test on 31 October 2019, the applicant tested positive for marijuana. The applicant completed the Prime for Life program on 4 December 2019. On 15 May 2020, the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c (2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions).

c. The applicant through counsel, requests the narrative reason for the discharge be changed to Secretarial Authority. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JJK." Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, SPD Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant through counsel, requests an RE code change from 4 to 1. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

e. The applicant through counsel contends, in effect, the applicant's discharge is inequitable due to mitigating circumstances surrounding the discharge. The applicant was over looked for promotion to the grades of E-2 and E-3. The applicant was transferred to special forces selection without notice and after completion of the course the applicant was transferred

to Fort Lewis, WA. These administrative issues caused the applicant to experience regular marital stress, which led to a one time use of marijuana. The applicant's AMHRR shows the applicant was promoted to the grades of E-2 effective 25 January 2017, E-3 effective 25 July 2017, and E-4 effective 25 June 2018. AR 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

f. The applicant through counsel contends good service, through completion of many military courses, awards and decorations, training scores, and assignment to Germany. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

g. The applicant through counsel, states since being discharged the applicant has not used drugs since the singular-use instance in September 2019. The applicant is employed with Security Services Northwest, is enrolled at Divers Institute of Technology and on track to complete a technical degree as a commercial diver. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

h. 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):** N/A.

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

c. **Counsel / Witness(es) / Observer(s):** N/A.

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? **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 was not diagnosed in-service, has no service connection, and there are no known post-service diagnoses. However, the applicant's assertion of depression alone could be sufficient to mitigate the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was not diagnosed in-service, has no service connection, and there are no known post-service diagnoses. However, the applicant asserted depression.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's misconduct is not mitigated by the asserted depressive symptoms.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's asserted Depression outweighed the applicant's medically unmitigated illegal substance abuse offense.

b. Response to Contention(s):

(1) The applicant contends the applicant's discharge is inequitable due to mitigating circumstances surrounding the discharge. The applicant was over looked for promotion to E-2 and E-3. The applicant was transferred to special forces selection without notice and after completion of the course the applicant was transferred to Fort Lewis, WA. These administrative issues caused the applicant to experience regular marital stress, which led to a one-time use of marijuana. The Board liberally considered this contention but determined that the applicant's asserted depression, even if related to the events listed, did not mitigate the applicant's illegal substance abuse. However, the Board did find that the applicant's service record did outweigh the misconduct and warrant a discharge upgrade.

(2) The applicant contends good service, through completion of many military courses, awards and decorations, training scores, and assignment to Germany. The Board considered the applicant's three years of service, including an overseas tour, and the numerous awards received. The Board determined that the applicant's record, combined with the applicant's post-service accomplishments, did outweigh the applicant's illegal substance use offense.

(3) The applicant desires to rejoin the military service. The Board considered this contention and voted to change the RE-code to a RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate.

c. The Board determined the discharge is inequitable based on the applicant's length and 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 to 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.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length and quality of service, and post-service accomplishments outweighed the applicant's illegal substance abuse offense. Thus, the prior characterization is no longer appropriate.

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AR20230005070

(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.

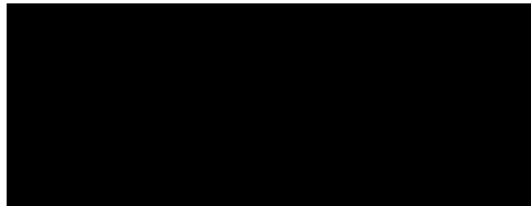
(3) The RE code will change to RE-3.

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:** Change to RE-3
- e. **Change Authority to:** AR 635-200

Authenticating Official:

3/12/2024



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