

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 17 July 2023
- b. **Date Received:** 24 July 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 due to an undiagnosed mental health condition of Post-Traumatic Stress Disorder (PTSD), they were self-medicating with marijuana because of the lack of support of their leadership and lack of knowledge of mental health services and assistance.

(3) They are now diagnosed with PTSD and receiving therapy. Due to the lack of support from their command when they lost their brother, they were depressed and did not have anyone to turn to or talk to. They started to self-medicate with marijuana to numb the pain and they have been seeking therapy since their PTSD diagnosis.

b. Board Type and Decision: In a records review conducted on 6 May 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 (PTSD and Bereavement). 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.

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: 22 December 2015

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 23 November 2015

(2) **Basis for Separation:** between on or about 21 March 2015 to on or about 21 April 2015, wrongfully used marijuana.

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

(4) **Legal Consultation Date:** 1 December 2015

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 10 December 2015 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 30 December 2013 / 3 years, 29 weeks
- b. **Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 102
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 35F10, Intelligence Analyst / 1 years, 11 months, 23 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWTSM, ASR
- 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 15 May 2015, reflects the applicant as the named subject with offense of Wrongful Use of Marijuana (Article 112a, Uniform Code of Military Justice (UCMJ), with occurrence on 21 April 2015. The Report of Summary states the investigation established probable cause to believe the applicant committed the offense of Wrongful Use of Controlled Substances when they rendered a urine sample during a unit urinalysis, which tested positive for Tetrahydrocannabinol (THC).

(2) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 18 August 2015, reflects the applicant received nonjudicial punishment for, between on or about 21 March 2015 and on or about 21 April 2015, wrongfully used marijuana, in violation of Article 112a, UCMJ. Their punishment consisted of a reduction in rank/grade of private first class/E-3 to private/E-1; forfeiture of \$773.00 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 25 August 2015, 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 was screened for PTSD and Traumatic Brain Injury and the findings were negative. The applicant was not enrolled in Army Substance Abuse Program but attended a two day Alcohol and Drug Abuse Prevention Training. The applicant meets medical retention standards and is therefore cleared for administrative separation actions as deemed appropriate by their command.

(4) A DD Form 2808 (Report of Medical Examination), dated 2 October 2015, reflects the examining physician states the applicant was qualified for service with no physical profile restrictions. In item 77 (Summary of Defects and Diagnoses), reflects "none."

(5) A DA Form 8003 (Army Substance Abuse Program (ASAP) Enrollment) dated 2 October 2015, reflects the applicant's command directed referral to the ASAP for a comprehensive assessment to determine whether or not the applicant meets the criteria for enrollment.

(6) A memorandum, Headquarters and Headquarters Company, 1st Battalion, 502nd Infantry Regiment, subject: Separation under Army Regulation 635-200, Chapter 14-12c(2), Misconduct (Drug Abuse), dated 23 November 2015, reflects the applicant's notification of initiating actions to separate them for Misconduct-Abuse of Illegal drugs. The reason for the proposed actions is between on or about 21 March 2015 to on or about 21 April 2015, 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.

(7) 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 23 November 2015, 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 rehabilitative attempts are not practical and will not produce a quality Soldier for continued service in the United States Armed Forces.

(8) In the applicant's memorandum, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), [Applicant], dated 1 December 2015, the applicant states they have been afforded the opportunity to consult with appointed counsel and waived their right to consult with an attorney. They understood they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them. They elected not to submit statements in their behalf.

(9) A memorandum, Headquarters, 2nd Brigade Combat Team, 101st Airborne Division (Air Assault) subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct (Drug Abuse), dated 10 December 2015, 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.

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 22 December 2015, with 1 year, 11 months, and 23 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 18 August 2015
- 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

(1) **Applicant provided:** two Department of Veterans Affairs letters reflecting a summary of benefits with an evaluation of PTSD which is currently 70-percent disabling.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 149 (Application for Correction of Military Records under the Provisions of Title 10, U.S. Code, Section 1552)
- Two VA Letters
- 3rd Party Letter

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the 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), 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 received nonjudicial punishment under the UCMJ for their misconduct (drug abuse) 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 1 year, 11 months, and 23 days of net active service. The applicant did not complete 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. The applicant's AMHRR does not reflect documentation of a diagnosis of PTSD, nor did the applicant provide evidence of a diagnosis of PTSD, during their 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: Bereavement and PTSD

(2) Did the condition exist, or experience occur during military service? **Yes.** Bereavement in-service with the VA retrospectively determining trauma symptoms were also present.

(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 is mitigated.

(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 and experience outweighed the basis of separation-wrongful use of marijuana.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends due to an undiagnosed mental health condition of PTSD; they were self-medicating with marijuana because of the lack of support of their leadership and lack of knowledge of mental health services and assistance. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's drug abuse basis for separation.

(2) The applicant contends they are now diagnosed with PTSD and receiving therapy. The Board acknowledged this contention.

(3) The applicant contends due to the lack of support from their command when they lost their brother, they were depressed and did not have anyone to turn to or talk to. They started to self-medicate with marijuana to numb the pain and they have been seeking therapy since their PTSD diagnosis. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's drug abuse basis for separation.

(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 (PTSD and Bereavement). 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 carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, 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, Quality) and concurred with the conclusion of the medical advising official that the applicant's (PTSD) does mitigate the applicant's misconduct drug abuse. There is a nexus between PTSD and substance use. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warranted an upgrade.

(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.

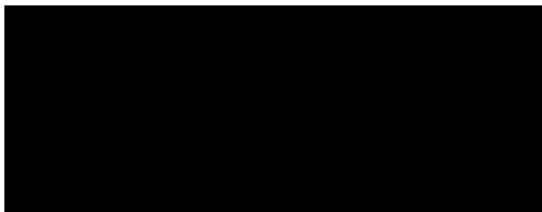
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

7/31/2024



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