

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 10 August 2023
- b. **Date Received:** 28 August 2023
- c. **Counsel:** None.

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is under honorable conditions (general). The applicant requests an upgrade to honorable and a narrative reason change.

The applicant states in effect, During their time in the military they were drug tested for THC and failed. They used THC to relieve the stress they were dealing with regarding their newborn son. Their son was physically abused by the babysitter, someone they trusted because they were referred by their NCO. They have the police reports of the incident and the pictures that were taken when they discovered the bruises on their son's back and ear. The applicant became mentally ill and became scared because they were young and alone with a baby. They understand their actions were wrong, they have found positive ways to cope with the mental damage of the abuse.

They learned a big lesson after their UCMJ, they received a demotion and 45 days of extra duty. They were on time for extra duty without complaints and reported when instructed, they attended a drug abuse class and passed, they did social counseling on and off post with a counselor. They loved the U.S Army but they made a huge mistake as a young adult, they are asking for forgiveness.

b. **Board Type and Decision:** In a telephonic personal appearance conducted on 10 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service. 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 reenry code to RE-3. *Please see Section 10 of this document for more detail regarding the Board's decision.*

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / AR 635-200 / JKK / RE-4 / Under Honorable Conditions (General)

b. **Date of Discharge:** 25 August 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 30 July 2014

(2) **Basis for Separation:** The applicant wrongfully used marijuana, a Schedule I controlled substance between 3 June 2014 and 10 June 2014.

(3) **Recommended Characterization:** General, under honorable conditions.

(4) **Legal Consultation Date:** Waived consultation 1 August 2014.

(5) **Administrative Separation Board:** N/A

(6) **Separation Decision Date / Characterization:** 12 August 2014 / General, under honorable conditions.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 14 June 2011 / 4 years

b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 85

c. **Highest Grade Achieved / MOS / Total Service:** E-4 (Specialist) / 92A10 Automated Logistical Specialist / 3 years, 2 months, 12 days.

d. **Prior Service / Characterizations:** None.

e. **Overseas Service / Combat Service:** South Korea / None

f. **Awards and Decorations:** AAM, AGCM, NDSM, GWTSM, KD SM, ASR, OSR

g. **Performance Ratings:** N/A

h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 19 June 2014 the applicant's immediate commander was notified of their confirmed positive urinalysis. The applicant tested positive for THC during a random urinalysis conducted on 10 June 2014.

(2) A Report of Medical Examination document dated 26 June 2014, provides the applicant received a separation medical examination.

(3) A CID Report of Investigation dated 1 July 2014, provides the applicant admitted to smoking marijuana.

(4) A Report of Mental Status Evaluation document dated 2 July 2014, provides the applicant received a separation evaluation that psychologically cleared them for administrative separation.

(5) On 9 July 2014 the applicant's immediate commander was notified of their enrollment in the Army Substance Abuse Program (ASAP) for substance abuse treatment.

(6) Record of Proceedings UCMJ document dated 17 July 2014 provides the applicant received a NJP for violating Article 112a of the UCMJ. They wrongfully used marijuana between 3 June – 10 June 2014. Punishment consisted of reduction in rank to E-3 and extra duty for 30 days.

(7) On 30 July 2014 the applicant's immediate commander notified them of their intent to separate them for misconduct; abuse of illegal Drugs. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they waived consulting with counsel and

completed their election of rights indicating they understood the prejudices that may occur in receiving a characterization of service of less than honorable.

(8) On 7 August 2014 the command endorsed and concurred with the commander's discharge recommendation and on 12 August 2014 the appropriate authority approved the separation and directed a general, under honorable conditions characterization of service.

(9) A Certificate Of Release Or Discharge From Active Duty document provides the applicant was discharged on 25 August 2014, they completed 3 years, 2 months, and 12 days of their contractual obligation.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant did not provide any mental health records.

(2) AMHRR Listed: The applicant was enrolled In ASAP for substance abuse treatment.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Discharge Review) application, Lawton Police Department offense report dated 5 February 2014 that provides , two photographic images, VA Form 21-4138; applicant's statement, Certificate of Achievement, The Good Conduct Medal, Associate in Science degree 18 December 2018, five Stayer University President's List certificates, State of Florida Notary Public document and three letter of recommendations that describes the applicant's attitude, performance, work ethic and positive promoting in their community to bring awareness to gun violence and to stop the violence.

6. POST SERVICE ACCOMPLISHMENTS: The applicant completed their Associate of Arts in General Education; August 2016, they graduated and received an Associate in Applied Science in Funeral Service; December 2018 and they are pursuing an Associate in Accounting, with an expected conferral with honors in Septemeber 2023. Currently they are notary in Jacksonville, Florida and work at a funeral home where they are learning to become a licensed embalmer and fulltime insurance processor.

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), dated 25 September 2019, 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 provides the authorized types of characterization of service or description of separation.

(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) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards

(5) 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. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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.

e. 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.

f. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (drug abuse).

g. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per 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:

- 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
- 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
- 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

h. 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. It provides 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 missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

- Chapter 1-7c (5) Soldiers who fails to participate adequately in or respond to successfully to rehabilitation will be processed for administrative separation
- Soldiers with subsequent alcohol or drug related incident or misconduct at any time during the 12 month period following successful completion of the ASAP or during the 12 month period following removal for any reason, will be processed for separation as a rehabilitation failure

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 an upgrade to honorable. The applicant's DD-214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge, which is normally considered appropriate for a soldier discharged under CH 14 for misconduct.

b. Based on the available evidence the applicant enlisted in the army at the age of 18 they tested positive for THC and received a Non Judicial Punishment. They were processed for administrative separation due to smoking marijuana between 3 June 2014 – 10 June 2014.

c. The applicant was notified of the Intent to separate them, they waived consulting with counsel and the appropriate authority approved the separation. Evidence provides the applicant received the required medical and mental health separation examinations. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 25 August 2014.

d. DD Form 214 provides administrative error in block 4a, the applicant was demoted to E-3 on 18 July 2014.

e. Chapter 14 establishes policy and prescribes procedures for members being separated 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.

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. 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 the contentions 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? **No.** 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 no potentially mitigating BH conditions documented in AHLTA or JLV.

(2) Did the condition exist, or experience occur during military service? **No.** The Board's Medical Advisor found no potentially mitigating BH conditions were diagnosed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the applicant was diagnosed with Cannabis Abuse while on active duty, this

condition is mitigating only in the presence of another mitigating BH condition. Applicant has not been diagnosed with any additional potentially mitigating BH conditions.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined there was no condition or experience that outweighed the basis of separation.

b. Response to Contention(s):

The applicant contends having had a mental breakdown after the applicant's child was abused. The Board considered this contention and determined that the trauma of this circumstance, combined with the applicant's length of service and one-time drug use, outweighed the applicant's illegal substance abuse offense.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. The Board carefully considered the applicant's request, supporting documents, evidence in the records, 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 and quality), to include severe family matters (babysitter allegedly abused the applicant's 10-month-old son) and post service accomplishments, and concurred the factors mitigate the misconduct. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were inequitable. Thus, the prior characterization is no longer appropriate.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230013274

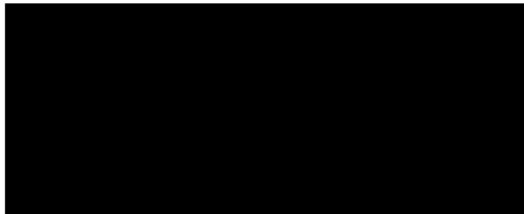
(3) The RE code will change to RE-3.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

7/5/2024



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