

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 26 September 2023
- b. **Date Received:** 2 October 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 a change to honorable.

(2) The applicant seeks relief stating because of the misfortune of events, they started to use marijuana as a coping mechanism from what they were enduring in and outside of the military. During all of this they were seeking mental/emotional help. Their continual use of marijuana was due to the fact of the domestic abuse they were receiving at home.

(3) They were inducted into a behavioral health facility in early 2021 to seek mental treatment. They were diagnosed with anxiety and depression disorder. They are asking for their characterization of service be upgraded because they did serve the country and their accolades speak of what an exceptional and respectable Soldier they were.

b. Board Type and Decision: In a records review conducted on 10 April 2024, and by a 5-0 vote, the board determined the discharge is inequitable based on the applicant's length and quality of service, Generalized Anxiety DO (GAD), and Major Depressive DO (MDD) mitigated the misconduct - drug abuse. 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.

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 15 July 2021

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR), case separation file for approved separation is void of all documents except for their separation orders. On 23 January 2024 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files), as of this date there has been no response.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 June 2019 / 3 years

b. Age at Enlistment / Education / GT Score: 21 / HS Graduate / 98

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92G10, Culinary Specialist / 4 years, 4 months, 9 days

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

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

f. **Awards and Decorations:** ARCOM, AAM-2, AGCM, NDSM, GWTSM, ASR

g. **Performance Ratings:** NA

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

(1) The Headquarters, U.S. Army Garrison – Fort Rucker Orders 183-0501, dated 2 July 2021, discharged the applicant from the U.S. Army effective 15 July 2021.

(2) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 15 July 2021 and shows in:

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 4 years, 4 months, 9 days
- item 12f (Effective Date of Pay Grade) – 27 April 2021
- item 18 (Remarks) – in part, the applicant completed their first term of service; it is void of a continuous honorable service remark
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12c
- item 26 (Separation Code) – JKQ [Misconduct, Commission of a Serious Offense]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

(3) An Enlisted Record Brief dated 16 July 2021, reflects the applicant was promoted to the rank/grade of specialist/E-4 on 7 March 2019 and was reduced to private/E1 on 27 April 2021. Additionally, the Enlisted Record Brief reflects the applicant has four suspensions of favorable personnel actions (Flag) for adverse action dated 26 March 2021, and for a Law Enforcement Investigation, Drug Abuse Adverse Action, and Involuntary Separation; dated 26 February 2021.

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

j. **Behavioral Health Condition(s):** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with personal statement
- Timeline of Events
- DD Form 214

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) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

(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. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Paragraph 14-12c (Commission of a Service Offense), stated a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) Chapter 15 (Secretarial Plenary Authority) 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 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

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

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 DoD Instruction 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for 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.

f. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

8. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the documents of the applicant's case files for approved separation reflecting the adverse actions, to include their adverse action for Drug Abuse and for their Law Enforcement Investigation, leading to their separation. The DD Form 214 provides the applicant was discharged with a character of service of general (under honorable conditions), for misconduct, (serious offense). They completed 4 years, 4 months, and 9 days of net active service this period; however, they did not complete their 3-year contractual reenlistment obligation.

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. Neither the applicant nor their AMHRR provide documentation of a mental health diagnoses prior to the applicant's discharge from the U.S. Army.

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

9. BOARD DISCUSSION AND DETERMINATION:

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

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

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found both GAD and MDD were diagnosed during military 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 two mitigating BH conditions, MDD and GAD. As there is an association between these conditions and use of illicit drugs to self-medicate emotional symptoms, there is a nexus between these two BH conditions and his wrongful use of marijuana.

(4) Does the condition or experience outweigh the discharge? **Yes.** The board concurred with the opinion of the Board's Medical Advisor, a voting member. As a result, the ADRB applied liberal consideration and found that the applicant's length and quality of service, Generalized Anxiety DO (GAD), and Major Depressive DO (MDD) outweighed the misconduct - drug abuse - basis for separation for the aforementioned reason.

b. Response to Contention(s):

(1) The applicant contends because of the misfortune of events, they started to use marijuana as a coping mechanism from what they were enduring in and outside of the military. The board considered this contention during proceedings and determined that relief was warranted based on the applicant's Generalized Anxiety DO (GAD) and Major Depressive DO (MDD) outweighed the misconduct - drug abuse - basis for separation for the aforementioned reason.

(2) The applicant contends there were inducted into a behavioral health facility in early 2021 to seek mental treatment. They were diagnosed with anxiety and depression disorder. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted as outlined above in paragraph 9a (4) and 9b (1).

(3) The applicant contends they are asking for their characterization of service be upgraded because they did serve the country and their accolades speak of what an exceptional and respectable Soldier there were. The board considered this contention during proceedings and determined that relief was warranted based on the applicant's Generalized Anxiety DO (GAD) and Major Depressive DO (MDD) outweighing the applicant's drug abuse basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, Generalized Anxiety DO (GAD), and Major Depressive DO (MDD) mitigated the applicant's drug use. 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 no change the reentry code.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization to honorable because the applicant's length and quality of service, Generalized Anxiety DO (GAD), and Major Depressive DO (MDD) mitigated the applicant's drug use. 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.

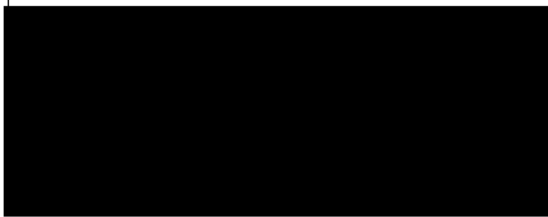
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: 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, paragraph 14-12a

Authenticating Official:

5/3/2024



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