

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 24 October 2023**b. Date Received:** 30 October 2023**c. Counsel:** [REDACTED]**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, a change of the separation code, reentry code and the narrative reason for separation.

(2) The applicant, through counsel, seeks relief stating they well understand their mistake in trying marijuana once, and has learned and practiced better ways of dealing with stress ever since then. They have continued to work and support their family, but still hopes to have a chance to serve again, whether in the active Army or the National Guard.

(3) The Army did not apply its rules and regulations equally and fairly. Their commander suspended the forfeiture of pay and restriction portions of their Article 15 punishment. The purpose was to give them a second chance. They held up their end of the bargain by not getting into further trouble and their suspended punishments were never imposed because of their good behavior. They successfully completed the Army's Substance Abuse Program. The Army allows for rehabilitative measures in cases such as theirs to give Soldiers a fighting chance to continue to serve. These measures mean nothing if commanders indiscriminately ignore them and kick out Soldiers on a whim. Their discharge also fails to account for changing societal norms about marijuana use. These evolving views do not give Soldiers license to use marijuana, but this board should consider the growing acceptability of medical and recreational marijuana in states across the country when deciding whether their one-time use warranted such a drastic penalty.

(4) The Army failed to follow the policy of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations). They demonstrated that rehabilitation was practicable for them and that they could be developed as a satisfactory Soldier. The Substance Use Disorder Clinical Care (SUDCC) has confirmed they did not need drug rehabilitation and their good conduct before and after their single lapse of judgement speaks for itself. Their command did not follow the regulation in their separation as they have proven they not only could be rehabilitated but actually were.

(5) The board should upgrade their discharge as a matter of fundamental fairness and clemency. Through their initial enlistment and reenlistment, they exhibited all the qualities of an excellent Soldier, except one mistake in using marijuana one time. Request for the board to grant their characterization of service that fits their overall character while serving and give them a second chance to serve again.

**b. Board Type and Decision:** In a records review conducted on 1 November 2024, the board, by a 4-1 vote, concluded that the applicant's discharge was inequitable due to in-

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20230017423**

service mitigating factors, such as length and quality of service. As a result, the board approved relief by upgrading the characterization of service to Honorable. 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) / Army Regulations 635-200, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

**b. Date of Discharge:** 17 April 2023

**c. Separation Facts:** The applicant's case separation file is void from the Army Military Human Resource Record (AMHRR); however, the applicant provided their case separation files. The information in 3c (1) through (6) were derived from those documents.

**(1) Date of Notification of Intent to Separate:** 23 January 2023

**(2) Basis for Separation:** between on or about 9 February 2022 and on or about 9 March 2022, wrongfully used marijuana.

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

**(4) Legal Consultation Date:** 7 February 2023

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 2 March 2023

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 7 May 2020 / NIF

**b. Age at Enlistment / Education / GT Score:** 27 / HS Graduate / 99

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B1O, Infantryman / 5 years, 3 months, 10 days

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

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

**f. Awards and Decorations:** JSAM, AAM, AGCM, NDSM, GWTSM, KDSM, NCOPDR, ASR

**g. Performance Ratings:** NA

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

**(1)** On 10 June 2019, the applicant was awarded the Army Achievement Medal for exceptionally meritorious service while serving as a Stryker Anti-Tank Guided Missile Driver, Camp Humphreys, Korea from 30 April 2018 to 10 June 2019.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20230017423**

(2) The Headquarters, United Nations Command, Permanent Order 203-002, dated 21 July 2020, awarded the applicant the Joint Service Achievement Medal for the period 1 July 2019 to 1 July 2020.

(3) A DA Form 1059 (Service School Academic Evaluation Report), covering the period 17 November 2020 through 11 December 2020, reflects the applicant successfully "Achieved Course Standards" and completed the Basic Leader Course. Their academic rater commented "performed as a motivated Soldier who satisfactorily demonstrated solid character by accepting accountability for [themselves] and others." Their reviewing official commented "[Applicant's] discipline and willingness to learn were easily identifiable by [applicant's] peers and instructors."

(4) The Headquarters, 2nd Battalion, 327th Infantry Regiment Permanent Orders Number 013-017, dated 13 January 2021, reflects the applicant was awarded the Army Good Conduct Medal for the period of service of 7 January 2018 to 8 January 2021, for exemplary behavior, efficiency, and fidelity in Active Federal Military Service.

(5) An Air Assault Course Diploma reflects on 23 September 2021, the applicant successfully completed the Air Assault Course at The Sabalauski Air Assault School, 101st Airborne Division.

(6) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 21 July 2022, reflects the applicant received nonjudicial punishment for, between on or about 9 February 2022 and on or about 9 March 2022, wrongfully used marijuana, in violation of Article 112a, UCMJ. Their punishment consisted of a reduction in rank/grade from specialist/E-4 to private first class/E-3, forfeiture of \$1,217.00 pay for 2 months suspended, extra duty for 45 days, and restriction for 45 days suspended. The applicant elected not to appeal.

(7) A DA Form 3822 (Report of Mental Status Evaluation) dated 26 July 2022, reflects the applicant has no duty limitations due to behavioral health reasons and currently meets behavioral health medical retention standards. The behavioral health provider noted the applicant has no behavioral health diagnosis and states the applicant presented for a Command Directed Evaluation for an Administrative Separation under Army Regulation 635-200, paragraph 14-12c. The applicant screened negative for Traumatic Brain Injury, Post Traumatic Stress Disorder, history of military sexual trauma, and screened negative for substance use disorder.

(8) A memorandum, Charlie Company, 2nd Battalion, 327th Infantry Regiment, subject: Notification of Administrative Separation under Army Regulation 635-200, Paragraph 14-12c (2), dated 23 January 2023, reflects the applicant was notified by their company commander of initiating action to separate them for Misconduct-Abuse of Illegal Drugs. The reason for their proposed actions is between on or about 9 February 2022 and on or about 9 March 2022, the applicant wrongfully used marijuana. The company commander recommended the applicant receive a General (Under Honorable Conditions) characterization of service. The applicant's acknowledgement of receipt of the notification is not in evidence for review.

(9) On 7 February 2023, the applicant completed their Election of Rights regarding separation under Army Regulation 635-200, paragraph 14-12c (2), stating they have been advised by their consulting counsel of the basis of the contemplated action to separate them for Misconduct-Abuse of Illegal Drugs, and its effects; of the rights available to them; and of the effect of any action taken by them in waiving their rights. They understand they may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to them. They elected not to submit statements in their own behalf and waived

counsel. However, in their personal statement submitted with their application to the board, they stated they were going through a very hard time and realize not that they made a bad decision. Their goal is to move forward and rise above this incident and still fulfill their dream of a lifelong career in the U.S. Army. Their initial steps that they took to remedy this situation included attending Counseling, SUDCC and Army Substance Abuse Program courses as well as maintaining commitment and work ethic in their current position.

**(10)** A memorandum, Headquarters, 1st Brigade Combat Team, 101st Airborne Division (Air Assault), subject: Administrative Separation under Army Regulation 635-200, Paragraph 14-12c(2), dated 2 March 2023, reflects the separation authority review the separation packet of the applicant and after careful consideration of all matters, directed the applicant be separated from the U.S. Army prior to the expiration of current term of service and their service be characterized as General (Under Honorable Conditions). The separation authority determined the rehabilitative transfer requirements do not apply to this separation action.

**(11)** In their counsel's letter, regarding: [Applicant] Request to Terminate Administrative Separation under Army Regulation 635-200, Paragraph 14-12c (2), dated 15 March 2023, The applicant's counsel requests the separation authority to terminate the administrative separation.

**(a)** The applicant received nonjudicial punishment on 21 July 2022, accepted responsibility and did not appeal their punishment. The applicant received notice of the initiation of separation actions 1 year and 5 months after the alleged misconduct. The applicant's unit caused them to believe the Article 15 punishment was the end of the adverse actions against them for a single allegation of marijuana use. The commander imposed the punishment in July 2022 and suspended a portion of the punishment until January 2023. The applicant accepted nonjudicial punishment, chose not to appeal, and served their punishment under the belief they would get to continue to service in the U.S. Army. Under the legal doctrine of equitable estoppel, the Army must retain the applicant.

**(b)** Alternatively, request the applicant's discharge should at least pause to afford them time to respond to the administrative separation action and argue for retention and a rehabilitation assignment.

**(12)** A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 17 April 2023, with 5 years, 3 months, and 10 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private First Class
- item 4b (Pay Grade) – E-3
- item 12i (Effective Date of Pay Grade) – 21 July 2022
- item 18 (Remarks) –
  - no entry for the applicant's CONTINUOUS HONORABLE ACTIVE SERVICE – "20180108 – 20200506"
  - MEMBER HAS 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)

(13) In an email exchange with the applicant's counsel and the SUDCC Clinical Director, Blanchfield Army Community Hospital, subject: New SUDCC, dated 10 October 2023, the director states "it appears the Soldier was chaptered out on a [Army Regulation 635-200, paragraph] 14-12 and was evaluated once by SUDCC and not enrolled for treatment as [applicant's] pattern of use did not meet criteria for a substance use disorder. There was nothing to rehabilitate from except a lapse in judgment."

(14) In the applicant's personal letter to the Board, undated, they state they are filled with remorse, and they know they were wrong to smoke marijuana which led to their positive urinalysis test on 9 March 2022. That was their first and last time smoking marijuana and the regret that decision every day and have learned a valuable lesson along with more positive ways to deal with stress.

(a) They received nonjudicial punishment in July 2022, accepted responsibility and did not appeal their punishment. They were told that if they had no more positive urinalysis tests that everything will be fine. However, 1 year, 5 months later after the alleged misconduct they received notice on 23 January 2023, the Army was discharging them. Their unit had them believing that the Article 15 punishment was the end of the allegations against them.

(b) They have hope of being able to serve in the Army again. They hope the Discharge Review Board will review their administrative discharge and upgrade the characterization of service and the reason of discharge. They also hope their mistake will not continue to follow them the rest of their life. Since being discharged it has been hard to get employment once perspective employers see their DD Form 214.

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 letter
- Counsel's Letter regarding: Request for Records Review of Equity and Propriety of Administrative Discharge [Applicant], with 18 exhibits

**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 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. It prescribes the policies, procedures, and the general provisions governing the separation of Soldiers before

expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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) Paragraph 1-17 (Counseling and Rehabilitative Requirements) states Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation of Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. 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 (Paragraph 5-7)
- other designated physical or mental conditions (Paragraph 5-14)
- entry-level performance and conduct (Chapter 11)
- unsatisfactory performance (Chapter 13)
- minor disciplinary infractions (Paragraph 14-12a) or a pattern of misconduct (Paragraph 14-12b)
- failure to meet body composition standards (Chapter 18)

(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 635-8 (Separation Processing and Documents) dated 10 March 2014, prescribed 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).

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. 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.

i. Manual for Courts-Martial, United States (2019 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. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation; however, the applicant provided separation documents which reflects they received nonjudicial punishment on for wrongfully using marijuana and was involuntarily discharged from the U.S. Army. Their DD Form 214 provides they were discharged with a character of service of general (under honorable conditions) for misconduct (drug abuse). They completed 5 years, 3 months, and 10 days of net active service this period, completed their first full term of service; however, their AMHRR does not contain their reenlistment document to determine their remaining 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; to include abuse of illegal drugs; 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. 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):**

b. **The applicant presented the following additional contention(s):**

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

**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 reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

**(4)** Does the condition or experience outweigh the discharge? **N/A**

**b. Response to Contention(s):**

**(1)** The applicant contends they well understand their mistake in trying marijuana once and has learned and practiced better ways of dealing with stress ever since then. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant in-service mitigating factors (length, quality) and one time drug use. As a result, the board approved relief by upgrading the characterization of service to Honorable and amending the separation authority to AR 635-200, paragraph 14-12a.

**(2)** The applicant contends they have continued to work and support their family, but still hopes to have a chance to serve again, whether in the active Army or the National Guard. 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 10b (1) of this document.

**(3)** The applicant contends the Army did not apply its rules and regulations equally and fairly. Their commander suspended the forfeiture of pay and restriction portions of their Article 15 punishment. The purpose was to give them a second chance. They held up their end of the bargain by not getting into further trouble and their suspended punishments were never imposed because of their good behavior. 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 10b (1) of this document.

**(4)** The applicant contends they successfully completed the Army's Substance Abuse Program. The Army allows for rehabilitative measures in cases such as theirs to give Soldiers a fighting chance to continue to serve. These measures mean nothing if commanders indiscriminately ignore them and kick out Soldiers on a whim. The board voted after considering the contention and finding no evidence of the command acting in an arbitrary or capricious manner. Also, the applicant did not provide any additional evidence to show that the command did not comply with the regulations.

**(5)** The applicant contends their discharge also fails to account for changing societal norms about marijuana use. These evolving views do not give Soldiers license to use marijuana, but this board should consider the growing acceptability of medical and recreational marijuana in states across the country when deciding whether their one-time use warranted such a drastic penalty. 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 10b (1) of this document.

**(6)** The applicant contends the Army failed to follow the policy of Army Regulation 635-200. They demonstrated that rehabilitation was practicable for them and that they could be developed as a satisfactory Soldier. The SUDCC has confirmed they did not need drug rehabilitation and their good conduct before and after their single lapse of judgement speaks for itself.

**(7)** The applicant contends the board should upgrade their discharge as a matter of fundamental fairness and clemency. Through their initial enlistment and reenlistment, they exhibited all the qualities of an excellent Soldier, except one mistake in using marijuana one time. Request for the board to grant their characterization of service that fits their overall

character while serving and give them a second chance to serve again. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant in-service mitigating factors (length, quality) and one time drug use. As a result, the board approved relief by upgrading the characterization of service to Honorable and amending the separation authority to AR 635-200, paragraph 14-12a.

**d.** The Board determined that the characterization of service was inequitable based on the applicant's in-service factors (length, quality) and one time drug use. Accordingly, the board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and amending the separation authority to AR 635-200, paragraph 14-12a. However, the Board determined that the narrative reason and reentry code were proper and equitable, deciding against any changes to them.

**e.** Rationale for Decision:

**(1)** The Board voted to change the applicant's characterization of service to Honorable because the applicant's in-service factors (length, quality) and one time use outweigh the applicant's misconduct of drug abuse. Thus, the prior characterization is no longer appropriate.

**(2)** The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.

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

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20230017423**

**11. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

**Authenticating Official:**

4/15/2025



Le

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