

1. Applicant's Name:

- a. **Application Date:** 16 October 2023
- b. **Date Received:** 16 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 under other than honorable conditions. The applicant requests an upgrade to honorable and an appearance before the Board.

(2) The applicant seeks relief contending, they joined the Army fresh out of high school. They were an immature, fatherless child, and with no real guidance before going to basic training. They chose the wrong crowd and made decisions that ultimately ruined their military career. They have no excuse for their actions.

(3) It has almost been 10 years since they enlisted and they have learned from their mistakes and completely understand their responsibilities as an adult. They have attended technical college and received a certificate of completion in Cybersecurity. They are currently in the process of becoming a firefighter and pursuing a career in aviation.

(4) They wish to be able to enlist in the Army and serve again. They have character reference letters but they believe the process to enlist will be smoother if they can get their character of service upgraded.

b. Board Type and Decision: In a records review conducted on 2 December 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 10 of this document for more detail regarding the Board's decision.

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: 28 May 2015

c. Separation Facts: The applicant's case separation file is void of several documents from their Army Military Human Resource Record (AMHRR); however, the Commander's Report and the separation authority memorandum were in evidence. The information in 3c(1) through (6) were derived from those documents.

(1) Date of Notification of Intent to Separate: NIF

(2) Basis for Separation:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20230014773**

- on 8 July 2014, disrespectful to a noncommissioned officer NCO and disrespectful in deportment by walking away from the NCO in an angry manner while being addressed
- on or about 26 November 2014, tested positive for marijuana
- on 17 December 2014, failed to report 0630 hours accountability formation and 0800 hours Behavior Health appointment
- on or about 5 January 2015, tested positive for marijuana
- on 21 January 2015, failed to report to their first line supervisor after their Army Substance Abuse Program (ASAP) class ended
- between 22 January 2015 and 10 February 2015 and again, between 17 March 2015 and 14 April 2015, Absent Without Leave

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: on 20 May 2015, the separation authority approved the applicant's request for a conditional waiver for a General (Under Than Honorable Conditions) discharge. [Note: the applicant's request for a conditional waiver is not in evidence for review.]

(6) Separation Decision Date / Characterization: 20 May 2015 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 20 August 2013 / 3 years, 18 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Diploma / 92
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 13B1O, Cannon Crewmember / 1 year, 7 months, 22 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) Four DA Forms 4187 (Personnel Action) dated 22 January 2015 through 17 April 2015, reflects that applicant's duty status changes with two occurrences of absent from duty from 22 January 2015 to 10 February 2015 and 17 March 2015 to 14 April 2015.

(2) A memorandum, 3rd Battalion, 29th Field Artillery Regiment, 3rd Armored Brigade Combat Team, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], reflects the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states for the description of rehabilitation attempts the applicant had numerous counseling on several occasions, they were given more

than ample time to rehabilitate. They do not consider it feasible or appropriate to accomplish other disposition as the applicant is not deserving to be in the U.S. Army. No amount of rehabilitation will produce a quality Soldier.

(3) A memorandum, Headquarter, Combat Aviation Brigade, 4th Infantry Division, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 20 May 2015, the separation authority, having reviewed the applicant's separation packet and careful consideration of all matters, directed that the applicant be separated from the Army prior to the expiration of their current term of service and their request for a conditional waiver for General (Under Honorable Conditions) discharge be approved.

(4) On 28 May 2015, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 1 year, 7 months, and 22 days of net active service this period. They did not complete their full 3-year, 18 week contractual enlistment obligation. Their DD Form 214 show in –

- item 18 (Remarks) – Continuous Honorable Service – 20130820-20140707
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 28 (Narrative Reason for Separation) – Misconduct (Serious Offense)
- item 29 (Dates of Time Lost During This Period) – 20150122-20150210; 20150317-20150414

i. Lost Time / Mode of Return: 22 January 2015 to 10 February 2015 and 17 March 2015 to 14 April 2015 / NIF

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)
- three 3rd Party Statements
- Technical Certificate of Credit – Cybersecurity
- Degree Completion Plan
- City of Memphis update letter

6. POST SERVICE ACCOMPLISHMENTS: educational requirements in cybersecurity and completed 23 of 120 credit hours towards a bachelor's degree in Aviation (Professional Pilot).

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), dated 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. 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), 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 "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).

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 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 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 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.

g. 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 86 (Absence Without Leave).

8. SUMMARY OF FACT(S):

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

b. The available evidence reflects the applicant's two occurrences of absent with leave from 22 January 2015 to 10 February 2015 and 17 March 2015 to 14 April 2015; was disrespectful to an NCO; disrespectful in deportment, failure to report, tested positive for marijuana on two occasions, and was involuntarily discharge from the U.S. Army. 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 1 year, 7 month, and 22 days of net active service this period; however, they did not complete their 3-year, 18-week contractual enlistment 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. 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. 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): N/A

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

10. BOARD DISCUSSION AND DETERMINATION:

d. 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**

e. Prior Decisions Cited: None

f. Response to Contentions:

(1) The applicant contends they joined the Army fresh out of high school. They were an immature, fatherless child, and with no real guidance before going to basic training. They chose the wrong crowd and made decisions that ultimately ruined their military career. They have no excuse for their actions.

The Board considered the applicant's contention regarding youth and immaturity and found that the totality of the applicant's record does not warrant a discharge upgrade.

(2) The applicant contends It has almost been 10 years since they enlisted and they have learned from their mistakes and completely understand their responsibilities as an adult. They have attended technical college and received a certificate of completion in Cybersecurity. They are currently in the process of becoming a firefighter and pursuing a career in aviation. The Board acknowledged and considered this contention and the applicant's post-service accomplishments during board deliberations.

(3) The applicant contends they wish to be able to enlist in the Army and serve again. They have character reference letters but they believe the process to enlist will be smoother if they can get their character of service upgraded.

The Board acknowledges the applicant's desire to serve again, however determined that a discharge upgrade to honorable is not warranted due to the serious nature of the misconduct.

g. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

h. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant did not have a condition or experience that may excuse or mitigate the multiple acts of misconduct. The Board also cited a lack of in-service factors (length, quality, and combat) to outweigh the misconduct. The applicant's discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, 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.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order:** No
- b. Change Characterization to:** No Change
- c. Change Reason / SPD Code to:** No Change
- d. Change RE Code to:** No Change
- e. Change Authority to:** No Change

Authenticating Official:

1/9/2025

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs