

1. Applicant's Name: [REDACTED]**a. Application Date:** 5 October 2023**b. Date Received:** 23 October 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, they were approached by their previous spouse and battle buddies regarding a change in their mood and behavior. They did not understand what was happening, they felt weak and felt like a failure, they were angry, lonely and under a great deal of stress. They started drinking more to cope and smoked marijuana to numb their pain. They were notified of their second deployment and felt as though the deployment would be a great way to get back on track: no access to marijuana or alcohol. A few weeks before their deployment their First Sergeant told them about their positive urinalysis, they asked what it meant for their deployment and their future in the Army. Their First Sergeant stated they would deploy, and they would do all they could to keep them in the Army, only because they saw the potential in them.

A few months after they deployed, they received an Article 15 for using marijuana, and after six months of being down range they were informed they were being chaptered out of the Army. They were devastated, they had just lost a soldier in Kandahar and they were weeks away from completing their initial enlistment. Religious services in Kandahar helped them through the process. They left the Army confused and feeling like a failure. The feelings of guilt, hurt, shame and defeat coupled with their pride prevented them from admitting they needed help. They lost their career and their marriage all because they lacked understanding and the intestinal fortitude to seek help.

They know there is no quick fix for battling with PTSD, depression, and substance abuse but now they understand there's hope especially when you identify the problems. Since receiving the help, they needed they have worked in various roles and have never been in trouble with the law aside from a few traffic tickets. They are pursuing a criminal justice technology degree and are undecided if they will become a juvenile probation officer or a substance abuse counselor. Since their separation they have received a 100 percent disability rating for PTSD. They are not attempting to dismiss the consequences of their behavior and actions, they are merely pointing out their undiagnosed mental health issues and mitigating circumstances. An upgrade to their discharge would be fair and equitable.

b. Board Type and Decision: In a records review conducted on 1 November 2024, the board, by a 4-1 vote, determined that the applicant's discharge was inequitable. This decision was based on the applicant's behavioral health condition (PTSD), which partially mitigated the misconduct related to the wrongful use of marijuana in 2008 and 2009. Additionally, the board found that the earlier misconduct (use of marijuana on 30 November 2007) was mitigated by the applicant's in-service factors, including length of service, quality of service, and combat experience, as it occurred prior to deployment to Afghanistan and the development of PTSD. As a result, the board voted to grant relief by upgrading the characterization of service to

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Honorable. However, the board voted not to change the narrative reason for separation or the reentry code.

*Please see Section 9 of this document for more detail regarding the Board's decision.
(Board member names available upon request)*

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 16 December 2009

c. Separation Facts:

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

(2) Basis for Separation: On 5 May 2009 the applicant tested positive for marijuana, they received a Filed Grade Article 15 on for 5 May 2009 for wrongful use of marijuana and they received a Field Grade Article 15 on 16 January 2008 for wrongful use of marijuana in which they tested positive for on 30 November 2007.

(3) Recommended Characterization: Retained

(4) Legal Consultation Date: 22 August 2009

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: NIF / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 27 September 2006 / 3 years

b. Age at Enlistment / Education / GT Score: 26 / NIF / 112

c. Highest Grade Achieved / MOS / Total Service: E-4 (Specialist) / 88H10 00 Cargo Specialist / 3 years, 2 months, 20 days.

d. Prior Service / Characterizations: ARNG; 20040507 – 20041129 / GD
RA; 19990811 – 20011102 / GD
ARNG; 19981201 – 19990810 / HD
ARNG; 19970805 – 19971020 / Uncharacterized

e. Overseas Service / Combat Service: None / Iraq, Afghanistan; 20090312 – 20090914

f. Awards and Decorations: ACM-CS, NDSM, GWTSM, ICM-CS, ASR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) Record of Proceedings UCMJ dated 16 January 2008 provides the applicant received a NJP for violating Article 112a of the UCMJ. They wrongfully used marijuana between or on 31 October – 30 November 2007. Punishment consisted of reduction in rank to E-1, forfeiture of \$670 pay for two months, extra duty and company restriction for 45 days.

(2) A memorandum dated 26 March 2008 provides the applicant's immediate commander was notified that they tested positive for THC.

(3) A Developmental Counseling Form dated 11 April 2009 provides the applicant was counseled to inform them they tested positive for THC during a random drug test that was conducted on 5 March 2019.

(a) On 5 May 2009 the applicant received a NJP for violating Article 112a of the UCMJ. On 5 March 2009 they wrongfully used marijuana. Punishment consisted of a rank reduction to E-1 and forfeiture of \$250 pay for two months.

(4) The applicant's immediate commander notified them of their intent to separate them for commission of a serious offense. The commander recommended retaining the applicant in the Army. On 16 August 2009 the applicant acknowledged the commander's notification and basis for separation, they consulted with counsel and completed their election of rights.

(5) On an unknown date the chain of command recommended separation from the Army prior to the expiration of their current term of service with a general discharge recommendation. On an unknown date the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

(6) A Certificate of Release or Discharge from Active Duty document provides the applicant was discharged on 16 December 2009, they completed 3 years, 2 months, and 20 days.

i. Lost Time / Mode of Return: None.

j. Behavioral Health Condition(s): PTSD

(1) Applicant provided: VA rating letter that shows a 100 percent service connection for PTSD.

(2) AMHRR Listed: Depression, drug abuse.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Record Review) application, a letter from the applicant, college transcripts, a copy of their DD Form 214 and a letter of recommendation in support of their application.

6. POST SERVICE ACCOMPLISHMENTS: The applicant previously worked at a Veteran's Home for the state of Ohio and worked as a correctional officer for three years. They are currently pursuing a criminal justice technology degree; they finished their last semester with a 4.0 GPA.

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. Rehabilitative requirements are not required for individuals separated under Chapter 14-12c.

- 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.

(6) 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.

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 12c, misconduct (serious offense).

f. 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.

g. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

h. 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

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 Form 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 for serious misconduct.

b. Based on available evidence the applicant enlisted in the army at the age of 26 they received two non-judicial punishments for using marijuana and were processed for administrative separation during their deployment in Afghanistan.

c. The applicant was notified of the intent to separate them for serious misconduct, and they acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. The applicant consulted with military counsel and the appropriate authority approved their administrative separation, the applicant's DD Form 214 provides they completed their first full term of service and was discharged on 16 December 2009 with an under honorable conditions (general) characterization of service.

d. 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. 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: PTSD-100% SC. (Note-diagnosis of Adjustment DO is subsumed under diagnosis of PTSD).

(2) Did the condition exist, or experience occur during military service? **Yes**. The Board's Medical Advisor found VA service connection for PTSD establishes nexus with military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partial**. The Board's Medical Advisor applied liberal consideration and opined that the applicant has a

mitigating BH condition, PTSD, which mitigates some of his misconduct. As there is an association between PTSD and use of illicit drugs to self-medicate, there is a nexus between his diagnosis of PTSD and his use of marijuana on 5 May 2009. PTSD does not mitigate the use of marijuana on 30 Nov 2007 as this occurred prior to his deployment to Afghanistan and development of PTSD.

(4) Does the condition or experience outweigh the discharge? No. After carefully reviewing the evidence, including the opinion of the Board Medical Advisor, the board concluded that the applicant's PTSD partially mitigated the misconduct related to the wrongful use of marijuana in 2008 and 2009, which served as the basis for separation. However, the PTSD did not outweigh the earlier misconduct (wrongful use of marijuana on 30 November 2007), which remained unmitigated. This earlier incident, though, was considered in light of the applicant's in-service factors such as length and quality of service, as well as combat experience since it occurred prior to deployment to Afghanistan and the development of PTSD.

b. Response to Contention(s):

(1) The applicant contends they suffered from undiagnosed mental health issues, and they had mitigating circumstances. The board reviewed this contention and, taking into account the applicant partially mitigated medical diagnosis of PTSD, as well as in-service factors such as the length and quality of service and combat experience, decided to grant relief.

c. The board found the applicant's discharge to be inequitable due to their BH condition (PTSD), which partially mitigates their misconduct related to the wrongful use of marijuana in 2008 and 2009. Additionally, the board determined that the remaining misconduct (wrongful use of marijuana on November 30, 2007) is mitigated by the applicant's in-service factors, including their length and quality of service as well as their combat experience. As a result, the board voted to grant relief by upgrading the characterization of service to Honorable, while leaving the narrative reason and reentry code unchanged.

d. Rationale for Decision:

(1) The board decided to upgrade the applicant's characterization of service to Honorable, recognizing that the applicant's behavioral health condition (PTSD) partially mitigated the misconduct involving the wrongful use of marijuana in 2008 and 2009. Additionally, the board concluded that the remaining misconduct, the wrongful use of marijuana on November 30, 2007, was mitigated by the applicant's in-service factors, including their length and quality of service as well as combat experience. As a result, the previous 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.

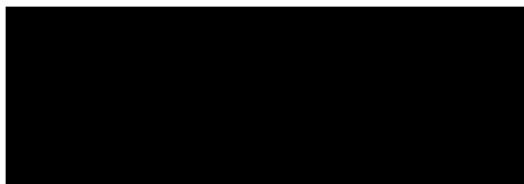
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10. BOARD ACTION DIRECTED:

- 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:

6/24/2025



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