

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 26 November 2023
- b. **Date Received:** 26 November 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 an upgrade to honorable and a change of their separation code and the narrative reason for separation.

(2) The applicant seeks relief contending, they were discharged about 90 days before their expiration term of service (ETS). They failed to ensure they had insurance on their car and got caught driving on post. They completed their 4 years of service and deserve to have their discharge upgraded to honorable.

(3) Since leaving the service they have been diagnosed by a Department of Veterans Affairs (VA) psychologist with Manic Depressant and they should have probably been on medication. They served their time and although they made a mistake, they served their punishment. They have changed their life since leaving the military. They were young and made foolish errors, but they don't deserve a characterization of service of general (under honorable conditions) and a narrative reason for separation reflecting misconduct (serious offense), or the inability to use their GI Bill.

Board Type and Decision: In a records review conducted on 24 October 2025, and by a 3-0 vote, the Board determined the discharge was inequitable based on the applicant's behavioral health diagnoses and voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted not to change the reentry code.

Please see Section 9 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:** 4 April 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separation:** 12 April 2010

(2) **Basis for Separation:** tested positive for marijuana on or about 17 July 2007

(3) **Recommended Characterization:** Retained in the U.S. Army

(4) **Legal Consultation Date:** 17 April 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: On 14 March 2011 the separation authority approved the separation action, vacating the suspended execution of the approved separation suspended on 23 August 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 24 January 2007 / 4 years, 19 weeks
- b. **Age at Enlistment / Education / GT Score:** 21 / HS Graduate / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 92Y10, Unit Supply Specialist / 4 years, 2 months, 11 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** AGCM, NDSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 3822 (Report of Mental Status Evaluation) dated 26 August 2009, reflects a request for a mental status evaluation for the applicant who is being considered for misconduct. The examining physician states the applicant has the mental capacity to understand and participate in the proceedings, meets the retention requirements, and was mentally responsible. In the Remarks section, the physician states the applicant was seen for a chapter 14 mental status evaluation. At this time, the applicant denies suicidal and homicidal ideation. Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) screens not clinically significant. The applicant does not have a history of psychiatric illness and does not present with current symptoms. This Soldier can proceed with chapter 14 proceedings.

(2) A Medical Command Form 699-R (Report of Mental Status Evaluation) dated 14 December 2009, reflects a request for a mental status evaluation for the applicant who is being considered for misconduct. The examining physician states the applicant has the mental capacity to understand and participate in the proceedings, meets the retention requirements, and was mentally responsible. In the Remarks section, the physician states the applicant's diagnosis as Adjustment Disorder with Anxiety, Cannabis Abuse. The applicant meets retention standards and there is no psychiatric disease or defect which warrants disposition through medical channels. The applicant was screened for PTSD and mild TBI, screening results were negative. Symptoms of anxiety appear to be related to the administrative separation process. Cannabis use is not related. Applicant is psychiatrically cleared for paragraph 14-12 separation.

(3) A DA Form 4856 (Developmental Counseling Form) dated 16 February 2010, reflects the applicant was counseled by their company commander for wrongful use of a controlled substance (Marijuana) on or about 17 July 2007. In the Key Points of Discussion the company commander states, on or about 17 July 2007, the applicant tested positive for Marijuana. In accordance with Army Regulation 635-200, paragraph 14-12c (Commission of a Serious Offense), the applicant must be processed for separation from the U.S. Army, although

the company commander is recommending the applicant be retained on Active Duty. The applicant agreed with the information and signed the form.

(4) A memorandum, 96th Transportation Company, 853rd Combat Sustainment Support Battalion, subject: Notification of Separation under the Provision of Army Regulation 635-200, Chapter 14, Paragraph 14-12c (Commission of a Serious Offense), dated 8 March 2010, reflects the applicant's company commander notified the applicant of initiating action to separate them for Commission of a Serious Offense. The reason for the proposed action is Misconduct – Abuse of Illegal Drugs, tested positive for marijuana on or about 17 July 2007. The company commander state they are recommending the applicant be retained in the U.S. Army

(5) A memorandum, 96th Transportation Company, 853rd Combat Sustainment Support Battalion, subject: Recommendation for Separation under the Provision of Army Regulation 635-200, Chapter 14, Paragraph 14-12c (Commission of a Serious Offense), dated 8 March 2010, reflects the applicant's company commander states the applicant must be considered for separation from the U.S. Army, although they are recommending they be retained in the U.S. Army. The applicant has demonstrated by their actions and conduct that they are suitable for further military service.

(6) A memorandum, 96th Transportation Company, 853rd Combat Sustainment Support Battalion, Fort Hood, TX, subject: Applicant's Retention, dated 8 March 2010, the company commander states –

(a) The applicant's positive urinalysis occurred in July 2007. Whereas under a reasonable time frame they should have been discharged for such an offense shortly afterward, they have been denied this speedy, and just measure. For 3 years they have been on hold, unable to move up in rank, or move on to rebuild their life in the civilian sector beyond this failure.

(b) The applicant has accepted responsibility and chose not to let in define them by rising above it. Given the input they have received from the applicant's supervisors, and observations they have made, the applicant is a retainable Soldier. They have neither repeated this action, nor have they had any other negative counseling against them since. It would seem under the circumstances the applicant has already paid for this action and chaptering them could be a miscarriage at this point.

(7) A memorandum, 853rd Combat Sustainment Support Battalion, subject: Recommendation for Separation Under the Provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12c (Commission of a Serious Offense), dated 24 March 2010, reflects the applicant's battalion recommendation to retain them in the U.S. Army and be rehabilitatively transferred to another battalion sized element.

(8) A memorandum, 4th Sustainment Brigade, subject: Separation Under the Provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12c (Commission of a Serious Offense), dated 6 April 2010, reflects the separation approval of the separation of the applicant with suspension. The separation authority directed the applicant's service be characterized as General (Under Honorable Conditions) and their separation be suspended for a period of 12 months. Barring any further conduct or misconduct of a type related to this separation during the period of suspension, this separation will be automatically remitted. The separation authority states if further conduct or misconduct of a type related to this separation occurs during the period of suspension, the suspension may be vacated and the approved separation be executed.

(9) On 12 April 2010, the applicant acknowledged receipt of notification of separation under the provisions of Army Regulation 635-200, chapter 14, paragraph 14-12c (Commission of a Serious Offense).

(10) On 17 April 2010, the applicant acknowledged that they have been advised of the basis of the contemplated action to separate them under the provisions of Army Regulation 635-200, chapter 14, paragraph 14-12c, Commission of a Serious Offense 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 to submit statements on their own behalf. [Note: statements in their behalf are not in evidence for review.]

(11) A Headquarters and Headquarters Detachment, 180th Transportation Battalion, 4th Sustainment Brigade) Permanent Order 162-27, dated 11 June 2010, awarded the applicant the Army Good Conduct Medal, with a period of service 22 January 2007 to 23 January 2010, for exemplary behavior, efficiency and fidelity in Active Federal Military Service. Their rank is shown as private.

(12) A memorandum, 180th Transportation Battalion, Fort Hood, TX, subject: Soldier Arrest (Driving with Suspended License and Unpaid Tickets), dated 29 January 2011, reflects the applicant was arrested for driving on a military post with a suspended driver's license and unpaid tickets.

(13) A DA Form 4856 (Developmental Counseling Form) dated 31 January 2011, reflects the applicant received counseling for violation of Article 92 (Failure to Obey Order or Regulation). The Key Points of Discussion stated the applicant, on or about 29 January 2011, was driving their privately owned vehicle and was stopped by Fort Hood Police at a check point. The Fort Hood Police informed the applicant that their license was suspended and their vehicle was towed and they were detained. Earlier, on 31 December 2010, they were pulled over for a spot check and Fort Hood Police informed the applicant of their suspended license. At that time they were verbally told to find out why their license was suspended and not to be driving. The applicant informed the company first sergeant that they had unpaid ticket and verbally agreed to pay the ticket on their next pay day. On 21 January 2011, the applicant informed their noncommissioned officer (NCO) that they were unable to pay their ticket. The applicant's blatant disrespect for higher authority displays conduct of a nature to bring discredit upon the unit, U.S. Army, and their supervisor. This is direct violation of Article 92 and will be recommended for Uniform Code of Military Justice (UCMJ) action. The applicant agreed with the information and signed the form.

(14) A memorandum, Headquarters, 4th Sustainment Brigade (Provisional), subject: Separation under Army Regulation 635-200, Paragraph 14-12c, dated 14 February 2011, reflects the applicant's brigade commander, under the provisions of Army Regulation 635-200, paragraph 1-18c(3) notifying them of initiation of action to vacate the suspended execution of their approved separation under the provisions of Army Regulation 635-200, paragraph 14-12c(1), for Misconduct – Abuse of Illegal Drugs. The reason for the proposed action is on or about 29 January 2011, the applicant was arrested for driving with a suspended license and unpaid tickets. On that same day the applicant acknowledged receipt of their notification and acknowledged they have been advised of their rights to consult with counsel prior to making any election of rights.

(15) A memorandum, U.S. Army Trial Defense Service, subject: Unlawful Separation of [Applicant], dated 10 March 2011, the applicant's defense counsel states –

(a) On or about 17 July 2007, the applicant tested positive for marijuana, accordingly, they received a Field Grade Article 15, UCMJ [not in evidence for review] and received notice of separation [not in evidence for review] under Army Regulation 635-200, paragraph 14-12c, by their company commander. The applicant received a suspension of favorable personnel actions (Flag) for adverse action. They were being retained because the chain of command deemed them to have rehabilitative potential. Soon thereafter, they were promoted to private first class/E-3 on 24 January 2008.

(b) On 8 March 2010, the applicant received notification of separation for commission of a serious offense: however, their company commander and battalion commander recommended retention. On 6 April 2010, the applicant's brigade commander suspended the separation of the applicant for 12 months, to be automatically remitted if no further misconduct occurred. Administrative separation files are purged after 2 years, accordingly, no memorandum written by the separation authority can be found directing either the separation or retention of the applicant in 2007.

(c) Army regulations and Fort Hood policy require Soldiers who test positive for illegal drugs to be processed for separation within 30 calendar days of the positive test. These policies ensure a swift determination of a Soldier's future and prevent prolonged career uncertainty. A Soldier cannot be separated for misconduct that was the subject of a prior separation action resulting in retention, under the provision of Army Regulation 635-200, paragraph 1-17b.

(d) Analysis – the evidence shows the applicant separation was initiated as required within 30 days calendar days of their positive urinalysis on 17 July 2007. There is ample evidence showing the applicant's separation action in 2007 resulted in a final determination of retention. In late 2007, the applicant was counseled to notify them that they would be retained, their adverse action flag was removed in December 2007, and they were promoted to private first class in January 2008. Any uncertainty should be resolved in favor of the applicant. This is particularly compelling where, as here, the lack of dispositive evidence is due to command's own action of shredding the applicant's packet in 2009.

(e) The attempted vacation of the applicant's suspended separation is void because the underlying separation action, initiated on 8 March 2010, was unlawful and contrary to Army regulation, that a Soldier cannot normally be separated for the same misconduct that was the subject of a prior administrative separation that resulted in retention. Thus, the applicant's latest separation, and attendant vacation, are void under the law and they must be retained through their expiration of term of service date of 6 June 2011.

(16) A memorandum, Headquarters, 4th Sustainment Brigade (Provisional), subject: Separation under Army Regulation 635-200, Paragraph 14-12c, dated 14 March 2011, the separation authority approved the separation pertaining to the applicant, which was suspended on 23 August 2010, thereby vacated. The separation authority directed the applicant be separated from the Army prior to the expiration of their current term of service under the provisions of Army Regulation 635-200, paragraph 14-12c(1), for misconduct – Abuse of Illegal Drugs. The applicant will be discharged and furnished a General (Under Honorable Conditions) Discharge Certificate and states the applicant does not have the potential for full mobilization and will not be transferred into the Individual Ready Reserve.

(17) The Headquarters, 3rd Corps and Fort Hood Orders 076-0104, dated 17 March 2011, reassigned the applicant to the U.S. Army transition point for transition processing, with a discharge date of 4 April 2011. The applicant's rank/grade is shown as private/E-1.

(18) A DA Form 4187 (Personnel Action) dated 4 April 2011, reflects in Section III (Request for Personnel Action) "Erroneous Promotion." Section IV (Remarks) states the applicant got promoted to the rank/grade of specialist/E-4 on 1 January 2011, at which time they should not have because as of 6 April 2010, they were placed on a year suspension for a positive urinalysis [2007]. The applicant had two flags, one for adverse action for illegal use of drugs and on or start of an involuntary separation, which is mandatory after a positive urinalysis. On 20 April 2010, their adverse action flag was removed and someone removed their involuntary separation flag which made them eligible for promotion. Their involuntary separation flag should not have been removed due to their year suspension. Please make the necessary correction to reflect the rank which they were supposed to be at which is private/E-1 until 6 April 2011. The request was verified by the applicant's commander.

(19) On 4 April 2011, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 4 years, 2 months, 11 days
- item 12i (Effective Date of Pay Grade) – 1 April 2009
- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) - JKQ
- item 27 (Reentry Code) – RE-3
- item 28 (Narrative Reason for Separation) – Misconduct (Serious Offense)

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

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Department of Veterans Affairs (VA) Decision Letter, dated 14 August 2012, reflecting service connection for Major Depression, recurrent, severe with anxiety features, evaluated at 50 percent. VA Summary of Benefits letter, dated 11 December 2023, reflecting a combined service-connected evaluation of 100-percent.

(2) **AMHRR Listed:** Report of Mental Status Evaluations as described in previous paragraphs 4h(1) and (2).

5. APPLICANT-PROVIDED EVIDENCE:

- two DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214
- Cosmetologist Esthetician License
- VA Decision Letter
- Certificate of Completion – Notary Signing Agent Training Course
- Scrum Alliance Training Certificate
- 3rd Party Statement
- VA Summary of Benefits Letter, reflecting a combined service-connected evaluation of 100-percent

6. POST SERVICE ACCOMPLISHMENTS: Cosmetologist Esthetician, Notary Signing Agent Training Course, and Scrum Alliance Training

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 17 December 2009, 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) Paragraph 1-17 (Restrictions of Administrative Separation and Board Hearings) stated separation per this regulation normally should not be based on conduct that has already been considered at an administrative or judicial proceeding and disposed of in a manner indicating that separation was not warranted. Accordingly, administrative separation under the provisions of, to include, chapter 14, are subject to the following restrictions. No Soldier will be considered for administrative separation because of conduct that, to include, has been the subject of an administrative separation proceeding resulting in a final determination by a separation authority that the Soldier should be retained, except when the Soldier's subsequent conduct or performance forms the basis, in whole or in part, for a new proceeding. Such conduct need not independently justify the Soldier's discharge, but it must be serious enough to raise a question as to their potential for further useful military service.

(5) Paragraph 1-18 (Suspension of Execution of Approved Separation) stated a highly deserving Soldier may be given a probation period to show successful rehabilitation before the Soldier's enlistment or obligated service expires. The separation authority or higher authority may suspend execution of an approved separation for a period of full-time military duty not to exceed 12 months. Upon satisfactory completion of the probation period, or earlier if rehabilitation has been achieved, the authority that suspended separation will cancel execution of the approved separation. If the Soldier engages in conduct similar to that for which separation was approved, but then was suspended, or otherwise fails to meet the appropriate standards of conduct and duty performance, the commander concerned, the convening authority, or the separation authority will, to include, [subparagraph 1-18c(3)] advise the Soldier, in writing, that

vacation of the suspension is being considered and the reasons that warrant such consideration. The separation authority may vacate suspension of the approved action and execute separation.

(6) 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.

(7) 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 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 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.

h. Manual for Courts-Martial, United States (2008 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 92 (Failure to Obey Order, Regulation) and Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

i. 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 the agency.

8. SUMMARY OF FACT(S):

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

b. b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of documents after the applicant's enlistment in January 2007 until their award of the Army Good Conduct Medal on 11 June 2010. Their case files for approved separation or retention from their initiation of separation action in 2007 is not in evidence. Notwithstanding the absence of records, 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, 2 months, and 11 days of net active service this period; however, they did not complete their 4-year, 19-week enlistment service obligation [62 days remaining].

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. The applicant's AMHRR reflects documentation of a diagnoses of Adjustment Disorder with Anxiety Disorder and Cannabis Abuse, however, the symptoms of Anxiety appear to be related to the administrative separation process and the Cannabis use is not related. The applicant did provide VA evidence of their service-connection for Major Depression, recurrent, severe with anxiety features, with a 50-percent evaluation, effective 5 April 2011. A VA Summary of Benefits letter, dated 11 December 2023, reflects a combined service-connected evaluation of 100-percent.

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: MDD w/Anxiety, Adjustment Disorder w/Anxiety

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 50 percent SC for MDD w/Anxiety and diagnosed with Adjustment Disorder w/Anxiety during her TIS.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that a review of the records shows the applicant has BH conditions that potentially mitigates her misconduct. She is 50 percent SC for MDD w/anxiety and was diagnosed during her TIS with Adjustment Disorder w/Depressed Mood. However, her misconduct characterized by wrongful use of marijuana is not mitigated as her BH conditions developed secondary to the applicant having to face the consequences of her misconduct, as opposed to contributing to her misconduct. As such, upgrade based on medical mitigation is not supported.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant had a condition to outweigh the reason for discharge.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends they were discharged about 90 days before their expiration term of service (ETS). They failed to ensure they had insurance on their car and got caught driving on post.

The Board acknowledged and considered this contention.

(2) The applicant contends they completed their 4 years of service and deserve to have their discharge upgraded to honorable.

The Board acknowledged and considered this contention.

(3) The applicant contends since leaving the service they have been diagnosed by a VA psychologist with Manic Depressant and they should have probably been on medication.

The Board acknowledged and considered this contention.

(4) The applicant contends although they made a mistake, they served their punishment.

The Board acknowledged and considered this contention.

(5) The applicant contends they have changed their life since leaving the military. They were young and made foolish errors, but they don't deserve a characterization of service of general (under honorable conditions) and a narrative reason for separation reflecting misconduct (serious offense), or the inability to use their GI Bill.

d. The Board determined that an upgrade was warranted. The Board voted to grant relief based on clemency, in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted not to change the reentry code.

e. Rationale for Decision:

(1) The Board determined the discharge is inequitable based on the applicant's Major Depressive Disorder (MDD) with Anxiety and also diagnosed with Adjustment Disorder with Anxiety mitigated the applicant's misconduct. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), and the separation code to JKN. The Board determined the RE Code was proper and equitable and voted not to change it.

(2) The Board voted to change the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. Therefore, the narrative reason for separation is no longer appropriate.

(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

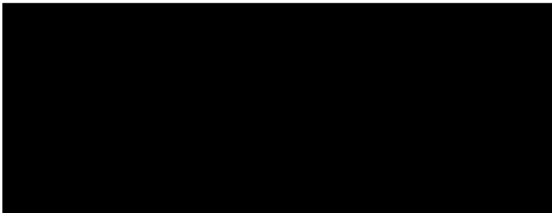
AR20240000264

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** No change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

10/29/2025



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