

1. Applicant's Name: [REDACTED]**a. Application Date:** 1 December 2023**b. Date Received:** 1 December 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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the applicant was suffering from a herniated disc and was originally on a profile for the condition. The profile was terminated to participate in a Jump Master and SERE training course and after completing the courses, the applicant began taking over the counter supplements to help mitigate the pain. The applicant failed a urinalysis test because the applicant was unaware the supplements would lead to a positive test. The applicant had no other infractions in the seven years of service.

b. Board Type and Decision: In a records review conducted on 4 September 2024 and by a 3-2 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

Please see Section 9 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / AR 635-200, Paragraph 14-12c(2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 8 November 2023

c. Separation Facts: Provided by the applicant.

(1) Date of Notification of Intent to Separate: 31 March 2023

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully used Delta-8 Tetrahydrocannabinol and marijuana between on or about 23 August 2022 and 23 September 2022 and between on or about 24 September 2022 and 25 October 2022, the applicant wrongfully used marijuana.

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

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: On 16 May 2023, the administrative separation board found the allegation the applicant wrongfully used Delta-8 THC between on or about 23 August 2022 and 23 September 2022 was supported by the preponderance of the evidence

and warranted separation; the allegation the applicant wrongfully used marijuana, a schedule I controlled substance between on or about 24 September 2022 and 25 October 2022, was supported by the preponderance of the evidence and did warrant separation. The board recommended the applicant be separated with a general (under honorable conditions) characterization of service. While separation was recommended, the board made a non-binding recommendation to the Separation Authority the discharge be suspended for a period of 12 months.

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 30 July 2020 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 27 / Baccalaureate Degree / 135
- c. **Highest Grade Achieved / MOS / Total Service:** E-6 / 38B3P, Civil Affairs Specialist / 7 years, 15 days
- d. **Prior Service / Characterizations:** RA, 24 October 2016 – 29 July 2020 / HD
- e. **Overseas Service / Combat Service:** Bosnia, Italy / None
- f. **Awards and Decorations:** ARCOM-2, AAM, AGCM-2, NDSM, GWOTSM, NCOPDR-2, ASR, OSR, EIB
- g. **Performance Ratings:** 1 August 2020 – 18 April 2021 / Highly Qualified
19 April 2021 – 18 April 2022 / Highly Qualified
19 April 2022 – 31 October 2023 / Not Qualified
- h. **Disciplinary Action(s) / Evidentiary Record:** FG Article 15, 18 January 2023, reflects on or about 23 August 2022 to on or about 23 September 2022, the applicant violated a lawful general order by wrongfully using a product derived from hemp: Delta-8 tetrahydrocannabinol; and between on or about 23 August 2022, the applicant wrongfully used marijuana products. The punishment consisted of reduction to sergeant/E-5, suspended, to be automatically remitted if not vacated on or before 18 April 2023.
- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**
 - (1) **Applicant provided:** None
 - (2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: On-Line Application, Talent Profile, ERB, Letters of Support, NCOERS, Awards and Achievements, Medical documents

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(4) 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.

(5) Paragraph 14-3 prescribes 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.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

(7) 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.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was separated under the provisions of AR 635-200, Chapter 14-12c(2), with a general (under honorable conditions) discharge.

The applicant contends, in effect, the applicant was suffering from a herniated disc and was originally on a profile for the condition, but the profile was terminated to participate in a Jump Master and SERE training courses and after completing the courses, the applicant began taking over the counter supplements to help mitigate the pain. The applicant failed a urinalysis test because the applicant was unaware the supplements would lead to a positive test.

The applicant states the applicant had no other infractions in the seven years of service. The Board will consider the applicant service accomplishments and the quality of service according to the DODI 1332.28.

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

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

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

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

b. Prior Decisions Cited: None

c. Response to Contention(s): The applicant contends the applicant was suffering from a herniated disc and was originally on a profile for the condition, but the profile was terminated to participate in Jump Master and SERE training courses and after completing the courses, the applicant began taking over the counter supplements to help mitigate the pain. The applicant failed a urinalysis test because the applicant was unaware the supplements would lead to a positive test.

The Board considered this contention during the proceedings, and the majority of the Board believed the applicant did not know the products he was using were derived from hemp, and believed the applicant was using the supplements to ease the pain of a herniated disc.

d. The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20240000367****e. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service based on the following reasons. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board determined that the applicant's Length, Quality, and Combat service outweighed the applicant's misconduct of illegal use of THC and marijuana. Based on a preponderance of evidence, the Board determined the reason for the applicant's separation and the character of service the applicant received upon separation was inequitable and warranted an upgrade.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same rationale, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

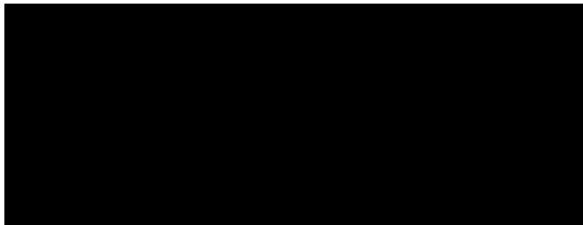
(3) The RE code will change to RE-3. RE-3 is consistent with the procedural and substantive requirements of the regulation.

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: RE-3**
- e. Change Authority to: AR 635-200**

Authenticating Official

10/16/2024



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

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

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

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