

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, during the time leading up to the applicant's discharge from the Army, they had just returned from their first deployment. The applicant was assigned to the Honors Platoon where they were a part of over twenty-six funerals in the span of six months. During this time the applicant's child's parent had repeatedly taken the applicant to court and a relative passed away which affected the applicant greatly. The applicant fell into a state of depression and began using spice to cope with the depression. As the spice use increased, the applicant started to become detached from reality and the people around them. One morning after using spice, they applicant needed help and went to the company to talk to the 1SG about their depression and spice use. While there, they blacked out and could not remember what happened. The applicant was enrolled in ASAP. While on the way to one of the appointments the child's parent called the applicant and stated they did not know if the applicant knew or not (which they did not) however, they had a court date the same day and since the applicant failed to appear their visitation rights had been revoked. After receiving this news, the applicant did not care about anything and fell back into depression and started using spice again despite having to take a weekly urinalysis. Some of the test came back positive and the company commander moved forward with the separation paperwork. The applicant sincerely regrets the choices they made and if they could go back and change them or do things differently, they would. The applicant is moving forward with their life and making steps towards being the best person they possible can be. The applicant humbly requests this proverbial shackle be removed from their status so they may move forward in life without this blemish on their record.

b. **Board Type and Decision:** In a records review conducted on 22 October 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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:** Drug Rehabilitation Failure / AR 635-200, Chapter 9 / JPC / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 1 March 2012

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file.

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NIF
- (6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 14 January 2009 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 21 / GED / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 25U10, Signal Support System Specialist / 3 years, 1 month, 18 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (23 December 2009 – 21 December 2010)
- f. **Awards and Decorations:** ARCOM, NDSM, ACM-2CS, GWOTEM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Orders 047-0274, 16 February 2012, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 1 March 2012 from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, chapter 9, with a narrative reason of Drug Rehabilitation Failure. The DD Form 214 was authenticated with the applicant's electronic signature.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** MTF Womack AMC, Record of Inpatient Treatment, 27 December 2011, reflects the applicant was admitted and being treated for DX1: Drug-Induced Psychotic Disorder with Hallucinations; DX 2: Cannabis/Marijuana Dependence, continuous use; DX 4: Personal history of return from military deployment; and DX 5: Occupational Circumstances or Maladjustment.

Report of Mental Status Evaluation (MSE), Hospital Discharge, 3 January 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was

diagnosed with Axis I: Substance Induced Mood Disorder, Manic Type, Spice/Cannabis Dependence.

Physical Profile reflects, 3 January 2012, reflects the applicant had a medical condition of Substance Induced Mood Disorder Manic Type, Spice Dependence, Cannabis Dependence.

Physical Profile, 26 February 2012, reflects the applicant had a medical condition of Spice Induced Psychotic Disorder, Spice Dependence.

MH Discharge Instructions, 27 February 2012, reflects the applicant was admitted with a diagnosis of Spice Induced Psychosis. The discharge diagnosis was Spice Induced Psychosis, Spice Dependence.

Report of Mental Status Evaluation (MSE), 27 February 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was unfit for duty due to a personality disorder or other mental condition which does not amount to a medical disability.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; self-authored statement; third-party statement; Certificate of Release or Discharge from Active Duty; Orders 047-0274; medical records; two Reports of Mental Status Evaluation; two Physical Profiles.

6. POST SERVICE ACCOMPLISHMENTS: The applicant teaches Sunday school for young people between the ages of 11 to 18. The applicant is moving forward with their life and making steps towards being the best person they can possible be.

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), 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 (Active Duty Enlisted Administrative Separations), 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 9 outlines the procedures for discharging individuals because of alcohol or other drug abuse. A member who has been referred to the Army Substance Abuse Program (ASAP) for alcohol or drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

(5) Paragraph 9-4, stipulates the service of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600-85.

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 "JPC" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 9, for drug rehabilitation failure.

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 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 waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes: 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.

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 Army Military Human Resources Record (AMHRR) is void of the specific and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 9, by reason of Drug Rehabilitation Failure, with a characterization of service of general (under honorable conditions).

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends family issues affected behavior and ultimately caused the discharge. The applicant's child's parent had repeatedly taken the applicant to court and a relative passed away which affected the applicant greatly. The applicant fell into a state of depression and began using spice to cope with the depression. The applicant was enrolled in ASAP. While on the way to one of the appointments the child's parent called the applicant and stated they did

not know if the applicant knew or not (which they did not) however, they had a court date the same day and since the applicant failed to appear their visitation rights had been revoked. After receiving this news, the applicant did not care about anything and fell back into depression and started using spice again despite having to take a weekly urinalysis. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends falling into a state of depression and began using spice to cope with the depression. The applicant provided MTF Womack AMC, Record of Inpatient Treatment, 27 December 2011, which reflects the applicant was admitted and being treated for DX1: Drug-Induced Psychotic Disorder with Hallucinations; DX 2: Cannabis/Marijuana Dependence, continuous use; DX 4: Personal history of return from military deployment; and DX 5: Occupational Circumstances or Maladjustment. Report of Mental Status Evaluation (MSE), Hospital Discharge, 3 January 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was diagnosed with Axis I: Substance Induced Mood Disorder, Manic Type, Spice/Cannabis Dependence. Physical Profile reflects, 3 January 2012, reflects the applicant had medical condition of Substance Induced Mood Disorder Manic Type, Spice Dependence, Cannabis Dependence. Physical Profile, 26 February 2012, reflects the applicant had medical condition of Spice Induced Psychotic Disorder, Spice Dependence. MH Discharge Instructions, 27 February 2012, reflects the applicant was admitted with a diagnosis of Spice Induced Psychosis. The discharge diagnosis was Spice Induced Psychosis, Spice Dependence. The AMHRR does not contain any medical documentation.

The third-party statement provided with the application is from the applicant's minister and reflects the applicant's good character and morale since being discharged from the Army.

The applicant teaches Sunday school for young people between the ages of 11 to 18. The applicant is moving forward with their life and making steps towards being the best person they can possible be. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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 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, Adjustment Disorder with Mixed Emotional Features.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found the applicant had an in-service diagnosis of Adjustment Disorder with Mixed Emotional Features and a post-service diagnosis of PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. The applicant's Adjustment Disorder does not mitigate the misconduct as the applicant's history of spice use preceded the Adjustment Disorder diagnosis and the condition was rendered after the applicant was facing separation for drug abuse. It is more likely than not that the condition developed as a result of the applicant having to face the consequences of the misconduct. Also, while the applicant asserts experiencing a deep depression, records document that applicant denied a history depressive symptoms while engaging in treatment. The applicant's claim of pre-service BH issues is not credible given that the applicant did not endorse such a history until facing separation of ASAP failure. The applicant's other in-service diagnoses are all substance-related conditions secondary to a history of chronic spice use. The applicant's in-service records reflect the applicant denied any deployment related traumas, denied any history of depression, anxiety, PTSD, and denied problems with concentration and memory problems. The documentation does not support a PTSD diagnosis as it was rendered by a Social Worker, who per VA policy, would not be authorized to conduct a BH-related C&P Examination due to not meeting minimal requirement and therefore the PTSD diagnosis is not considered for mitigation. Finally, the applicant's increased use of spice over the period of enlistment from every other day to almost daily appears consistent with a normal progression of substance dependence and in absence of a comorbid BH condition is not mitigating.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Adjustment Disorder, and self-asserted Depression outweighed the applicant's medically unmitigated illegal substance abuse offense.

b. Response to Contention(s):

(1) The applicant contends falling into a state of depression and began using spice to cope with the depression. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Adjustment Disorder, and self-asserted Depression outweighed the applicant's medically unmitigated illegal substance abuse.

(2) The applicant contends good service, including a combat tour. The Board considered the applicant's three years of service, including a combat tour in Afghanistan, but determined that the applicant's record does not outweigh the applicant's illegal substance abuse offense.

(3) The applicant contends family issues affected behavior and ultimately caused the discharge. The applicant's child's parent had repeatedly taken the applicant to court and a relative passed away which affected the applicant greatly. The applicant fell into a state of depression and began using spice to cope with the depression. The Board considered this contention but determined that the applicant's loss of a family member does not mitigate the applicant's illegal substance abuse as the Army affords many avenues to Soldiers including seeking separation for hardship.

(4) The applicant teaches Sunday school for young people between the ages of 11 to 18. The applicant is moving forward with their life and making steps towards being the best person they can possible be. The Board considered the applicant's post-service

accomplishments but determined that they do not outweigh the applicant's illegal substance abuse offense.

c. 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all evidence before the Board, the applicant's Post Traumatic Stress Disorder, Adjustment Disorder, and self-asserted Depression did not outweigh the medically unmitigated offense of illegal substance abuse. The Board also considered the applicant's contentions regarding good service and difficult family circumstances but found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

10. 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:

10/29/2024

X

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

Legend:
AWOL – Absent Without Leave

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000695

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