

**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, receiving an Article 15 for a situation regarding Spice. On 11 April 2011, the applicant was flagged and received punishment under the Uniform Code of Military Justice (UCMJ) of extra duty for 45 days and a half months pay. The applicant's request to be moved to another battery was approved to get away from the Soldiers the applicant was in trouble with. On 9 June 2011, 14 days after the applicant was taken off restriction, the applicant was t-boned by a drunk driver on post. The applicant's license was suspended for a Texas surcharge fee. On 10 June 2011, the applicant received three DA Forms 4856 (Developmental Counseling Form) for driving with a suspended driver's license; violating DA Form 4856; and being recommended for and initiating Chapter 14-12b. The applicant disagreed with the counseling because the applicant and the other Soldiers were released from the restriction 14 days before the accident. On 12 June 2011, the applicant paid the Texas surcharge fee and the applicant's driver's license was reinstated, and the paperwork was presented to the first sergeant (1SG). The 1SG told the applicant it was too late because the applicant's paperwork had been forwarded to the higher echelon. On 23 June 2011, the applicant appeared in court, and the charge of driving with a suspended driver's license was amended to driving without a valid license. The applicant understood the applicant was wrong for driving with a suspended driver's license, but the applicant believes the applicant was not given the opportunity to resolve the civil problem before the chapter action was initiated. The counseling statement the applicant received did not match the outcome of the court case.

b. **Board Type and Decision:** In a records review conducted on 3 September 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Board Discussion and Determination 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:** Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 27 July 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 5 July 2011

**(2) Basis for Separation:** The applicant was informed of the following reasons: On 9 June 2011, the applicant was arrested for driving with a suspended license and admitted to violating the applicant's restriction by leaving post. On 24 May 2011, the applicant received a Field Grade Article 15 for violation of Article 92, of the Uniform Code of Military Justice (UCMJ).

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

**(4) Legal Consultation Date:** On 5 July 2011, the applicant waived legal counsel.

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 19 July 2011 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 2 March 2010 / 4 years, 32 weeks

**b. Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 14E1P, Patriot Fire Control Operator / 1 year, 4 months, 26 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** NDSM, GWOTSM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Criminal Investigation Division (CID) Report of Investigation - Initial Final, 4 April 2011, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Use and Possession of Spice when the applicant admitted to purchasing Spice at a local head shop, then smoking it with two other Soldiers at one of the Soldier's apartment.

Consultation Report on Contributor Material, 12 April 2011, reflects the applicant's urine was screened for synthetic cannabinoids and none were detected.

The applicant provided Department of Public Safety Surcharge Default and Suspension, 31 March 2011, reflecting the applicant's Texas driver license, permit, or privilege to operate any motor vehicle was suspended for failing to pay a balance of \$104.

Field Grade Article 15, 24 May 2011, for violating a lawful general order by wrongfully purchasing, possessing, and using Spice or similar substance (30 March 2011). The punishment consisted of a reduction to E-1; forfeiture of \$733 pay per month for two months; and extra duty for 45 days.

Receipt for Inmate or Detained Person, 10 June 2011, reflects, the applicant was detained for driving on a suspended driver's license.

Report of Mental Status Evaluation, 14 June 2011, reflects the applicant was cleared for administrative separation under AR 635-200, Chapter 14. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for post-traumatic stress disorder (PTSD) and mild traumatic brain injury (mTBI), with negative results.

The applicant provided U. S. District Court, Judgment in a Criminal Case, 23 June 2011, reflecting the charge of driving with suspended license was amended to driving without a valid drivers license. The applicant plead nolo contendere to the amended charge of driving without a valid drivers license. The applicant was sentenced to a fine of \$145.

Four Developmental Counseling Forms, for driving on a suspended driver's license; being disorderly at the Military Police Station; violation DA Form 4856 regarding restriction; using and possessing Spice, and confessing to the use; being command referred to the Army Substance Abuse Program; and pending separation.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** None

*The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.*

**5. APPLICANT-PROVIDED EVIDENCE:** Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; Enlisted Record Brief; Surcharge Default and Suspension; three Developmental Counseling Forms; and U.S. District Court Judgment in a Criminal Case.

**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), 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)** Paragraph 1-18 (previously 1-17), states no soldier will be considered for administrative separation because of conduct that has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof.

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

(3) 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.

(4) 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.

(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.

(6) 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.

(7) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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-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.

**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 contends the counseling regarding violating their restriction was inaccurate. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the charge of driving on a suspended license was amended and not being given the opportunity to resolve the civil issue. The applicant provided evidence reflecting

the applicant was charged by civil authorities with driving with suspended license and the applicant plead nolo contendere to the amended charge of driving without a valid driver's license. AR 635-200, Paragraph 1-18 (previously 1-17), states no soldier will be considered for administrative separation because of conduct that has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof. The evidence presented by the applicant shows the offense did not result in an acquittal.

The applicant contends presenting paperwork to the 1SG, reflecting the applicant's license was reinstated. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

#### **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, 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: None. The records reflect that the applicant does not have a BH-condition that mitigates the misconduct. The applicant has an in-service diagnosis of Cannabis-Related Disorder, which is not afforded relief under liberal guidance. Additionally, it does not appear the applicant asserts the misconduct was related to a BH-condition.

**(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.** Response to Contention(s):

**(1)** The applicant contends the counseling regarding violating restriction was inaccurate. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant was not in violation of restriction while driving on a suspended license.

**(2)** The applicant contends the charge of driving on a suspended license was amended and not being given the opportunity to resolve the civil issue. The Board considered this contention but did not find that amendment in the civil offense would substantially change the ultimate outcome of this separation. The Board found insufficient evidence to support that the applicant wasn't given an opportunity to resolve the civilian offense of driving without a valid driver's license.

**(3)** The applicant contends presenting paperwork to the 1SG, reflecting the applicant's license was reinstated. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant presented the command with a reinstated license prior to committing the offense of driving without a valid driver's license.

**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 was not found to hold a behavioral health condition that could potentially outweigh the medically unmitigated offenses of driving with a suspended license and violating the applicant's restriction by leaving post. The Board also considered the applicant's contentions regarding and 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, 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.

**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:**

9/10/2024

**X**

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

**Legend:**

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

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

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

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

