

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, they were on profile and were not allotted the proper recovery time. The applicant was not allotted the time; however, the applicant passed an APFT on 25 April 2014. The applicant was also only a few months from their ETS. The applicant believes they received a general (under honorable conditions) due to a previous issue and not the failed APFT.

b. **Board Type and Decision:** In a records review conducted on 29 August 2024, and by a 3-2 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Board Discussion and Determination section of this document for more details regarding the Board's decision. Board member names available upon request.

a. **Reason / Authority / Codes / Characterization:** Unsatisfactory Performance / AR 635-200, Chapter 13 / JHJ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 6 June 2014

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 26 March 2014

(2) **Basis for Separation:** The applicant was informed of the following reasons:

On or about 17 October 2013 and on or about 20 November 2013 the applicant failed two consecutive Army Physical Fitness Tests;

Used Spice;

Wrongfully possessed paraphernalia;

Failure to report; and

Failure to obey orders.

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

(4) **Legal Consultation Date:** On 1 April 2014, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 12 May 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 9 June 2010 / 4 years, 17 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Letter / 105

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years, 11 months, 28 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: AAM, NDSM, GWOTSM, KDMS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Agent's Investigation Report, 11 December 2012, reflects the applicant provided a sworn statement wherein they confessed they purchased Synthetic Cannabis the last weekend of November 2012, transported the Synthetic Cannabis on post and smoked it utilizing a homemade pipe.

CID Report of Investigation – Initial Final – 0635-2012-CID452-88386-5Y2B4/5L2D2, 12 December 2012, investigation established probable cause to believe the applicant committed the offense of Failure to Obey a Lawful Order when they possessed drug paraphernalia and consumed Synthetic Cannabinoids.

FG Article 15, 1 May 2013, for violating a lawful general order on or about 5 December 2012 x 2 by wrongfully using spice and wrongfully possessing paraphernalia. The punishment consisted of a reduction to E-3; extra duty for 20 days; and an Oral Reprimand.

Army Physical Fitness Test Scorecard, from 3 March 2013 through 20 November 2013, reflects four record APFT failures and one record pass.

Several Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Samaritan Medical Center Discharge Instructions, 5 December 2012 reflects the applicant was treated and released at the Emergency Department.

Report of Medical Examination, 8 April 2013, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Medical History, 8 April 2013, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Mental Status Evaluation (MSE), 13 January 2014, 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 had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The evaluation contains a diagnosis.

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: Application for the Review of Discharge; Certificate of Release or Discharge from Active Duty; Individual Sick Slip; Developmental Counseling Form; Army Physical Fitness Test Scorecard; Recommendation for Award; Oakland County Michigan Department of Public Services Letter.

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) 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 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(5) Paragraph 13-8 prescribes for the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

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 "JHJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 13, unsatisfactory performance.

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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends they were on profile and were not allotted the proper recovery time. The applicant was not allotted the time; however, the applicant passed an APFT on 25 April 2014. The applicant was also only a few months from their ETS. The applicant believes they received a general (under honorable conditions) due to a previous issue and not the failed Army Physical Fitness Tests (APFT). The AMHRR reflects the applicant was discharged due to failing two consecutive APFTs on or about 17 October and 20 November 2013. The applicant also engaged in misconduct by using Spice, wrongfully possessing paraphernalia, failure to report and failure to obey orders. Army Regulation 635-200, Chapter 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder. This condition does not provide any mitigation for the basis of separation. An Adjustment Disorder is a low-level temporary difficulty coping with stressors that does not impair an individual's cognitive ability to understand right from wrong and act in accordance with the right. An Adjustment Disorder also does not interfere with the ability to train for and pass the APFT. There is no documentation that suggests that any other behavioral health (BH) conditions were present during military service and went undiagnosed, and the VA has not service connected any BH conditions. Accordingly, there is no mitigation for the basis of separation.

(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 current evidentiary record did not support a conclusion that the applicant's Adjustment Disorder outweighed the basis for applicant's separation (APFT failures, spice use, possessing drug paraphernalia, failure to report, and disobeying orders).

b. Response to Contention(s): The applicant contends they were on profile and were not allotted the proper recovery time. The applicant was not allotted the time; however, the applicant passed an APFT on 25 April 2014. The applicant was also only a few months from their ETS. The applicant believes they received a general (under honorable conditions) due to a previous issue and not the failed Army Physical Fitness Tests (APFT). The Board liberally considered this contention and found insufficient evidence in the AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner. The Board was unable to determine the details of the previous issues referenced by the applicant and there is no medical mitigation for the array of misconduct that served as the basis of separation. Therefore, a discharge upgrade is not warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a 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 the evidence before the Board, the applicant's Adjustment Disorder did not excuse or mitigate the basis of separation (APFT failures, spice use, possessing drug paraphernalia, failure to report, and disobeying orders). The Board considered the applicant's contention regarding receiving a general (under honorable conditions) due to previous issues and not the failed APFTs but was unable to determine what those issues were. 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 Honorable characterization.

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

9/8/2024

X

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