

**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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was due to the stress of having a parent with cancer and being denied Red Cross message due to school. The applicant states, while in service being diagnosed with multiple medical illnesses and disabilities. The applicant was an outstanding Soldier and advanced through the ranks quickly in three and a half years, receiving multiple awards and attending several military courses. The applicant also had three sets of three grand mal seizures, with three EEGs performed. The applicant was discharged without proper diagnosis and help with them.

b. **Board Type and Decision:** In a records review conducted on 1 August 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:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 17 December 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 24 July 2013

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

On or about 9 January 2013, fail to obey a lawful order by wrongfully possessing Spice;

On or about 9 January 2013, fail to obey a lawful order by wrongfully possessing a smoking pipe, drug paraphernalia;

On or about 9 January 2013, fail to obey a lawful general order by possessing a loaded and concealed firearm in their POV;

On or about 4 February 2013, fail to obey a lawful order by possessing a smoking pipe, drug paraphernalia;

On or about 4 February 2013, fail to obey a lawful order by wrongfully possessing Spice;

On or about 4 February 2013, fail to obey a lawful general order, by storing ammunition in the POV;

On or about 25 March 2013, fail to obey a lawful order by wrongfully possessing Spice;

On or about 8 January 2013, unlawfully enter a room, the property of the Group Service Support Company, Group Support Battalion, 3d Special Forces Group, United States Army with the intent to commit a criminal offense, to wit: steal the unit funds of the Group Service Support Company, Group Support Battalion, 3d Special Forces Group, of a value of less than \$500, the property of the Group Service Support Company, Group Support Battalion, 3d Special Forces Group;

On or about 8 January 2013, steal funds, of a value of about \$500 or less, the property of Group Service Support Company, Group Support Battalion 3d Special Forces Group; and,

On or about 9 January 2013, steal 24 armor piercing 5.56 ammunition cartridges, military property, of a value of \$500 dollar or less, the property of the U.S. Army.

**(3) Recommended Characterization:** Under Other Than Honorable Conditions

**(4) Legal Consultation Date:** 24 June 2013

**(5) Administrative Separation Board:** On 24 June 2013, the applicant unconditionally waived consideration of the case before an administrative separation board.

**(6) Separation Decision Date / Characterization:** 15 November 2013 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 25 October 2010 / 4 years

**b. Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 99

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 89B1P, Ammunition Specialist / 3 years, 1 month, 23 days

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

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

**f. Awards and Decorations:** AAM-2, GWOTSM, NCOPDR, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** The Commander's Report, undated, reflects the applicant received a FG Article 15, 24 January 2013, for use, possession, and distribution of Marijuana, an illegal substance. The punishment consisted of a reduction to E-1; forfeiture of \$758 pay for one month (suspended); extra duty and restriction for 45 days; and

oral reprimand. Vacation of Suspension on 8 February 2013, in which the forfeiture was vacated.

Charge Sheet, 12 June 2013, reflects the applicant was charged with:

The Charge: Violating Article 92, UCMJ.

Specification 1: On or about 9 January 2013, fail to obey a lawful order by wrongfully possessing Spice.

Specification 2: On or about 9 January 2013, fail to obey a lawful order by wrongfully possessing a smoking pipe, drug paraphernalia.

Specification 3: On or about 9 January 2013, fail to obey a lawful general order by possessing a loaded and concealed firearm in the POV.

Continuation page for additional charges and specifications is void from the AMHRR.

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

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

**(1) Applicant provided:** Report of Mental Status Evaluation (MSE), 20 November 2013, 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.

Adult Preventive and Chronic Care Flowsheet, reflects the applicant's chronic illnesses.

**(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:** Application for the Review of Discharge; Recommendation for Award; seven certificates; Permanent Orders 167-2901; Service School Academic Evaluation Report; Addendum to Conduct Individual Training Performance Evaluation; Adult Preventive and Chronic Care Flowsheet; Report of Mental Status Evaluation; five third-party letters; Certificate of Release or Discharge from Active Duty.

**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) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(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 14-12c(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.

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 "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (drug abuse).

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 contends family issues affected behavior and ultimately caused the discharge. 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 good service and advancing through the ranks quickly in three and a half years, receiving multiple awards and attending several military courses. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends having three sets of three grand mal seizures, with three EEGs performed. The applicant was discharged without proper diagnosis and help with them. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statements provided with the application are from a drug and alcohol recovery program which the applicant is enrolled in, all the statements reflect the applicant's progress in the program.

#### **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: 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 actually 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 which 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 make purposeful choices understanding consequences. In addition, the applicant's Adjustment Disorder was diagnosed months after all of the misconduct that led to the separation occurred further indicating that it was non-contributory to the separation. There is no evidence

that there were any other Behavioral Health conditions that went undiagnosed, and the VA has not service connected any Behavioral Health conditions.

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

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

(1) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board liberally considered this contention and determined that the applicant's family issues does not mitigate the applicant's Drug Abuse as the Army affords many avenues to Soldier's including seeking separation for hardship.

(2) The applicant contends good service and advancing through the ranks quickly in three and a half years, receiving multiple awards and attending several military courses. The Board liberally considered this contention and the applicant's four years of service and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's Drug Abuse.

(3) The applicant contends having three sets of three grand mal seizures, with three EEGs performed. The applicant was discharged without proper diagnosis and help with them. The Board liberally considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(4) The third-party statements provided with the application are from a drug and alcohol recovery program which the applicant is enrolled in, all the statements reflect the applicant's progress in the program. The Board liberally considered this contention and determined that the applicant's progress in a drug and alcohol program does not outweigh the misconduct based on the seriousness of the applicant's offense of Drug Abuse.

**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 of all the evidence before the Board, the applicant's Adjustment Disorder did not excuse or medically unmitigate the Drug Abuse offense.

(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:**

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210000976**

- 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:**

8/14/2024

**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