

1. Applicant's Name: [REDACTED]

- 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 the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was inequitable because it was based on an isolated incident during the applicant's six years and eight months of honorable service with no other adverse action. The applicant was at the end of the enlistment and was suffering from depression. The applicant self-medicated with a substance to cope with the depression. The applicant completed the Department of Veterans Affairs (VA) Dual Diagnosis Treatment Program (DDTP) for substance abuse and mental health program and since the applicant has been discharged, the applicant has been volunteering and being active in the community.

b. **Board Type and Decision:** In a records review conducted on 6 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's anxiety, dysthymia, and IPV mitigating the spice use basis of separation (BOS). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN and reentry code of RE-3.

Please see Section 9 of this document for more details 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, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 4 October 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 September 2013

(2) **Basis for Separation:** Under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense, the applicant was informed of the following reasons: The applicant between on or about 17 March and 17 April 2013, violate a lawful regulation, to wit: Army Regulation 600-85, paragraph 4-2p, 28 December 2012, by wrongfully inhaling a type of "Spice," a tetrahydrocannabinol (THC) analogue used as a means to produce excitement, intoxication, and stupefaction of the central nervous system.

(3) Recommended Characterization: Under Other Than Honorable Conditions / The intermediate commanders recommended general (under honorable conditions).

(4) Legal Consultation Date: 18 September 2013

(5) Administrative Separation Board: On 18 September 2013, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: 26 September 2013 / General (Under Honorable Conditions) / The separation authority approved the applicant's separation under the provisions of AR 635-200, Chapter 14-12c, Commission of a Serious Offense.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 January 2007 / 6 years, 17 weeks

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / 116

c. Highest Grade Achieved / MOS / Total Service: E-5 / 13F2P, Fire Support Specialist / 6 years, 8 months, 17 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (28 September 2007 – 10 January 2008, 1 June 2011 – 28 February 2012); Iraq (30 June 2008 – 19 October 2008)

f. Awards and Decorations: AAM, NATOMDL, AGCM-2, NDSM, ACM-2CS-3, ICM-CS, ASR, CAB / The applicant's AMHRR reflects award of the ARCOM, however, the award is not reflected on the DD Form 214.

g. Performance Ratings: 1 October 2011 – 30 September 2012 / Fully Capable
1 October 2012 – 18 August 2013 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Memorandum, subject: Notification of Dismissal from WLC, Class 09-12 and Right to Appeal, 15 June 2012, reflects the applicant was dismissed from the Warrior Leadership Course for a disciplinary reason, displaying misconduct by disrespecting a Noncommissioned Officer Academy Instructor.

Report of Toxicological Examination and DD Form 2624, 14 May 2013, reflect the applicant tested positive for synthetic cannabinoid (spice), during a Probable Cause (PO) urinalysis testing, conducted on 17 April 2013.

Field Grade Article 15, 1 July 2013, for violating a lawful general regulation, by wrongfully inhaling a type of Spice, a tetrahydrocannabinol (THC) analogue (between 17 March and 17 April 2013). The punishment consisted of a reduction to E-4; forfeiture of \$301 pay per month for two months (\$900 pay per month for two months suspended); and extra duty and restriction for 45 days.

Commander's Report, 19 September 2013, reflects the applicant was counseled using DA Form 4856 (Developmental Counseling Form) for lost identification; and failing to report. The applicant was absent without leave (AWOL), from 8 to 12 July 2013 and from 15 to 17 July 2013.

i. **Lost Time / Mode of Return:** AWOL for 8 days, 8 to 12 July 2013, and 15 to 17 July 2013. This period is not annotated on the DD Form 214, block 29.

j. Behavioral Health Condition(s):

(1) **Applicant provided:** Letter, 18 September 2014, reflecting the applicant was evaluated for a substance abuse problem and completed the DDTP at the VA Medical Center. The treatment addressed alcohol/drug dependence and mental health disorders as the major focus of treatment. The applicant was admitted on 7 August 2014 and discharged on 18 September 2014.

(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: DD Form 214; DA Form 293; VA letter, DDTP.

6. POST SERVICE ACCOMPLISHMENTS: The applicant completed the VA Dual Diagnosis Treatment Program for substance abuse and mental health and has been volunteering and active in the community.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(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 14-12c(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 depression affected behavior, which ultimately led to the discharge. The applicant provided a medical document indicating the applicant was evaluated for a substance abuse problem and completed a VA Dual Diagnosis Treatment Program, which focused on alcohol/drug dependence and mental health disorders. The letter does not indicate a mental health disorder diagnosis. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

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

The applicant contends completing the VA Dual Diagnosis Treatment Program for substance abuse and mental health disorders and volunteering and being active in the community. 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'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, Anxiety, Dysthymia, TBI, and IPV.

(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, Anxiety, and Dysthymia, and the medical record reveals that the applicant was the victim of IPV during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple BH conditions and experiences that provide mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder, Anxiety, and Dysthymia, and the medical record reveals that the applicant was the victim of IPV during military service. Given the nexus between Anxiety, Dysthymia, being a victim of IPV, and self-medicating with substances, the Spice use that led to the applicant's separation is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Anxiety, IPV, and Dysthymia outweighed the spice use BOS.

b. Response to Contention(s):

(1) The applicant contends depression affected behavior, which ultimately led to the discharge. The Board considered this contention during proceedings but did not address it in detail due to an upgrade being granted based on the applicant's Anxiety, IPV, and Dysthymia fully outweighing the applicant's spice use BOS.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention during proceedings but did not address it in detail due to an upgrade being granted based on the applicant's Anxiety, IPV, and Dysthymia fully outweighing the applicant's spice use BOS.

(3) The applicant contends good service, including three combat tours. The Board recognized the totality of the applicant's service record and considered it during deliberations.

(4) The applicant contends completing the VA Dual Diagnosis Treatment Program for substance abuse and mental health disorders and volunteering and being active in the community. The Board considered the noted treatment and post-service accomplishments but did not address them in detail due to an upgrade being granted based on the applicant's Anxiety, IPV, and Dysthymia fully outweighing the applicant's spice use BOS.

c. The Board determined the discharge is inequitable based on the applicant's anxiety, dysthymia, and IPV mitigating the applicant's spice use BOS. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN and reentry code of RE-3. The applicant may request a personal appearance hearing to address further 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 to change the applicant's characterization of service to Honorable because the applicant's Anxiety, IPV, and Dysthymia mitigated the applicant's BOS misconduct. Thus, the prior characterization is no longer appropriate.

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

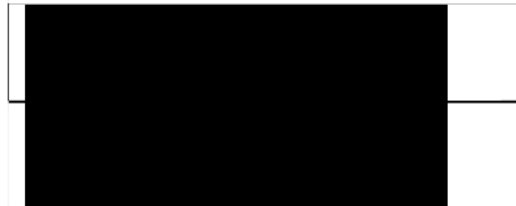
(3) The Board voted to change the RE code to RE-3 based on the BH conditions and the new narrative reason/SPD.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

9/4/2024



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