

**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, did not present any issues of propriety or equity for the Board's consideration.

b. **Board Type and Decision:** In a records review conducted on 11 April 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:** Condition, Not a Disability / AR 635-200, Chapter 5-17 / JFV / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 14 July 2010

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 24 May 2010

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

The applicant was diagnosed by a licensed physician on 18 March 2010 with an adjustment disorder. The applicant was given a reasonable time to overcome said disorder and was unable to; and

The applicant wrongfully used marijuana between on or about 16 November 2007 and 17 December 2007 and between on or about 2 December 2007 and 2 January 2008; and

The applicant deserted the unit from 21 February 2008 until 9 August 2008; and

The applicant was AWOL from 25 December 2008 until 16 February 2010.

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

(4) **Legal Consultation Date:** 25 May 2010

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

**(6) Separation Decision Date / Characterization: NIF****4. SERVICE DETAILS:**

- a. Date / Period of Enlistment:** 8 February 2007 / 3 years
- b. Age at Enlistment / Education / GT Score:** 21 / GED / 104
- c. Highest Grade Achieved / MOS / Total Service:** E-3 / 92R1P, Parachute Rigger / 2 years, 4 months, 17 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:** Nine Personnel Action Forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 21 February 2008;

From "AWOL" to "Dropped From Rolls (DFR)," effective 21 March 2008;

From "DFR" to "Returned to Military Control (RMC)," effective 9 August 2008;

From "RMC" to "PDY" effective 20 August 2008;

From "PDY" to "AWOL," effective 6 December 2008;

From "AWOL" to "PDY," effective 22 December 2008;

From "PDY" to "AWOL," effective 25 December 2008;

From "AWOL" to "DFR," effective 24 January 2009; and

From "DFR" to "PDY," effective 16 February 2010.

Charge Sheet, 15 September 2008, reflects the applicant was charged with:

Charge I: Violating Article 112a, UCMJ:

Specification 1: On or about 16 November 2007 and on or about 17 December 2007, the applicant wrongfully used Marijuana.

Specification 2: On or about 2 December 2007 and on or about 2 January 2008, the applicant wrongfully used Marijuana.

Charge II: Violating Article 85, UCMJ. The Specification: On or about 21 February 2008, without authority and with intent to remain away therefrom permanently, absent oneself from the unit and did remain so absent in desertion until being apprehended on or about 9 August 2008.

Offer to Plead Guilty, 5 February 2009, reflects the applicant pled guilty to wrongful use of marijuana on two occasions and being AWOL from 21 February 2008 until being apprehended on 9 August 2008.

Developmental Counseling Form, informing the applicant of Separation.

**i. Lost Time / Mode of Return:** 1 year, 7 months, 24 days: (The DD Form 214 under review does not include all periods of lost time.)

AWOL, 21 February 2008 – 9 August 2008 / Apprehended by Civil Authorities

AWOL, 6 December 2008 – 22 December 2008 / NIF

AWOL, 25 December 2008 – 16 February 2010 / Returned to Military Control

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Medical Examination, 24 February 2010, the examining medical physician noted in the comments section the applicant's conditions.

Report of Medical History, 24 February 2010, the examining medical physician noted in the comments section the applicant's conditions.

Report of Behavioral Health Evaluation (BHE), 18 March 2010, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was cleared for any administrative actions deemed appropriate by command. It was noted: The diagnosis and problems presented by the applicant, in the opinion of the examiner, warranted discharge from the Army. The applicant would be a consistent liability during deployed settings, was a drain on military resources, and was unreliable in carrying out the responsibilities as a Soldier. The diagnosis was of sufficient severity to impede the ability to function as a Soldier, with no potential for rehabilitation. It was strongly recommended the command expedite administrative separation from the Army IAW Chapter 5-17, AR 635-200.

*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 293 and DD Form 214.

**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 5 provides for the basic separation of enlisted personnel for the convenience of the government.

(5) Paragraph 5-1, states a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. A general (under honorable conditions) discharge is normally inappropriate for individuals separated under the provisions of paragraph 5-14 (previously paragraph 5-17) unless properly notified of the specific factors in the service that warrant such characterization.

(6) Paragraph 5-14 (previously paragraph 5-17) specifically provides that a Soldier may be separated for other physical or mental conditions not amounting to a disability, which interferes with assignment to or performance of duty and requires that the diagnosis be so severe that the Soldier's ability to function in the military environment is significantly impaired.

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 "JFV" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-14 (previously Chapter 5-17), Condition, Not a Disability.

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 did not present any issues of propriety or equity for the Board's consideration.

The applicant's AMHRR reflects the applicant underwent a Behavioral Health Evaluation (BHE) on 18 March 2010. The diagnosis and problems presented by the applicant, in the opinion of the examiner, warranted discharge from the Army. The applicant would be a consistent liability during deployed settings, was a drain on military resources, and was unreliable in carrying out the responsibilities as a Soldier. The diagnosis was of sufficient severity to impede the ability to function as a Soldier, with no potential for rehabilitation. It was strongly recommended the command expedite administrative separation from the Army in accordance with Chapter 5-17, AR 635-200. The commander recommended separation under the provisions of AR 635-200, paragraph 5-17.

**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, Somatization Pain Disorder, and Anxiety.

(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, Somatization Pain Disorder, and Anxiety. The VA has not service connected any BH conditions.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder, Somatization Pain Disorder, and Anxiety. The VA has not service connected any BH conditions. The applicant's Chapter 5-17 discharge for an Adjustment Disorder was recommended by BH and complied with the separation guidelines at the time. Given the nexus between Somatization Pain Disorder, Anxiety, and self-medicating with substances, the applicant's marijuana use is mitigated. However, there is no natural sequela between an Adjustment Disorder, Somatization Pain Disorder, or Anxiety and going AWOL, so the AWOL offense is not mitigated. The medical record reveals that the applicant had an extensive history of behaviorally acting out, particularly when the applicant's demands were not granted. The applicant's periods of AWOL appear to have been a conscious behavioral response to the separation not being processed as expeditiously as the applicant desired.

(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 Adjustment Disorder, Somatoform Pain Disorder, Anxiety outweighed the applicant's medically unmitigated AWOL offense.

b. Response to Contention(s): The applicant did not make any contentions or provide any evidence to support that the discharge was improper or inequitable. The Board reviewed all available evidence, including the totality of the applicant's service record, and determined that no relief was warranted at this time.

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, Somatization Pain Disorder, and Anxiety did not outweigh the applicant's

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medically unmitigated AWOL offense. The Board also considered the totality of the applicant's record and determined that it 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:**

6/11/2024

**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