

**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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, suffering from post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). At the time of the incident, the applicant was suffering and smoked K2 (synthetic marijuana) twice to better cope with the situation in Iraq. The applicant was shamed by peers and superiors because the applicant was receiving mental health treatment. The applicant states it was not discouraged, exactly, but when the applicant would visit the chaplain, the applicant was mocked. The applicant is 100 percent disabled for PTSD with bipolar disorder.

b. **Board Type and Decision:** In a records review conducted on 21 March 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 (Minor Infractions) / AR 635-200, Paragraph 14-12a / JKN / RE-3 / Honorable

b. **Date of Discharge:** 16 November 2010

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 8 October 2010

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant used an illegal drug, spice, between on or about 1 June and 15 September 2010, which was prohibited by the United States Forces – Iraq General Order Number 1 and Army Regulation 600-85.

(3) **Recommended Characterization:** The immediate commander recommended retention and the intermediate commander recommended general (under honorable conditions).

(4) **Legal Consultation Date:** 8 October 2010

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

(6) **Separation Decision Date / Characterization:** 19 October 2010 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 11 August 2007 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 88
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 12B10, Combat Engineer / 5 years, 20 days
- d. **Prior Service / Characterizations:** RA, 27 October 2005 – 10 August 2007 / HD
- e. **Overseas Service / Combat Service:** SWA / Iraq (14 January 2007 – 29 March 2008; 14 December 2009 – 2 November 2010)
- f. **Awards and Decorations:** ICM-2CS, AAM, AGCM, NDSM, GWOTSM, ASR, OSR-2, CAB
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Field Grade Article 15, 28 September 2010, for violating a lawful general order by wrongfully using a substance, to wit: spice, with the intent of improper use to create an impaired state of mind (between 1 June and 15 September 2010). The punishment consisted of a reduction to E-2; forfeiture of \$811 pay per month for two months (suspended); and extra duty for 45 days.

Two Sworn Statements, one by the applicant and another by a fellow Soldier, reflect noncommissioned officers were involved in soliciting junior enlisted Soldiers in smoking spice.

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

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

(1) **Applicant provided:** Department of Veterans Affairs (VA) letter, 20 November 2020, reflects the VA rated the applicant 100 percent service-connected disabled.

Department of Veterans Affairs Health Summary, 23 November 2020, reflecting the applicant was diagnosed with PTSD; migraine headaches; major depressive disorder, recurrent, unspecified; TBI; and rule out bipolar disorder. The VA rated the applicant 70 percent service-connected disability for PTSD, and 30 percent for migraine headaches.

Department of Veterans Affairs eBenefits webpage, undated, reflecting the VA rated the applicant 100 percent disability for PTSD with unspecified bipolar disorder, alcohol and cannabis use disorders, and residuals of TBI; and 10 percent for residuals, TBI.

(2) **AMHRR Listed:** Report of Medical History, 24 September 2010, the examining medical physician noted in the comments section: attention deficit hyperactivity disorder, has taken medication in the last six months; and problem sleeping.

Report of Behavioral Health Evaluation, 25 September 2010, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The

applicant was diagnosed with attention deficit hyperactivity disorder and recent improvised explosive device (IED) blast but cleared during initial evaluation on 20 September 2010. The blast occurred weeks after the alleged spice event.

*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 (two copies); three DD Forms 293; electronic mail message, self-authored statement; separation packet; four character references; academic documents; employment history; VA eBenefits webpage; VA letter; and VA Health Summary.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant provided evidence to show the applicant has maintained employment and obtained an Associate of Applied Science Degree as an Honors Graduate with a 3.76 grade point average (GPA).

**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) 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.

(4) 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.

(5) Paragraph 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

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 "JKN" as

the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (minor infractions).

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 non-waiverable 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 current characterization of service for the period under review is honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends suffering from PTSD, bipolar disorder, and TBI; and the VA rated the applicant 100 percent service-connected disability for PTSD and bipolar disorder. The applicant provided medical documents reflecting the applicant was diagnosed with PTSD, with unspecified bipolar disorder, alcohol and cannabis use disorders, and residuals of TBI; migraine headaches, TBI; and major depressive disorder, recurrent, unspecified. The VA rated the applicant 100 percent service-connected disability for PTSD, and 10 percent for residuals of TBI. The applicant's AMHRR contains documentation which supports an in-service diagnosis. The record shows the applicant underwent a behavioral health evaluation (BHE) on 25 September 2010, which indicates the applicant was mentally responsible and met medical retention standards. The applicant was diagnosed with attention deficit hyperactivity disorder and recent IED blast but cleared during initial evaluation on 20 September 2010. The BHE was considered by the separation authority.

The applicant contends harassment regarding mental health issues by members of the unit, including supervisors. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

The applicant contends maintaining employment and obtaining an Associate of Applied Science Degree as an Honors Graduate with a 3.76 GPA. 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.

The third-party statements provided with the application reflect the applicant's supervisors, fellow Soldiers, and colleagues found the applicant to be a person of good character and work ethic. They all recognize the applicant's good military service and/or good conduct after leaving the Army.

**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: PTSD, Unspecified Bipolar Disorder, TBI.

(2) Did the condition exist, or experience occur during military service? The Board's Medical Advisor found that the applicant is diagnosed and service connected by the VA for PTSD, Unspecified Bipolar Disorder, and TBI. Service connection establishes that these conditions existed 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 the applicant's BH conditions provide mitigation for the basis of separation. Given the nexus between PTSD, Unspecified Bipolar Disorder, and self-medicating with substances, the spice use that led to the applicant's separation is mitigated. The blast event that resulted in the applicant's TBI occurred after the spice use, so the TBI was non-contributory.

(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 Post Traumatic Stress Disorder and Bipolar Disorder outweighed the applicant's illegal substance abuse.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD, bipolar disorder, and TBI; and the VA rated the applicant 100 percent service-connected disability for PTSD and bipolar disorder. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder and Bipolar Disorder outweighed the applicant's illegal substance abuse. However, a previous ADRB upgraded the applicant's discharge to an Honorable characterization of service with a narrative reason for separation of Misconduct (Minor Infractions) and a reenlistment eligibility code of 3. The Board found the prior upgrade was proper and equitable.

(2) The applicant contends harassment regarding mental health issues by members of the unit, including supervisors. The Board considered this contention during proceedings but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant was harassed. Therefore, further upgrade is not warranted.

(3) The applicant contends maintaining employment and obtaining an Associate of Applied Science Degree as an Honors Graduate with a 3.76 GPA. The Board considered the applicant's post-service accomplishments but determined that the prior discharge upgrade was proper and equitable.

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.

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

**AR20210001325**

**d. Rationale for Decision:**

(1) The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a characterization of Honorable. Therefore, no further relief is available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the upgrade to Misconduct (Minor Infractions) that 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:**

4/3/2024

**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