

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**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, suffering from constant pain and depression resulting from severe ankylosing spondylitis. Given the grim prognosis, the applicant began to self-medicate with alcohol and synthetic marijuana.

b. Board Type and Decision: In a records review conducted on 14 December 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Depression and Mood Disorder mitigating the basis of separation (wrongful use of spice). 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 changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The reentry code was changed to RE-3.

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

b. Date of Discharge: 28 May 2013

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 4 March 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: Between on or about 4 September 2012 and on or about 4 October 2012, the applicant wrongfully used spice. Between on or about 5 November 2012 and on or about 5 December 2012, the applicant wrongfully used spice.

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

(4) **Legal Consultation Date:** 5 March 2013

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 19 April 2013 / General (Under Honorable Conditions) / The Separation Authority directed the administrative separation proceedings continue and found the applicant's medical conditions were not the direct or substantially contributing cause of the misconduct, and there were no circumstances of the applicant's case which warrant disability processing. Therefore, disposition through the physical disability system was not appropriate.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 20 January 2010 / 4 years, 19 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 112
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 3 years, 4 months, 9 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:** Memorandum for Commander, 8 November 2012 reflects the applicant tested positive for Spice in Document #0001, Specimen #001 which was collected on 4 October 2012.

FG Article 15, 18 December 2012, for wrongfully using spice (between on or about 3 September 2012 and on or about 4 October 2012). The punishment consisted of a reduction to E-1; forfeiture of \$745 pay per month for two months; and extra duty and restriction for 45 days.

Memorandum for Commander, 4 February 2013, reflects the applicant tested positive for Spice on Document #0001, Specimen #002 which was collected on 5 December 2012.

Medical Evaluation Board Proceedings, 8 February 2013, reflects the following diagnosis: Chronic right shoulder pain and instability with right labral tear, and ankylosing spondylitis (affecting the entire spine, bilateral knees, and bilateral ankles) and was referred to a Physical Evaluation Board (PEB).

Department of Veterans Affairs letter, 13 March 2015, reflects the applicant developed the first symptoms of ankylosing spondylitis in 2010 while on active military duty. The diagnosis was eventually made while the applicant was still on active duty. Despite treatment, the disease had progressed in dramatic fashion leaving the applicant bedridden, unable to walk, use the hands or eat. The applicant is unquestionably completely disabled by the ankylosing spondylitis. Substantive improvement is not expected. The disease began while the applicant was still on active military service and the applicant is service connected for ankylosing spondylitis.

Two Developmental Counseling Forms, for positive urinalysis and a recommendation for UCMJ, Bar to reenlistment, and Flag.

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

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

(1) **Applicant provided:** Department of Veterans Affairs letter, 20 March 2015, reflects the applicant had been under medical care for the evaluation and treatment of depression and anxiety associated with severe ankylosing spondylitis. The applicant's unremitting pain led to the use of non-prescribed substance such as marijuana during the period of military service. It was the doctor's opinion the use of marijuana was a direct result of the understandable effort to reduce the severe pain and associated emotional distress resulting from the advance ankylosing spondylitis.

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 14 January 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 applicant was diagnosed with: Axis I: Mood Disorder Due to a Medical Condition and Axis III: Scoliosis, Shoulder instability. It was noted: The applicant was experiencing symptoms of depression due to multiple medical conditions. Although the applicant had symptoms of depression and was in a MEB for the medical conditions, The applicant knew the difference between right and wrong. The applicant knew and understood the Army standards and was fully accountable for their actions. The applicant's psychological symptoms did not significantly impair their judgment and did does not render the applicant unfit for duty. The applicant had declined behavioral health services. The applicant should continue to see the PCM as needed.

Report of Medical Assessment, 11 February 2013, the health care provider noted in the comments section: mTBI.

Report of Medical History, 11 February 2013, the examining medical physician noted in the comments section: Anxiety 0 meds at the time; used spice marijuana.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; two Department of Veterans Affairs letters; 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 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.

(5) 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.

(6) 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 being in constant pain due to a medical condition, developing depression, and therefore self-medicating with alcohol and synthetic marijuana. The applicant

provided a Department of Veterans Affairs letter, 13 March 2015, which reflects the applicant developed the first symptoms of ankylosing spondylitis in 2010 while on active military duty. The MSE, Report of Medical Assessment, and Report of Medical History were considered by the separation authority.

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: Depression and Mood Disorder (Due to a Medical Condition).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with Depression and Mood Disorder (Due to a Medical Condition). The VA has service connected the applicant's Depression.

(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 was diagnosed in service with Depression and Mood Disorder (Due to a Medical Condition). The VA has service connected the applicant's Depression. Given the nexus between Depression/Mood Disorder 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.** The Board applied liberal consideration to the evidentiary record and found that the applicant's Depression and Mood Disorder outweighed the basis of separation (spice use).

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable. The board considered this contention and determined that relief was warranted because the applicant's Depression and Mood Disorder outweighed the basis of separation (spice use).

(2) The applicant contends being in constant pain due to a medical condition and developing depression and began to self-medicate with alcohol and synthetic marijuana. The Board considered this contention during proceedings, but ultimately did not address it further due to an upgrade being granted based on the information outlined above in paragraph 9b (1).

c. The Board determined the discharge is inequitable based on the applicant's Depression and Mood Disorder mitigating the basis for separation (spice use). 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 changed to Misconduct (Minor Infractions) with a corresponding SPD of JKN and reentry code of RE-3.

d. Rationale for Decision:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001400

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Depression and Mood Disorder mitigated the basis of separation (spice use). Thus, the prior characterization is no longer appropriate.

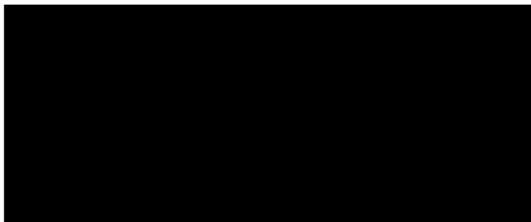
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts. Thus, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The reentry code will change to RE-3.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** 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:



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