

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

The applicant seeks relief contending, in effect, having one incident of drug use and successfully completed the required treatment. The applicant joined the Army for the sole purpose of deploying to fight the war on terror. Once they found out their unit would not be deploying, the applicant became depressed. The applicant had a few drinks and decided to try cocaine. The applicant, along with five other individuals, tested positive for the drug. Despite testing positive, the applicant continued to hold the position of company armorer and was placed in charge of a \$12 million stock of equipment, which was normally handled by an NCO. The applicant knows of two individuals who were higher in rank and received an honorable discharge after testing positive. Since the discharge, the applicant has been employed full-time as a pest control specialist as well as a technician for a beverage distributor. The applicant dreams of utilizing their military education benefits to finish school and hopefully get a job in law enforcement.

b. **Board Type and Decision:** In a records review conducted on 7 December 2023, 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 / General (Under Honorable Conditions)

b. **Date of Discharge:** 19 November 2013

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the complete case separation file.

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** Memorandum Legal Review, 24 October 2013, reflects the Brigade Judge Advocate states the Company Commander recommended General (Under Honorable Conditions).

(4) **Legal Consultation Date:** NIF

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

(6) **Separation Decision Date / Characterization:** 24 October 2013 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 6 March 2012 / 3 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 21 / High School Graduate / 94

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 1 year, 8 months, 14 days

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

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

f. **Awards and Decorations:** NDSM, GWOTSM, ASR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Army Substance Abuse Program (ASAP) Enrollment form, dated 22 September 2013, reflects the applicant was command referred to the ASAP.

The applicant provided a Report of Mental Status Evaluation, 24 September 2013, that 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 with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions.

The applicant's Enlisted Record Brief (ERB), 25 September 2013, reflects the applicant was flagged under the Army Body Composition Program (KA), effective 10 July 2013; Adverse Action (AA), effective 5 September 2013; Drug Abuse (Adverse Action) (UA), effective 5 September 2013; Involuntary Separation or Discharge (Field Initiated) (BA), effective 10 September 2013. The applicant was reduced from E-3 to E-1 effective 19 September 2013.

The applicant's DD Form 214 reflects the applicant did not complete the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c(2), with a narrative reason of Misconduct (Drug Abuse). The DD Form 214 was authenticated with the applicant's electronic signature.

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

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

(1) **Applicant provided:** None

**(2) AMHRR Listed: None**

**5. APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 214, DD Form 293, self-authored letter, DA Form 8003, DA Form 3822, and letter of support.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has been employed full time as a pest control specialist and a technician for a beverage distributor.

**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's Army Military Human Resources Record (AMHRR) includes partial facts and circumstances concerning the events which led to a discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions). The AMHRR includes the separation authority's decision directing the applicant's discharge under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), with a general (under honorable conditions) characterization of service.

The applicant contends being depressed. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant provided a Report of Mental Status Evaluation, 24 September 2013, reflecting 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 was screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The mental status report was considered by the separation authority.

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 they knew of two individuals who were higher in rank and received an honorable discharge after testing positive. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. Applicable regulations state each case must be decided on an individual basis, considering all unique facts and circumstances.

The applicant contends good service. The Board will consider the applicant's service accomplishments and the quality of service according to DODI 1332.28.

The applicant contends a discharge upgrade will allow for better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends a discharge upgrade will allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact the Department of Veterans Affairs for further assistance.

The third-party statement provided with the application reflects the applicant's good conduct and outstanding work ethic during service and after leaving the Army.

The applicant contends obtaining employment. 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 [REDACTED] 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: None. Additionally, the applicant asserts Depression, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant self-asserts Depression at the time of military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant self-asserts Depression at the time of military service. However, there is no medical documentation to support this assertion. The sole in service BH diagnosis is Alcohol Abuse and the VA has not service connected any BH conditions. Without medical documentation to support the applicant's asserted Depression, there is no medical mitigation for the cocaine use that led to the discharge.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidentiary record, including the Board Medical Advisor's opine, the Board determined that the applicant's Alcohol Abuse and asserted Depression do not mitigate the basis of separation (cocaine use).

b. Response to Contention(s):

(1) The applicant contends being depressed. The Board liberally considered this contention, but the evidentiary record was void of any diagnosis or documentation of this assertion. The sole BH diagnosis is Alcohol Abuse and the applicant is not service connected for any BH conditions by the VA.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but determined that the applicant's offense of cocaine use was a single incident which can serve as the basis for separation and characterization in accordance with AR 635-200.

(3) The applicant contends they knew of two individuals who were higher in rank and received an honorable discharge after testing positive. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show two individuals who were higher in rank received an honorable discharge after testing positive. Command discharge recommendations and characterizations are determined on a case-by-case basis.

(4) The applicant contends good service. The Board considered this contention, including the applicant's length/quality of service and post-service accomplishments. The Board determined that these factors did not outweigh the discharge considering the totality of the information (or lack thereof) in the evidentiary record.

(5) The applicant contends a discharge upgrade will allow the applicant to obtain better employment. The Board liberally considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(6) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a Department of Veterans Affairs for further assistance.

(7) The third-party statement provided with the application reflect the applicant's good conduct and outstanding work ethic during service and after leaving the Army. The Board considered this contention and determined that the applicant's outstanding work ethic after leaving the Army does not outweigh the misconduct that served as the basis of separation.

(8) The applicant contends obtaining employment. The Board commends the applicant's employment accomplishments but determined those accomplishments do not outweigh the misconduct that served as the basis of separation.

c. The Board determined that the discharge is, at this time, proper and equitable considering the current evidentiary record. However, the applicant may request a personal appearance hearing to address 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 to the evidentiary record, the applicant's Alcohol Abuse and Depression assertion do not excuse or mitigate the misconduct that served as the basis of separation (cocaine use). 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.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD under the same pretenses as the reason the applicant was discharged was both proper and equitable.

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

**AR20210001416**

(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:**

12/27/2023

**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