

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, an upgrade would allow the applicant to become a US citizen and improve the record for the future. The applicant has matured and no longer uses drugs because they do not belong in the applicant's future.

b. **Board Type and Decision:** In a records review conducted on 18 July 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:** 15 September 2009

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 17 August 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: On several occasions, the applicant participated in consuming or using controlled substances, and was AWOL on 19 February through 24 March 2009.

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

(4) **Legal Consultation Date:** 18 August 2009

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

(6) **Separation Decision Date / Characterization:** In an undated memorandum. / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 16 January 2008 / 3 years, 17 weeks

b. **Age at Enlistment / Education / GT Score:** 17 / GED / 91

c. Highest Grade Achieved / MOS / Total Service: E-2 / 11B10, Infantryman / 1 year, 4 months, 26 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: Electronic Copy of DD Form 2624, dated 30 January 2009, reflects the applicant tested positive for THC 286 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 5 January 2009.

Electronic Copy of DD Form 2624, dated 5 February 2009, reflects the applicant tested positive for MDMA 1130 (methylenedioxymethamphetamine) and THC 327 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 27 January 2009.

Five Personnel Action forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 19 February 2009;

From "AWOL" to "Confined by Civil Authorities (CCA)," effective 24 March 2009;

From "CCA" to "PDY," effective 4 May 2009;

From "PDY" to "Confined by Military Authorities (CMA)" effective 22 July 2009; and

From "CMA" to "PDY," effective 11 August 2009.

Charge Sheet, dated 1 June 2009, reflects the applicant was charged with:

Charge I: Violation of the UCMJ, Article 86, for without authority absent himself from his unit on 19 February 2009 and remained absent until 24 March 2009.

Charge II: Five Specifications of violating the UCMJ, Article 112a:

Specifications 1, 2, and 4: The applicant wrongfully used marijuana between 5 December 2008 and 5 January 2009; 27 December 2008 and 27 January 2009; and 17 January and 17 February 2009, respectively.

Specification 3: The applicant wrongfully used ecstasy between 25 and 27 January 2009.

Specification 5: The applicant wrongfully used cocaine between 14 and 17 February 2009.

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 22 July 2009. The applicant was charged with violating Article 86, UCMJ and five specifications of violating Article 112a, UCMJ. The summary and description of offenses, pleas, and findings in a continuation sheet were NIF. Sentence: Forfeiture \$933 pay and confinement for 30 days.

Report of Mental Status Evaluation, dated 14 May 2009, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

i. Lost Time / Mode of Return: 94 days:

AWOL, 19 February 2009 – 3 May 2009 / Apprehended by Civil Authorities
CMA, 22 July 2009 – 10 August 2009 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Summary of Army Substance Abuse Program Rehabilitation Failure (memo), dated 10 February 2009, reflects the applicant had medical diagnoses of “Cannabis Dependence, Cocaine Abuse, Hallucinogen Abuse, and Alcohol Abuse.” The summary further indicated the rehabilitation team, which met on 10 February 2009, had determined the applicant had not made satisfactory progress toward achieving the criteria for successful rehabilitation as outlined in AR 600-85, paragraph 3-2 and 3-3. The applicant failed to adhere to the established treatment plan by failing to refrain from the usage of mood alter chemicals. Further rehabilitation efforts in a military environment were not justified considering the applicant’s lack of progress. The command was cleared to move forward with any administrative action deemed appropriate.

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 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) Paragraph 3-8a states a Soldier is entitled to an honorable characterization of service if

(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 an upgrade would allow the applicant to become a US citizen. The issue the applicant submitted is not a matter upon which the Army Discharge Review Board grants a change in discharge. The issue raises no matter of fact, law, procedure, or discretion related to the discharge process, nor is it associated with the discharge when it was issued.

The applicant contends youth and immaturity affected the applicant's behavior but has since matured and no longer uses drugs. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant's AMHRR contains documentation which supports medical diagnoses of "Cannabis Dependence, Cocaine Abuse, Hallucinogen Abuse, and Alcohol Abuse." The record shows the applicant underwent a mental status evaluation (MSE) on 14 May 2009, which indicates the applicant was mentally responsible, but provided no diagnosis. The MSE was considered by the separation authority.

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? **No.** 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: none either by record review or assertion.

(2) Did the condition exist or experience occur during military service? **No.** The Board's Medical Advisor found no evidence of any potentially mitigating psychiatric conditions during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.**

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends an upgrade would allow the applicant to become a US citizen. The Board considered this contention and determined the applicant's US citizenship status does not outweigh the basis for discharge of being AWOL. Thus, the applicant was properly and equitably discharged.

(2) The applicant contends youth and immaturity affected the applicant's behavior but he matured and no longer uses drugs. The Board considered this contention and determined that the applicant's youth and immaturity did not outweigh the seriousness of the applicant's AWOL. The Board also determined that there is insufficient evidence in the applicant's official record and application that his youth and immaturity affected his behavior and caused the discharge. Therefore, no change is warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, based-on 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 does not have an experience or condition that could excuse or mitigate the offense of AWOL. 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 code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001769

(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:

12/18/2023

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