

1. Applicant's Name:

- a. **Application Date:** 15 March 2021
- b. **Date Received:** 23 March 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 under honorable conditions (general). The applicant requests an upgrade to honorable, and a narrative reason change.

The applicant states in effect, they understand the basis of receiving a general discharge, they are requesting an upgrade to their discharge status due to individual circumstances. They suffer from several mental health illnesses: schizoaffective disorder, multiple personality disorder, chronic depression, anxiety, and PTSD that they were diagnosed with during service. They were recommended for a Chapter 5/17 by their doctor. They had a mental break down and requested to be sent back to Peak Behavioral Health for inpatient treatment, they were denied by their chain of command. The misconduct that caused them to be separated from the Army was the only way they knew how to get back to Peak and receive the treatment they needed.

They have since been diagnosed with schizophrenia, which led to them being awarded a 100 percent VA disability rating with a permanent and total status. The severe mental health condition significantly impacted their ability to fulfill their duties effectively. Their symptoms began to manifest and worsen during their military service, which eventually led to their diagnosis post-service. Schizophrenia is a debilitating mental illness that can cause disturbances in thinking, emotions, and behavior. The symptoms of schizophrenia can impair one's ability to function in a high stress environment such as military service. The diagnosis significantly impacted their ability to perform their duties, it directly affected their cognitive abilities, decision-making skills, and their overall well-being which made it a primary factor contributing to their discharge. While there may have been other contributing factors to their discharge, the impact of schizophrenia on their functioning and overall health outweighs any other reasons for their separation from the Army.

b. **Board Type and Decision:** In a records review conducted on 23 October 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 (Drug Abuse) / AR 635-200 / JKK / RE-4 / General (Under Honorable Conditions).

b. **Date of Discharge:** 28 June 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 4 May 2012

(2) Basis for Separation: The applicant wrongfully possessed spice and they failed to obey lawful orders on divers' occasions.

(3) Recommended Characterization: General, under honorable conditions.

(4) Legal Consultation Date: 7 May 2012

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 23 May 2012 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 August 2009 / 5 years, 34 weeks.

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / 102

c. Highest Grade Achieved / MOS / Total Service: E-4 (Specialist) / 25B10 IT Specialist / 2 years, 10 months, 4 days.

d. Prior Service / Characterizations: None.

e. Overseas Service / Combat Service: None.

f. Awards and Decorations: NDSM, GWTSM, ASR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) A Military Police Report provides on 27 July 2011 the applicant had an open container while riding as a passenger in a vehicle. They were traveling with two additional service members who were drinking while underage, the applicant submitted a breath sample; they passed.

(2) Record of Proceedings UCMJ document signed 12 October 2011 provides the applicant received a NJP for violating Article 92 of the UCMJ; wrongfully possessed an open container of spirituous liquor within the passenger compartment of a motor vehicle on 27 July 2011. Punishment consisted of reduction in rank to E-3, forfeiture of \$429 pay, extra duty, and post restriction for 14 days.

(3) CID Report dated 22 November 2011 provides on 15 September 2011 the applicant purchased spice from a store in Tucson, Arizona and consumed it while driving back to a military installation. The applicant was also found to be in possession of spice during a search of their barracks room.

(4) A Developmental Counseling Form dated 16 December 2011 provides the applicant was counseled after a 40 caliber pistol was found under the driver's seat of their vehicle with a full magazine clip on 15 September 2011.

(5) Record of Proceedings UCMJ document signed 11 January 2012 provides the applicant received a NJP for violating Article 92 of the UCMJ; on 15 September 2011 they violated a lawful general regulation by failing to register their privately owned weapon and they wrongfully possessed Spice K-6. Punishment consisted of reduction in rank to E-1, forfeiture of \$733 pay per month for 2 months, extra duty, and post restriction for 45 days.

(6) A Report of Medical Examination document dated 9 March 2012 provides the applicant was diagnosed with adjustment disorder, depression and they were in an inpatient psychiatric hospital.

(7) Report of Mental Status Evaluation document dated 20 April 2012, provides the applicant were seen at behavioral health for issues with anger, ADHD, depression, and records indicated they were recommended for a Chapter 5-17 separation in the past.

(8) On 4 May 2012 the applicant's immediate commander notified them of their intent to separate them for Misconduct-Abuse of illegal drugs. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they consulted with counsel and completed their election of rights indicating they understood the prejudices that may occur in receiving a characterization of service less than honorable.

(9) On 21 May 2012 the chain of command endorsed and concurred with the commander's discharge recommendation and on 23 May 2012 the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

(10) A Certificate Of Release Or Discharge From Active Duty document provides the applicant were discharged on 28 June 2012, they completed 2 years, 10 months, and 4 days of their contractual obligation.

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

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

(1) **Applicant provided:** Alcohol abuse and dependence, personality disorder, suicidal ideation, bipolar disorder, schizoaffective schizophrenia.

(2) **AMHRR Listed:** Adjustment disorder, depression, attention deficit disorder, ADHD, anger issues.

5. APPLICANT-PROVIDED EVIDENCE: Two DD Form 293 (Discharge Review) applications and 584 pages of medical documentation is support of their petition.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their petition.

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), dated 25 September 2019, 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 provides the authorized types of characterization of service or description of separation.

(1) 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.

(2) 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.

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(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. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. It provides the ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they

do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

f. Title 10, U.S. Code, Sections 1177 (Members Diagnosed with or Reasonably Asserting Post-Traumatic Stress Disorder or Traumatic Brain Injury: Medical Examination Require Before Administrative Separation) states under regulations prescribed by the Secretary of Defense, the Secretary of a military department shall ensure that a member of the armed forces under the jurisdiction of the Secretary who has been deployed overseas in support of a contingency operations, or sexually assaulted, during the previous 24 months, and who is diagnosed by a physician, clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advance practice registered nurse as experiencing PTSD or TBI or who otherwise reasonably alleges, based on the service of the member while deployed, or based on such sexual assault, the influence of such a condition, receives a medical examination to evaluate a diagnosis of PTSD or TBI. A member shall not be administratively separated under conditions other than honorable, including an administrative separation in lieu of court-martial, until the results of the medical examination have been reviewed by appropriate authorities responsible for evaluating, reviewing, and approving the separation case, as determined by the Secretary concerned.

g. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

h. 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, paragraph 12c, misconduct (drug abuse).

i. 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-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.
- 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.
- 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.

a. The applicant requests an upgrade to honorable, and a narrative reason change. The applicant's DD-214 provides the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions discharge which is normally considered appropriate for a soldier discharged for drug abuse.

b. Based on the available evidence the applicant enlisted in the Army at the age of 19, three years into their contractual obligation they received their first NJP for being in possession of an open container of alcohol while traveling as a passenger in a vehicle. Shortly after, the applicant received their second NJP for failing to register their personally owned weapon and for being in possession of spice; they were subsequently processed for administrative separation. Evidence provides at some point they were recommended for a Chapter 15-17 separation due to their mental health diagnoses.

c. The applicant was notified of the intent to separate them for misconduct-drug abuse and acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c, they consulted with counsel and the appropriate authority approved the separation. Evidence provides the applicant received the required mental health and medical separation examinations. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 28 June 2012.

d. Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

e. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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: The applicant held in-service diagnoses of Adjustment Disorder with Mixed Emotional Features, Polysubstance Abuse, Alcohol Dependence, and Personality Disorder, Mixed. The applicant is service connected for Schizophrenia, but backdated to April 2023 as the VA has determined applicant

did not have symptoms while in service. Rather, the VA references depressive symptoms in-service alone.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder with Mixed Emotional Features, Polysubstance Abuse, Alcohol Dependence, and Personality Disorder, Mixed.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant had substantial observation and assessment in-service which did not result in a clinically impairing condition, i.e., Major Depressive Disorder rather than Adjustment Disorder, contributing to his substance use. Rather, it is more likely than not longstanding maladaptive coping resulting in the Personality Disorder diagnosis and subsumed Adjustment Disorder drove the misconduct. While a Personality Disorder provides context, it is not mitigating. However, the board could consider the low-level symptoms present in-service in making a determination.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the ADRB's application of liberal consideration, the board concurred with the opinion of the Board's Medical Advisor, a voting member, that the applicant's Adjustment Disorder with Mixed Emotional Features, Polysubstance Abuse, Alcohol Dependence, and Personality Disorder did not outweigh the misconduct (wrongfully possessed spice and failed to obey lawful orders on multiple occasions. Additionally, the applicant failed to register their privately owned weapon and the applicant's pistol was found in a car with a full magazine).

b. Response to Contention(s):

(1) The applicant contends they were recommended for a Chapter 5-17 separation by their doctor.

The board determined the applicant's discharge was proper and equitable. The board noted the applicant was notified of the intent to separate him from service, consulted with counsel and the discharge was approved by the appropriate authority. The applicant and the senior defense counsel both signed the TDS memo on 7 May 2012 acknowledging the separation under AR 635-200, Chapter 14-12c. The board did not find any evidence of the command acting in any arbitrary or capricious manner.

(2) The applicant contends they had a mental break down and requested to be sent back for inpatient treatment and their command denied their request. The board considered this contention and found no evidence the Command acted in an arbitrary or capricious manner.

(3) The applicant contends schizophrenia impacted their ability to perform military duties; the symptoms began to manifest and worsen during their military service. The board considered this contention. The applicant is service connected for Schizophrenia, backdated to April 2023, however the VA has determined the applicant did not have symptoms of Schizophrenia in-service. Rather, the VA references depressive symptoms in-service alone.

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 diagnoses of Adjustment Disorder with Mixed Emotional Features, Polysubstance Abuse, Alcohol Dependence, and Personality Disorder do not excuse or mitigate the basis for separation (wrongfully possessed spice and failed to obey lawful orders on multiple occasions). Additionally, the board noted other misconduct in the applicant's file to include failed to register privately owned weapon, and the applicant's pistol was found in a car with a full magazine. 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, as 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:

11/20/2024

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