

1. Applicant's Name: [REDACTED]

- a. Application Date:** 12 March 2021
- b. Date Received:** 15 March 2021
- c. Counsel:** NA

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues:

(1) The current characterization of service for the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to honorable and/or a change of the narrative reason for separation to reflect a medical discharge.

(2) The applicant seeks relief contending they hurt their back and was receiving physical therapy. Their immediate chain of command was angry at this and told them they could not receive a medical discharge. During a room inspection, an empty "spice" packet was found in the pocket of a sweater that they had loaned out the previous night; they believe they had been set up. They received a drug test and passed because they have never done use "spice;" however, they were told they were going to receive an Article 15 and be chaptered out of the military. They agreed to the chapter out of fear of what their command might do to them if they legally retaliated in anyway. They are currently have a 70-percent disability rating through the Department of Veterans Affairs (VA). They feel a medical discharge is the most appropriate action to take and if not an honorable discharge.

b. Board Type and Decision: In a records review conducted on 25 June 2025, and by a 5-0 vote, the Board determined the discharge is inequitable based upon the misconduct being a first time offense for the applicant and they did not fail a uranalysis for spice, nor was the drug found on them. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warranted an upgrade. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / Army Regulations 635-200, Paragraph 14-12c(2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 14 February 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 17 January 2013

(2) Basis for Separation: on 21 December 2012, violated a general regulation, to wit: Fort Brag Master Policy Number 52, dated 20 June 2011, by wrongfully possessing spice.

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

(4) Legal Consultation Date: 17 January 2013

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 31 January 2013 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Reenlistment: 15 November 2011 / 4 years, 21 weeks

b. Age at Enlistment / Education / GT Score: 21 / Test-Based Equivalent Certificate / 108

c. Highest Grade Achieved / MOS / Total Service: E-2 / 13F1P, Fire Support Specialist / 1 year, 3 months

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, Bravo Company, 1st Battalion, 325th Airborne Infantry Regiment, 2nd Brigade Combat Team, 82nd Airborne Division, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct – Abuse of Illegal Drugs, [Applicant], undated, reflects the applicant receive notification of the initiation of separation action against them from their company commander for Misconduct – Abuse of Illegal Drugs. The reason for the proposed separation action is described above in paragraph 3c(2). The company commander recommended the applicant's service be characterized as General (Under Honorable Conditions). On 17 January 2013, the applicant acknowledged receipt of their notification of separation and of the rights available to them.

(2) On 17 January 2013 the applicant completed their Election of Rights acknowledging they have accepted the opportunity to speak with counsel.

(3) A memorandum, Bravo Company, 1st Battalion, 325th Airborne Infantry Regiment, 2nd Brigade Combat Team, 82nd Airborne Division, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct – Abuse of Illegal Drugs, (Applicant), undated, reflects the applicant's company commander's recommendation to separate them from the Army prior to the expiration of their current term of service. The commander states they do not consider it feasible or appropriate to accomplish other disposition as retaining the applicant would have an adverse impact on military discipline, good order, and morale.

(4) A memorandum, Headquarters, 1st Battalion, 325th Airborne Infantry Regiment, 2nd Brigade Combat Team, 82nd Airborne Division, subject Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct – Abuse of Illegal Drugs, [Applicant],

dated 30 January 2013, reflects the applicant's battalion commander recommended the applicant be separated from the Army prior to the expiration of their current term of service. They recommended the applicant's service be characterized as General (Under Honorable Conditions).

(5) A memorandum, Headquarters, 2nd Brigade Combat Team, 82nd Airborne Division, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct – Abuse of Illegal Drugs, [Applicant], dated 31 January 2013 reflects the separation authority reviewed the separation packet of the applicant and after careful consideration of all matters directed the applicant be separated from the Army prior to the expiration of their current term of service. They directed the applicant's service be characterized as General (Under Honorable Conditions). After reviewing the rehabilitative transfer requirements they have determined the requirements do not apply to this action.

- i. **Lost Time / Mode of Return:** NA
- j. **Behavioral Health Condition(s):** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- two VA Decision Letters
- VA Summary of Benefits Letter
- VA Rating Decision

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) effective 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, and the general provisions governing the separation of Soldiers before expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Paragraph 1-16 (Counseling and Rehabilitative Requirements) stated Army leaders at all level must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have potential to serve honorably and well, be given every opportunity to succeed. Commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. The rehabilitative transfer requirements may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier.

(5) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; 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. 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) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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 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(2), 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 DoD Instructions 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) 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.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

g. 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. 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 mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

h. Manual for Courts-Martial, United States (2012 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating Article 92 (Failure to Obey Order, Regulation) and Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

i. 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.

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR case files for approved separation does not contain documents regarding the applicant's misconduct. Their DD Form 214 provides they were discharged with a character of service of General (Under Honorable Conditions) for misconduct (drug abuse). They completed 1 year and 3 months of net active service and did not complete their first full term of service of their 4-year, 21 week enlistment obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense; to include abuse of illegal drugs; 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.

d. 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? **No.** The Board's Medical Advisor, a voting member, reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(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. Prior Decisions Cited:

c. Response to Contention(s): The applicant contends during a room inspection, an empty "spice" packet was found in the pocket of a sweater that they had loaned out the previous night; they believe they had been set up. They received a drug test and passed because they have never done use "spice;" however, they were told they were going to receive an Article 15 and be chaptered out of the military. The Board considered this contention found that this was a first-time offense for the applicant thus the separation was inequitable and warranted an upgrade.

d. The Board determined: The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found that this was a first-time offense for the applicant, and they did not fail a uranalysis for spice, nor was the drug found on them. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warranted an upgrade.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because, the applicant's discharge was inequitable for a first time offense without complication thus an upgrade was warranted.

(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.

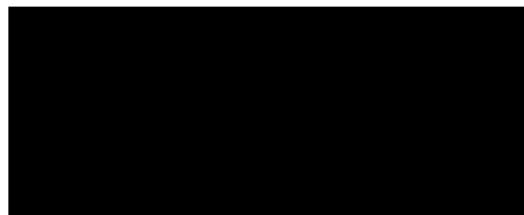
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(3) The RE code will change to RE-3 as the current code is no longer applicable.

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:** No Change

6/27/2025



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