

1. Applicant's Name:

- a. **Application Date:** 14 December 2020
- b. **Date Received:** 21 December 2020
- 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 General (under honorable conditions). The applicant requests an upgrade to honorable, a narrative reason change, and a change to the separation and reentry code.

b. The applicant states, in effect they have sought the help that was needed to correct their self while in the army and after being discharged. They have been clean and sober for years and would like their characterization of service to reflect the person that they are today.

c. **Board Type and Decision:** In a records review conducted on 22 January 2024, and by a 4-1 vote, the Board denied the request upon finding the separation was both proper and equitable.

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:** 22 June 2012

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 30 May 2012

(2) **Basis for Separation:** wrongfully used marijuana, AWOL for 14 days, deemed a rehabilitative failure by the rehabilitative treatment team, and failure to report on different occasions.

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

(4) **Legal Consultation Date:** 30 May 2012

(5) **Administrative Separation Board:** N/A

(6) **Separation Decision Date / Characterization:** 6 June 2012 / General, Under Honorable Conditions.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 11 January 2010 / 4 years

b. **Age at Enlistment / Education / GT Score:** 19 / [NIF] / 104

c. Highest Grade Achieved / MOS / Total Service: E-4 (Specialist) / 91B10 Wheeled Vehicle Mechanic / 4 years, 8 months, 19 days.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None / Iraq ; 5 May 2009 – 5 May 2010

f. Awards and Decorations: ARCOM, AGCM, NDSM, GWTSM, ICM-CS, ASR, OSR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides the applicant reenlisted in the Army at the rank of specialist (E-4) for 4 years on 11 January 2010.

(2) Three Developmental Counseling forms dated 20 October 2010, 18 November 2010 and 16 March 2011 provides the applicant was counseled for failing to be at the appointed place of duty at the right time.

(3) Record of Proceedings UCMJ dated 28 September 2011 provides the applicant received a NJP for violating Article 86 of the UCMJ on 5 separate occasions. They failed to go at the prescribed time to their appointed place of duty. Punishment consisted of reduction in rank to E-3 and extra duty for 14 days.

(4) A Personnel Action Document provides the applicants duty status changed from present for duty (PDY) to absent without leave (AWOL) on 1 March 2012. The applicant's duty status changed from AWOL to present for duty on 14 March 2012

(5) A memorandum, ASAP Clinical Supervisor subject: Rehabilitation Failure Determination dated 12 March 2012 provides the applicant's command was notified of the applicant being deemed a rehabilitation failure; cleared the command to move forward with any administrative action deemed necessary.

- First enrolled as a self-referral on 2 March 2011 for alcohol use; Admitted into inpatient substance abuse treatment 16 June 2011 – 18 July 2011.
- Missed 6 ASAP appointments and reported 30 minutes late to an appointment.
- Received both inpatient and outpatient treatment for 12 months; demonstrated low motivation for treatment based on multiple unexcused absences, self-reported not attending AA/NA support meetings and self-reported spending time in "Pubs."

(6) A Report of Mental Status Evaluation document dated 12 April 2012, provides the applicant received a separation mental health evaluation. Pertinent findings: frequently impulsive.

(7) On 30 May 2012 the defense counsel, notified the applicants command informing them that the applicant tested positive for Post Traumatic Stress Disorder (PTSD).

- If the misconduct stems from [their] mental health condition and PTSD, then [they] should receive a honorable discharge.

(8) A Report of Medical Assessment document dated 24 April 2012, provides the applicant received a separation medical examination.

(9) Record of Proceedings UCMJ dated 26 April 2012 provides the applicant received a NJP for violating Articles 112a and 86 of the UCMJ. They wrongfully used marijuana between 14 February 2012 and 14 March 2012 and failed to go at the time prescribed to their appointed place of duty on three separate occasions. Punishment consisted of reduction in rank to E-1, forfeiture of \$745, extra duty and post restriction for 45 days.

(10) A memorandum, 4TH Heavy Brigade Combat Team, 1ST Armored Division, Fort Bliss, Texas subject: Separation under AR 635-200, Chapter 14-12c (misconduct-abuse of illegal drugs) dated 30 May 2012 provides the applicant's immediate commander notified them of their intent to separate them for wrongfully using marijuana, for being absent without leave for 14 days, for being deemed a rehabilitative failure and for failing to report on different occasions. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, and their available rights. The applicant completed their election of rights and consulted with counsel on 30 May 2012.

(11) On 31 May 2012 the chain of command endorsed and concurred with the commander's recommendation. On 6 June 2012 the appropriate authority approved the separation and directed a characterization of service of General (under honorable conditions).

(12) A DD Form 214 shows on 22 June 2012 the applicant was discharged, they completed a total active service of 4 years, 8 months, and 19 days.

i. **Lost Time / Mode of Return:** AWOL; 1 March 2012 – 13 March 2012 / [NIF]

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

(1) **Applicant provided:** A Department of Veterans Affairs rated disabilities document that provided the applicant is 70 percent service connected for PTSD.

(2) **AMHRR Listed:** PTSD, alcohol dependence and cannabis dependence.

5. APPLICANT-PROVIDED EVIDENCE: 2- DD Form 293 (Application for Review of Discharge), a Department of Veterans Affairs summary of benefits letter that provides the applicant is 100% service connected, a Department of Veterans Affairs rated disabilities document that provided the applicant is 70 percent service connected for PTSD, a copy of their Culinary Arts Diploma, a copy of their permanent employee registration card and one additional enclosure in support of their application, and a letter of recommendation from the applicant's previous battalion Command Sergeant Major stating the applicant deployed to Iraq twice, has a great work ethic, commitment to duty, and a role model for other transitioning soldiers.

6. POST SERVICE ACCOMPLISHMENTS: The applicant received their Culinary Arts Diploma 15 May 2015 and has been clean and sober for years now.

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.

(6) Chapter 9 provides the authority and outlines the procedures for discharging Soldiers for alcohol or other drug abuse rehabilitation failure. Discharge is based upon alcohol or other drug abuse such as illegal, wrongful, or improper use of any controlled substance,

alcohol, or other drugs when the soldier is enrolled in Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) or when the commander determines that further rehabilitation efforts are not practical, rendering the soldier a rehabilitation failure. This determination will be made in consultation with the rehabilitation team. A Soldier who is enrolled in the ADAPCP for alcohol/drug abuse may be separated because of their inability or refusal to participate in, cooperate in, or successfully complete such a program due to their lack of potential for continued army service and rehabilitation efforts are no longer practical.

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. 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).

g. 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.

h. Appendix 12, Maximum Punishment Chart in the Manual for Courts-Martial provides that wrongful use of marijuana includes a punitive discharge, confinement from 2-5 years, and total forfeiture or pay.

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 that agency.

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. The applicant's DD Form 214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge which is normally considered appropriate for a soldier discharged for drug abuse.

b. Based on the available evidence, the applicant joined the Army at the age of 19, they received the Army Good Conduct Medal and the Army Commendation Medal during their enlistment. The applicant deployed to Iraq for 12 months and reenlisted in the army for an additional 4 years before returning from their deployment in 2010. Five months after returning from deployment the applicant started having occasions of misconduct. In 2011 they self-referred to ASAP and started receiving outpatient and inpatient treatment for alcohol and cannabis dependence. They received a NJP for failing to report on several occasions that same year. In 2012 they were deemed a rehabilitative failure, received their second NJP for wrongfully using marijuana and was processed for administrative separation.

c. The applicant was notified of the intent to separate them for misconduct (abuse of illegal drugs), they acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. They consulted with counsel and received the required medical and mental health separation examinations which provided the applicant tested positive for PTSD. A properly constituted DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 22 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:

c. 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 and Major Depressive Disorder (MDD) By History. He is service connected for PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder and Major Depressive Disorder (MDD) By History.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that while it is more likely than not the applicant's drug use was a continuation of his pre-enlistment misconduct which continues post-service, the VA service connecting the applicant for PTSD and possibility drug use was aggravated by deployment call for mitigation. However, the Board noted the available evidence reflects additional misconduct, including IPV, stalking of an NCO, and death threats made towards said NCO. The Board found this additional misconduct was not mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Adjustment Disorder, MDD and PTSD outweighed the listed basis for separation for the aforementioned reason(s). However, in light of the additional misconduct contained in the available military service and health records, the Board found the applicant's PTSD, Adjustment Disorder, and Major Depressive Disorder did not outweigh the discharge.

d. Response to Contention(s): The applicant did not make any contentions or provide any evidence to support that the discharge was improper or inequitable. The Board reviewed all available evidence and determined that no relief was warranted at this time.

e. 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. The applicant had preservice criminal affiliation and activity, combined with in-service record (IPV and propensity toward violence, well documented in the medical record). The Board found this evidence material and relevant to whether relief was warranted. Given the applicant was an IPV perpetrator, as well as made death threats towards and stalked an NCO, the Board determined the discharge was proper and equitable and the applicant's PTSD, Adjustment Disorder and MDD did not mitigate or outweigh the misconduct.

f. 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 Adjustment Disorder and Major Depressive Disorder (MDD) and PTSD, while mitigating the offenses of drug abuse and AWOL, did not excuse or mitigate the additional misconduct of IPV, stalking, and death threats. 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:

7/31/2024

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