

1. Applicant's Name:

- a. **Application Date:** 4 December 2020
- b. **Date Received:** 13 January 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, a narrative reason change, as well as a change to both of their separation and reentry codes.

b. The applicant seeks relief contending, they were active for 8 years and 9 months. The sole reason for their separation was not drug abuse, it was for taking a medication that the Army would ultimately prescribe them just two months later, after Veterans Affairs (VA) sample was sent in. This happened in June 2019 and they tried with the separation board but was separated in November 2020.

c. **Board Type and Decision:** In a records review conducted on 24 July 2024, and by a 5-0 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, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 30 November 2020

c. Separation Facts:

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

(2) **Basis for Separation:** Wrongful use of D-amphetamine

(3) **Recommended Characterization:** NIF

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

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

(6) **Separation Decision Date / Characterization:** 15 October 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 18 December 2018 / 3 years (3rd Reenlistment)

b. **Age at Enlistment / Education / GT Score:** 34 / High School Diploma / 101

c. Highest Grade Achieved / MOS / Total Service: E-4 / 19D10 Cavalry Scout / 8 years, 9 months, 24 days

d. Prior Service / Characterizations:

- RA, (7 February 2012 – 1 November 2016) / Honorable
- RA, (2 November 2016 – 17 December 2018) / Honorable

e. Overseas Service / Combat Service:

- Korea / None (25 June 2012 – 25 June 2013)
- SWA / Kuwait (15 June 2016 – 24 February 2017)
- SWA / Iraq (4 May 2018 – 12 January 2019)

f. Awards and Decorations: ARCOM-2, AAM-2, AGCM-2, NDSM, GWOTEM, KDSM, NCOPDR, ASR, OSR-2, IRCM-CS

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 18 December 2018, the applicant completed their third reenlistment for 3 years and 18 days as a SPC, with 7 years, 10 months, and 4 days of prior service. The Enlisted Record Brief provides they served one year in Korea and 17 months in Kuwait and Iraq. They have been awarded two Army Achievement Medals and two Army Good Conduct Medals. On 9 and 24 July 2019, they were flagged, Suspend Favorable Personnel Actions (FLAG), for drug abuse adverse action (UA), field-initiated involuntary separation (BA), and adverse action (AA).

(2) The AMHRR is void of most of the entire separation proceedings; however, on 15 October 2020, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(3) On 13 November 2020, their separation orders were issued. A DD Form 214, reflects the applicant was discharged accordingly on 30 November 2020, with 9 years, 4 months, and 18 days of service, noting the following:

- Authority: AR 635-200, Chapter 14-12c (2)
- Narrative: Misconduct (Drug Abuse)
- SPD Code: JKK
- Reentry Code: RE-4
- Service Characterization: General (Under Honorable Conditions)
- Total NET Active Service this Period: 8 years, 9 months, and 24 days
- Remarks: Continuous Honorable active service: 7 February 2012 – 17 December 2018; Service in Iraq 4 May 2018 – 12 January 2019; Service in Kuwait 15 June 2016 – 24 February 2017. Member has completed first full term of service.
- Lost Time: None
- Signature: Electronically signed.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application of the Review of Discharge); DD Form 214; Partial Separation Package; two Army Commendation Medal Awards; two Army Achievement Medal Awards; two Army Good Conduct Medal Awards

a. On 23 July 2019, the applicant was seen for an Attention-Deficit/Hyperactivity Disorder (ADHD) assessment, which provides their Conner's Continuous Performance Test resulting in 65% confidence that a valid and significant attention problem exists. These results needed to be cleared and thoroughly investigated through clinical interview and documented history to establish the best treatment intervention possible. The applicant was to follow up with Embedded Behavioral Health (EBH), Fort Hood, TX within one to two weeks from then.

b. On 31 July 2019, the applicant completed Alcohol and Drug Abuse Prevention Training (ADAPT), given at Army Substance Abuse Program (ASAP), Fort Hood, TX.

c. On 27 September 2019, the applicant completed Substance Use Disorder Clinical Care (SUDCC), given at EBH, Fort Hood, TX.

d. On 22 April 2020, a Tricare Online Medication History, provides they were prescribed a 90 day supply of Amphetamine Aspartate 3.75mg + Amphetamine Sulfate 3.75mg + Dextroamphetamine Saccharate 3.75mg + Dextroamphetamine Sulfate 3.75mg 24 hour extended release capsule, with a prescription expiration date of 20 July 2020.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this 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), 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.

(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 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 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 14-12c (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 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:

(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 waiverable. 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)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. 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.

(1) 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.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

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, a narrative reason change, as well as a change to both of their separation and reentry codes. A review of the records provides there was administrative irregularity in the proper retention of official military records, specifically, the referral to ASAP [a two-part mandatory clinical assessment, required within 4 days of the first positive urinalysis], a charge sheet, investigation report(s), and the separation package.

b. The available evidence provides the applicant completed their third reenlistment in the RA as a SPC, with 7 years, 10 months, and 4 days of prior service. They served one year in Korea and 17 months in Kuwait and Iraq. They were flagged, for drug abuse adverse action, field-initiated involuntary separation, and adverse action. Aside from the missing documents, the applicant was separated under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), with a General (Under Honorable Conditions) characterization of service.

(1) The applicant provides they were seen for an Attention-Deficit/Hyperactivity Disorder (ADHD) assessment, which indicated their Conner's Continuous Performance Test resulting in 65% confidence that a valid and significant attention problem exists. They completed both Alcohol and Drug Abuse Prevention Training (ADAPT) and Substance Use Disorder Clinical Care (SUDCC) with EBH. Lastly, they provided their medication history which indicates they were prescribed Amphetamine Aspartate 3.75mg + Amphetamine Sulfate 3.75mg + Dextroamphetamine Saccharate 3.75mg + Dextroamphetamine Sulfate 3.75mg from April to July 2020.

(2) They served 1 year 11 months, and 14 days their 3 year contractual 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 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? **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: ADHD, GAD. Applicant is also an offender of IPV.

(2) Did the condition exist or experience occur during military service? **Yes.** ADHD and offender of IPV.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that having a history of ADHD with medication treatment does not equate to not understanding using

stimulants without a script is illegal. Rather, due to his own noncompliance he was delayed in diagnosis and treatment and consciously chose to take his son's medication. Accordingly, there is no mitigation.

(4) Does the condition or experience outweigh the discharge? **No**

b. Prior Decisions Cited: AR20220004777

c. Response to Contention(s): The applicant seeks relief contending, they were active for 8 years and 9 months. The sole reason for their separation was not drug abuse, it was for taking a medication that the Army would ultimately prescribe them just two months later, after Veterans Affairs (VA) sample was sent in. This happened in June 2019; they tried with the separation board but was separated in November 2020. The Board considered the applicant's over 8 years of service, including combat and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's misconduct. 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. Therefore, the applicant's discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

d. 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.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service based on the following reasons. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that the applicant does not have a BH condition that mitigates the applicant's misconduct. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. Additionally, the Board's Medical Advisor informed the Board that a Civilian Court found the applicant to be an offender of IPV and child abuse and violated a protective order.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same reasons, 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:

8/5/2024

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