

**1. Applicant's Name:**

- a. **Application Date:** 12 July 2021
- b. **Date Received:** 19 July 2021
- c. **Counsel:** Yes

**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, through counsel, an upgrade to honorable and a narrative reason change.

The applicant's counsel seeks relief contending, in effect, the applicant's command made a material error of procedure and discretion when they discharged the applicant and compounded the error when the applicant was issued an improper characterization of service and narrative reason for the discharge; and the command failed to follow the required procedure in referring the applicant to counseling and rehabilitation within five days of the applicant's positive urinalysis, but deployed the applicant without ensuring enrollment in the Army Substance Abuse Program (ASAP). The applicant's counsel also contends the waiver of the rehabilitation transfer requirement was unfounded and there is no evidence the applicant fell under any exceptions which allow waiver if the rehabilitation transfer. The applicant's counsel further contends the applicant had honorable service.

**b. Board Type and Decision:** In a records review conducted on 16 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, Paragraph 14-12c(2) / JKK / RE-4 / General (Under Honorable Conditions)

**b. Date of Discharge:** 25 September 2017

**c. Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** The applicant was informed of the following reasons: NIF
- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 12 August 2017 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. Date / Period of Enlistment:** 4 August 2014 / 3 years, 41 weeks
- b. Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 101
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 13J10, Fire Control Specialist / 3 years, 1 month, 22 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** SWA / Kuwait (4 March 2017 – 26 August 2017)
- f. Awards and Decorations:** NDSM, GWOTEM, ASR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** The applicant's Enlisted Record Brief (ERB), 27 September 2017, reflects the applicant was the applicant's highest grade was specialist/E-4, at the time of separation, the applicant's grade is listed as private/E-2. The circumstances surrounding the demotion is not available for review.
- 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, Counsel's Brief, DD Form 214, Enlistment documents, Orders, Applicant's statement, Letter of Support

**6. POST SERVICE ACCOMPLISHMENT:** None submitted with the application.

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

**a.** Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval

Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

**b.** Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

**(1)** Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

**(2)** Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

**c.** Army Regulation 15-180 (Army Discharge Review Board), 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)** Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) 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.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c(2), misconduct (drug abuse).

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests, through counsel, an upgrade to honorable and a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's service AMHRR is void of the specific facts and circumstances concerning the events which led to his discharge from the Army. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged under the provisions of AR 635-200, paragraph 14-12C(2), by reason of Misconduct (Drug Abuse), with a characterization of service of General (Under Honorable Conditions).

The applicant's counsel requests the applicant's narrative reason for the discharge be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with an under other than honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." Army Regulation 635-8, Separation Processing and Documents, governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be

listed in tables 2-2 or 2-2 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant's counsel contends the applicant's command made a material error of procedure and discretion when they discharged the applicant and compounded the error when the applicant was issued an improper characterization of service and narrative reason for the discharge.

The applicant's counsel contends the command failed to follow the required procedure in referring the applicant to counseling and rehabilitation within five days of the applicant's positive urinalysis but deployed the applicant without ensuring enrollment in ASAP. The applicant's service AMHRR is void of the specific facts and circumstances concerning the events which led to his discharge from the Army.

The applicant's counsel contends the waiver of the rehabilitation transfer requirement was unfounded and there is no evidence the applicant fell under any exceptions which allow waiver if the rehabilitation transfer. The applicant's service AMHRR is void of the specific facts and circumstances concerning the events which led to his discharge from the Army.

The applicant's counsel further contends the applicant had honorable service. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

If the applicant desires a personal appearance hearing, it is his/her responsibility to meet the burden of proof and provide the appropriate documents (i.e., the discharge packet) or other evidence sufficient to explain the facts, circumstances, and reasons underlying the separation action, for the Board's consideration because they are not available in the official record.

#### **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, reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service 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.** Response to Contentions:

(1) The applicant's counsel contends the applicant's command made a material error of procedure and discretion when they discharged the applicant and compounded the error when the applicant was issued an improper characterization of service and narrative reason for the discharge.

The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(2) The applicant's counsel contends the command failed to follow the required procedure in referring the applicant to counseling and rehabilitation within five days of the applicant's positive urinalysis but deployed the applicant without ensuring enrollment in ASAP. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(3) The applicant's counsel contends the waiver of the rehabilitation transfer requirement was unfounded and there is no evidence the applicant fell under any exceptions which allow waiver if the rehabilitation transfer. Army Regulation 635-200, paragraph 1-17d(2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality Soldier. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(4) The applicant's counsel further contends the applicant had honorable service. The Board considered this contention and the applicant's three years of service, including one tour in Kuwait and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's Failure to complete drug abuse program (ASAP).

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 for 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 that mitigate the basis for separation. The applicant tested positive for drugs and failed to complete ASAP. 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. The Board recommends a personal appearance. 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 General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

**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