

1. Applicant's Name:

- a. **Application Date:** 23 February 2023
- b. **Date Received:** 2 March 2023
- c. **Counsel:** None

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 honorable conditions. The applicant requests an upgrade to honorable.

(2) The applicant seeks relief stating they joined the Army in 2004, made 63 airborne jumps, excelled through the ranks, and served an extended tour in Afghanistan. They returned home in 2007 to discover their pregnant spouse in bed with another person. They started using drugs to contain their anger and hurt. Up until then their military career was outstanding, after that, between that incident and the events that took place in Afghanistan, their mental health deteriorated, they were reduced in rank and received a general (under honorable conditions) discharge.

b. Board Type and Decision: In a records review conducted on 1 April 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) / Army Regulations 635-200, Paragraph 14-12c(2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 8 May 2009

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 23 March 2009

(2) **Basis for Separation:** tested positive for cocaine four times.

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

(4) **Legal Consultation Date:** 24 March 2009

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

(6) **Separation Decision Date / Characterization:** 3 April 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 February 2008 / 6 years

- b. Age at Enlistment / Education / GT Score:** 27 / 1 year College / 108
- c. Highest Grade Achieved / MOS / Total Service:** E-5 / 21W1P, Carpentry/Mason Specialist / 5 years, 3 months, 19 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** SWA / Afghanistan (2 April 2006 – 6 April 2007)
- f. Awards and Decorations:** ARCOM, AAM-2, NDSM, ACM-2CS, GWTSM, ASR, OSR, NATOMDL
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) The applicant's service record reflects they were deployed to Afghanistan from 2 April 2006 through 6 April 2007. A DD Form 93 (Record of Emergency Data) reflects the applicant's son was born May 2007.

(2) A DA Form 3286 (Statements for Enlistment) dated 7 February 2008, reflects the applicant reported their offense of "Domestic" dated 13 October 2007, with disposition pending. They attended a court ordered class 13 October 2007 through 6 July 2008, with disposition of pending, waiting on dismissal.

(3) A DA Form 4856 (Developmental Counseling Form), dated 12 November 2008, reflects the applicant received counseling for testing positive on a urinalysis. Key points of discussion states, the applicant came up positive for cocaine on a urinalysis conducted on 27 October 2008. The applicant agreed with the information and signed the form.

(4) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 25 July 2005, reflects the applicant received nonjudicial punishment for, between on or about 20 October 2008 and 27 October 2008, wrongfully use Cocaine. Their punishment consisted of reduction in rank/grade from sergeant/E-5 to specialist/E-4, forfeiture of \$1023.00 pay for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(5) A memorandum, subject: Positive Drug Testing Result, dated 8 December 2008, reflects the applicant tested positive on 1 December 2008 for cocaine.

(6) A DD Form 2807-1 (Report of Medical History) dated 31 December 2008, the applicant checked "Yes" indicating they have had or currently do have, nervous trouble of any sort, depression, or excessive worry, and used illegal drugs or abused prescription drugs. They stated they are depressed more than they have ever been. The examiner commented the applicant had a history of mental health/psychological – depression, was on Zoloft.

(7) A DD Form 2808 (Report of Medical Examination) dated 31 December 2008; the examiner indicated the applicant is qualified for a chapter 14-12c separation with no physical profile limitations.

(8) A memorandum, subject: Positive Drug Testing Result, dated 21 January 2009, reflects the applicant tested positive on 12 January 2009 for cocaine.

(9) A DA Form 3822 (Report of Mental Status Evaluation), dated 26 February 2009, reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets the retention requirements. The Remarks Section reflects a diagnosis of Axis I – Cocaine abuse and an Axis II – Cluster B traits.. The physician stated there is no evidence of emotional or mental disorder of psychiatric significance that would warrant disposition through medical channels. There is no evidence of Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI). The applicant is psychologically cleared for any administrative action deemed appropriate by command.

(10) A memorandum, subject: Positive Drug Testing Result, dated 9 March 2009, reflects the applicant tested positive on 26 February 2009 for cocaine.

(11) A memorandum, Headquarters Company, 27th Engineer Battalion (Combat) (Airborne), subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, 23 March 2009, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, with a recommended characterization of service of general (under honorable conditions) for misconduct, testing positive for cocaine four times. The applicant acknowledged receipt of notification for separation.

(12) A memorandum, U.S. Army Trial Defense Service, Fort Bragg, NC, subject: Election of Rights under Army Regulation 635-200 Notice Procedure, dated 24 March 2009, the applicant completed their election of rights signing they understand they are not entitled to an administrative separation board; they have not been given notice that they are being considered for an under other than honorable conditions discharge. They elected to submit statements in their behalf. [Note: statements in their behalf are not in evidence for review.]

(13) A memorandum, Headquarters Company, 27th Engineer Battalion (Combat) (Airborne), subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, dated 31 March 2009, the applicant's company commander submitted a request to separate them prior to their expiration term of service to the separation authority. The company commander states it is not feasible or appropriate to accomplish other disposition because in their opinion the applicant is unlikely to overcome their deficiencies and be a viable member of the unit. Continued presence in the unit will reduce morale, readiness, and unit effectiveness. The applicant clearly has no potential for useful service under the conditions of full mobilization.

(14) A memorandum, Headquarters, 20th Engineer Brigade (Combat)(Airborne), dated 3 April 2009, the separation authority thoroughly reviewed the discharge packet of the applicant and directed the applicant be separation and issued a General (Under Honorable Conditions) discharge.

(15) The Enlisted Record Brief, dated 20 April 2009, reflects the applicant was promoted to the rank/grade of sergeant/E-5 on 1 May 2008 and reduced to the rank/grade of specialist/E-4 on 19 November 2008.

(16) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 8 May 2009, with 5 years, 3 months, and 21 days of net active service this period. They have completed the first full term of service; however, they did not complete their contractual reenlistment obligation of 6 years.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** MSE/BHE as described in previous paragraph 4h(9).

5. **APPLICANT-PROVIDED EVIDENCE:** None submitted with application.

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with 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 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) 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), 6 July 2005, 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. Readiness is promoted by maintaining high standards of conduct and performance.

(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) 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, abuse of illegal drugs is serious misconduct; 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.

(5) 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 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)) dated 15 October 2001, prescribed policies, and procedures to implement, administer, and evaluate the ASAP. 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) When a unit commander, in consultation with the ASAP clinical staff, determines that rehabilitative measures are not practical and that separation action will be initiated, all Soldiers identified as illegally abusing drugs will be processed for administrative separation. Soldiers diagnosed as being drug dependent by a physician will be detoxified and then processed for administrative separation and be considered for disciplinary action under the UCMJ.

h. Manual for Courts-Martial, United States (2005 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 the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

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. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment under the UCMJ for wrongfully using cocaine, which led to their involuntary separation from the service. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12c (2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions). The applicant completed 4 years and 21 days of their 5-year service obligation and did not complete their first full term of service.

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. The applicant's Army Military Human Resource Record reflects documentation of a diagnosis of Cocaine Abuse; however, there is no evidence of a diagnosis of PTSD, nor did the applicant provide evidence of a diagnosis of PTSD, during their military service.

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

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records and found no diagnosis. However, the applicants marking of PTSD/OBH may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **Yes.** Applicant marking PTSD/OBH

(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 the applicant's markings of PTSD/OBH are acknowledged, documentation is void of these diagnoses or clarification to make a mitigation determination. Accordingly, there is no mitigation at this time.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition did not outweigh the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends they joined the Army in 2004, made 63 airborne jumps, excelled through the ranks, and served an extended tour in Afghanistan. The Board considered the applicant's 5 years of service, including combat and the numerous awards received, but determined that these factors did not outweigh the applicant's specific misconduct (tested positive for cocaine four times).

(2) The applicant contends they returned home in 2007 to discover their pregnant spouse in bed with another person. They started using drugs to contain their anger and hurt. The Board considered this contention and determined that the applicant's family issue does not mitigate the applicant's Drug Abuse misconduct as the Army affords many avenues to Soldiers to include marital counseling, family advocacy, as well as seeking separation for hardship.

(3) The applicant contends up until that incident their military career was outstanding, after that incident and the events that took place in Afghanistan, their mental health deteriorated, they were reduced in rank and received a general (under honorable conditions) discharge. The Board considered this contention as well as the totality of the applicant's records and determined that an upgrade is not warranted.

d. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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's Medical Advisor applied liberal consideration and opined that while the applicant's markings of PTSD/OBH are acknowledged, documentation is void of these diagnoses or clarification to make a mitigation determination. Accordingly, there is no mitigation at this time. The Board members carefully considered the applicants contentions, supporting documents, evidence in the records, and medical review recommendation. Based on non-BH mitigation of the misconduct (multiple IPVs and child endangerment) the Board concurred the applicant's record of service did not mitigate the misconduct. The current discharge is appropriate.

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

- f. Issue a New DD-214 / Separation Order:** No
- g. Change Characterization to:** No change
- h. Change Reason / SPD code to:** No change
- i. Change RE Code to:** No change
- j. Change Authority to:** No change

Authenticating Official:

4/29/2024

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