

1. Applicant's Name:

- a. **Application Date:** 21 May 2020
- b. **Date Received:** 19 November 2020
- 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 changes to the RE code to 1, and narrative reason to "Secretarial Authority."

b. The applicant through counsel seeks relief contending, in effect, there is a procedural defect in this case. The request for administrative separation can be both command-initiated and initiated by the service-member. In this case, there was a hasty command-initiated request for separation under Army Regulations. The applicant was an excellent Army Officer who had tested positive for an illegal substance.

(1) Prior to the administration of the Article 15 (analyst notes Article 15 was not provided and not in the AMHRR) and subsequent referral to a court-martial, the command should have considered the Army Substance Abuse Program (ASAP) and rehabilitation. During a command initiated discharge request, under Chapter 10, Army Regulation 635-200, there is an option for rehabilitation and all separations under AR 635-200 require some evaluation regarding future rehabilitative potential. After failure the applicant should have been given a chance for a rehabilitative transfer and be allowed to recover from alcohol related issues. The applicant was never referred to the Medical Evaluation Board (MEB)/Physical Evaluation Board (PEB), nor considered for a rehabilitative transfer.

(2) Although the command was authorized to administratively separate the applicant, the fundamental reason of the discharge was substantially deficient. The service-member should have been allowed to show that the incident which took place at the military ball was not a failure on the part of the applicant to maintain sobriety. The command in this case did not have the proper authority to administratively separate the applicant in this manner per AR 635-200.

c. **Board Type and Decision:** In a records review conducted on 17 January 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:** In Lieu of Trial by Court-Martial / AR 600-8-24, Chapter 3-9 / DFS / General (Under Honorable Conditions)

b. **Date of Discharge:** 7 May 2020

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 21 June 2019, the applicant was charged with violating Article 112a, UCMJ, for wrongfully using cocaine between on or about 21 July 2018 and 24 July 2018 period.

(2) Legal Consultation Date: NIF

(3) Basis for Separation: Pursuant to applicant's request for Resignation, In Lieu of Trial by Court-Martial under the provisions of Chapter 3, AR 600-8-24.

(4) Separation Decision Date / Characterization: 17 April 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 5 October 2015 / 10 years

b. Age at Appointment: / Education: 27 / bachelor's degree

c. Highest Grade Achieved / MOS / Total Service: O-2 / 19A R7 2B, Armor / 4 years, 7 months, and 3 days.

d. Prior Service / Characterizations: USAR, 24 July 2015 - 4 October 2015 / HD

e. Overseas Service / Combat Service: None

f. Awards and Decorations: ARCOM, NDSM, GWOTSM, ASR

g. Performance Ratings: 5 October 2015 - 26 August 2016 / NIF
25 August 2016 - 23 July 2017 / Highly Qualified
24 July 2017 - 30 August 2018 / Not Qualified
31 August 2018 - 16 June 2019 / Highly Qualified
17 June 2019 - 7 May 2020 / Highly Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) Two developmental counseling forms for failure to report on 23 and 31 October 2017.

(2) On 4 September of 2018, the applicant was counseled and flagged for drug abuse adverse action (UA).

(3) The applicant provided:

(a) General Officer Memorandum of Reprimand, 9 April 2018, reflects the applicant deceived a senior commissioned officer and was not at the assigned duty location on 8 April 2018.

(b) Electronic Copy of DD Form 2624, 24 August 2018, reflects the applicant tested positive for COC 148 (cocaine), during an Inspection Unit (IU) urinalysis testing, conducted on 24 August 2018.

(c) Charge sheet as described in previous paragraph 3c.

(4) On 4 September 2019, the Staff Judge Advocate recommended the charge and its specification be referred to trial by a General Court-Martial.

(5) Memorandum, Resignation for the Good of the Service (in lieu of general court-martial), 26 November 2019, reflects the applicant voluntarily tendered resignation from the Army and did not desire to appear before a court martial or board of officers.

(6) The applicant provided memorandums reflecting the applicant's company, squadron, and brigade commanders recommended a general (under honorable conditions) character of service.

(7) On 3 December 2019, the general officer show cause authority recommended approval of the applicant's request for resignation for the good of the service in lieu of court-martial with an under other than honorable conditions character of service.

(8) Report of Mental Status Evaluation (MSE), 30 January 2020, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and TBI with negative results. The command was advised to monitor changes in mood, behavior, or safe.

(9) The applicant provided:

(a) Memorandum, Resignation for the Good of the Service (in Lieu of General Court-Martial Case), 17 April 2020, reflects the Department of the Army Ad Hoc Review Board reviewed the applicant's resignation. The Deputy Assistant Secretary of the Army (Army Review Boards) accepted the applicant's resignation and discharged the applicant with a general, under honorable conditions characterization of service.

(b) Memorandum, Release date under AR 600-8-24, chapter 3-13 (3-9), reflects the applicant acknowledged receipt of the approved resignation.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None.

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; legal brief; DD Form 214; partial case separation packet; GOMOR.

6. POST SERVICE ACCOMPLISHMENTS: 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) 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 600-8-24, Officer Transfers and Discharges, sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(2) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) Paragraph 1-23c, states a discharge under other than honorable conditions is an administrative separation from the service. A discharge certificate will not be issued. An officer will normally receive an under other than honorable conditions when he or she: Resigns for the good of the Service; is dropped from the rolls (DFR) of the Army in accordance with paragraph 5-9; (3) is involuntarily separated due to misconduct, moral or professional dereliction, or for the final revocation of a security clearance under DODI 5200.02 and AR 380-67 as a result of an act or acts of misconduct, including misconduct for which punishment was imposed; and, is discharged following conviction by civilian authorities.

(4) Chapter 3 prescribes the rules for processing voluntary resignations. Except as provided in paragraph 3-1b, any officer of the RA or USAR may tender a resignation under the provisions of this chapter. SECARMY (or designee) may accept resignations and orders will be issued by direction of the CG, HRC. An officer whose resignation has been accepted will be separated on the date specified in DA's orders or as otherwise directed by the DA. An appropriate discharge certificate as specified by the CG, HRC, will be furnished by the appropriate commander at the time the officer is separated. The date of separation, as specified or directed, will not be changed without prior approval of HQDA nor can valid separation orders be revoked subsequent to the specified or directed date of separation.

(5) Paragraph 3-9 outlines the rules for processing requests for resignation for the good of the Service in lieu of trial by a general court-martial.

(6) Paragraph 3-9i, states an officer separated under this paragraph normally receives characterization of service of under other than honorable conditions.

e. Army Regulation 635-5-1 (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 "DFS" as the appropriate code to assign Officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 3-9, in lieu of trial by court-martial.

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 through counsel, an upgrade to honorable, and changes to the RE code to 1, and narrative reason to "Secretarial Authority." The applicant's record of service, the issues and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 4 years, 7 months, 3 days. The applicant received a GOMOR for deceiving a senior commissioned officer and was not at the assigned duty location on 8 April 2018. On 21 June 2019, the applicant was charged with violating Article 112a, UCMJ, for wrongfully using cocaine between on or about 21 July 2018 and 24 July 2018 period. The applicant was discharged with a general (under honorable conditions) characterization of service on 7 May 2020.

c. The applicant through counsel requests the narrative reason for the discharge to be changed to "Secretarial Authority." The applicant was separated under the provisions of Chapter 3, paragraph 3-9, AR 600-8-24, with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Miscellaneous / General Reasons," and the separation code is "DFS." Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, SPD Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant through counsel requests the RE code be changed. Block 27 (RE Code) of the applicant's DD Form 214 shows as "NA." The applicant's DD Form 214 does not have an RE code. There is no basis for changing the DD Form 214.

e. The applicant through counsel contends, in effect, prior to the administration of the Article 15 and subsequent referral to a court-martial, the command should have considered the ASAP and rehabilitation. During a command initiated discharge request, under Chapter 10, Army Regulation 635-200, there is an option for rehabilitation and all separations under AR 635-200 require some evaluation regarding future rehabilitative potential. After failure the applicant should have been given a chance for a rehabilitative transfer and be allowed to recover from alcohol related issues. The applicant was never referred to the MEB/PEB, nor considered for a rehabilitative transfer.

(1) An Article 15 was not provided for review and not in the applicant's AMHRR.

(2) AR 635-200, Active Duty Enlisted Administrative Separations, provides the basic authority for the separation of enlisted personnel. AR 600-8-24, Officer Transfers and Discharges, provides the basic authority for the separation of commissioned and warrant officers.

(3) Counsel did not provide evidence for the claim that the applicant had alcohol related issues.

(4) AR 600-8-24, paragraph 1-25, states generally, officers approved to resign for the good of the Service in lieu of trial by court-martial are ineligible for referral to the MEB and PEB. However, if the officer was referred to the MEB prior to approval of the resignation, the MEB and/or PEB must be completed and then action may be taken on the resignation request.

f. The applicant through counsel contends, in effect, although the command was authorized to administratively separate the applicant, the fundamental reason of the discharge was substantially deficient. The service-member should have been allowed to show that the incident which took place at the military ball was not a failure on the part of the applicant to maintain sobriety. The command in this case did not have the proper authority to administratively separate the applicant in this manner per AR 635-200.

(1) Counsel did not provide evidence of the situation that took place at the military ball.

(2) On 21 June 2019, the applicant was charged with violating Article 112a, UCMJ, for wrongfully using cocaine between on or about 21 July 2018 and 24 July 2018 period.

(3) AR 635-200, Active Duty Enlisted Administrative Separations, provides the basic authority for the separation of enlisted personnel. AR 600-8-24, Officer Transfers and Discharges, provides the basic authority for the separation of commissioned and warrant officers.

g. 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 [REDACTED] 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 no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant requests through counsel, an upgrade to honorable, and changes to the RE code to 1, and narrative reason to "Secretarial Authority." The board considered the applicant's statement, record of service (length and quality) and reason for separation and found insufficient evidence of an improper discharge because the applicant's misconduct - failure to report, lying to the Staff Duty NCO that the applicant was on duty while applicant was off-post at a restaurant, and testing positive for cocaine during urinalysis testing was not mitigated by in-service factors (length and quality). The applicant received the appropriate characterization and the SPD code for the discharge specified in AR 600-8-24, Chapter 3-9. Therefore, an upgrade to honorable and narrative reason to "Secretarial Authority" is not warranted at this time. Additionally, an upgrade to the reentry code is not valid because Officers are not given a reentry code upon discharge, honorable or otherwise.

(2) The applicant through counsel contends, in effect, prior to the administration of the Article 15 and subsequent referral to a court-martial, the command should have considered the ASAP and rehabilitation. During a command-initiated discharge request, under Chapter 10, Army Regulation 635-200, there is an option for rehabilitation and all separations under AR 635-200 to require some evaluation regarding future rehabilitative potential. After failure the applicant should have been given a chance for a rehabilitative transfer and allowed to recover from alcohol related issues. The applicant was never referred to the MEB/PEB, nor considered

for a rehabilitative transfer. The board considered this contention and after a review of the applicant's AMHRR the board found that the Deputy Assistant Secretary of the Army (DASA) accepted and directed the applicant's resignation. AR 600-8-24, paragraph 4-20, reflects the GOSCA will make a formal recommendation concerning the options submitted by the officer and the DASA may direct retention, discharge, or referral to a BOI. After finding insufficient evidence of any arbitrary or capricious action being taken by the applicant's Command, the board determined the discharge was proper and equitable.

(3) The applicant through counsel contends, in effect, although the command was authorized to administratively separate the applicant, the fundamental reason of the discharge was substantially deficient. The service-member should have been allowed to show that the incident which took place at the military ball was not a failure on the part of the applicant to maintain sobriety. The command in this case did not have the proper authority to administratively separate the applicant in this manner per AR 635-200. The board considered this contention during proceedings, but ultimately found this contention non-persuasive during deliberations because the applicant or counsel did not provide any evidence for the claim that the applicant had alcohol related issues and that this uncorroborated assertion did not outweigh the applicant's unacceptable conduct outlined in paragraphs 9b (1).

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, despite applying liberal consideration of all evidence provided to the board, the applicant provided no documents or testimony of a condition or experience, that could have excused or mitigated the applicant's discharge. Therefore, the characterization of General (Under Honorable Conditions) is proper and equitable. 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, and the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the applicant was an Army Officer, there is no reentry code supplied upon discharge.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20200009914

9. 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 Authority to: No Change**

Authenticating Official:

2/2/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs