

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is bad conduct. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, was shown to be innocent of the charges alleged against them. The applicant had a diagnosis of PTSD and believes all their actions were a result of the PTSD.

b. **Board Type and Decision:** In a records review conducted on 21 November 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:** Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / Bad Conduct

b. **Date of Discharge:** 6 April 2007

c. **Separation Facts:**

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 3, 29 April 2005, on 4 August 2004, the applicant was found guilty of the following:

Charge I, in violation of Article 107, UCMJ. The Specification: On or about 31 December 2003, with intent to deceive, make to Special Agent K. A. an official statement, to wit: "I did not distribute controlled substances to PFC R. and PFC C.," or words to the effect, which statement was totally false and then known by the applicant to be so false.

Charge II, in violation of Article 112a, UCMJ:

Specification 1: On or about 18 December 2003, wrongfully distribute six milligrams of Clonazepam, a schedule IV controlled substance to PFC R. L. C.

Specification 2: Between on or about 19 December 2003 and on or about 21 December 2003, wrongfully distribute 30 milligrams of Clonazepam, a schedule IV controlled substance to PFC J. R. R. Finding: Guilty, except the words "30 milligrams," substituting therefor the words, "some or a lesser amount." Of the excepted words.

(2) Adjudged Sentence: Reduction to E-1; to forfeit \$795 pay per month for 12 months, be confined for 12 months, and to be discharged from the service with a bad conduct discharge.

(3) Date / Sentence Approved: 29 April 2005 / Only so much of the sentence, a reduction E-1, forfeiture of \$795 pay per month for 12 months, confinement for 12 months, and a bad conduct discharge was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed. Effective 18 August 2004, the adjudged forfeiture of pay, and the automatic forfeiture of pay required by Article 58b(a), UCMJ, were deferred pursuant to Article 57(a)(2), UCMJ, until the date of this action.

(4) Appellate Reviews: The Record of Trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: 26 October 2006

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 29 August 2002 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 37 / bachelors degree / 120
- c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 11C20, Indirect Fire Infantry / 19 years, 10 months, 13 days
- d. **Prior Service / Characterizations:** RA, 26 August 1983 – 22 August 1986 / GD
(Break in Service)
ARNG, 25 August 1989 – 31 March 1998 / NIF
IADT, 29 November 1990 – 13 July 1991 / HD
(Concurrent Service)
RA, 1 April 1998 – 20 April 2000 / HD
RA, 21 April 2000 – 28 August 2002 / HD
- e. **Overseas Service / Combat Service:** Hawaii, Korea, Saudi Arabia, SWA / Kuwait (NIF)
- f. **Awards and Decorations:** AAM, USA/USAF PUC, MUC, AGCM, NDSM-2, AFEM, SASM-2BS, GWOTSM, AFRM-D, KDMS, NCOPDR-2, ASR, OSR-3, ARCOTR-4, NATOMDL, KU-LIB-MDL (SA), KU-LIB-MDL (KU)
- g. **Performance Ratings:** January 2002 – December 2002 / Fully Capable
January 2003 – December 2003 / Fully Capable
- h. **Disciplinary Action(s) / Evidentiary Record:** The applicant provided Agent's Investigation Report 0233-03-CID838-57825, undated, which reflects on 5 February 2004, SA H. coordinated with CPT O., Trial Counsel who was briefed regarding the status of this investigation. CPT O. was of the opinion sufficient admissible evidence was available to prosecute the applicant for the offense of Wrongful Distribution of Controlled Substance.

Two Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Confined by Military Authorities (CMA) effective 4 August 2004; and,

From CMA to PDY, effective 14 May 2005.

SCMO Number 3, 29 April 2005, as described in previous paragraph 3c(1).

SCMO Number 227, 26 October 2006, ordered the Bad Conduct Discharge to be executed.

i. Lost Time / Mode of Return: 9 months, 9 days (CMA, 4 August 2004 – 13 May 2005) / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Application for Correction of Military Record; Application for the Review of Discharge; self-authored statement; third-party letter; three Certificate of Release or Discharge from Active Duty; Correction to DD Form 214; Agent's Investigation Report; Letter from Constituent Service, United States; three letters for DA, US Army Trial Defense Service, three letters from Congressman H., letter from DA, Office of the Chief of Legislative Liaison, a letter from DA US Army Legal Service Agency; a letter from The White House, Special Assistant to the President and Director of Presidential Correspondence, partial transcript of the court-martial trial; sign in roster for Camp Casey Trial Defense Service; physical profile.

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), 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 (Active Duty Enlisted Administrative Separations) 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. A characterization of under

honorable conditions may be issued only when the reason for separation specifically allows such characterization.

(4) Paragraph 3-7c states 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.

(5) Paragraph 3-11 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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: 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.

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

The applicant's Army Military Human Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends they were innocent of the charges alleged against them. The applicant was diagnosed with PTSD and believes all actions were a result of the PTSD. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The applicant's AMHRR contains no documentation of PTSD diagnosis. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statement provided with the application reflects the applicant's good character since being discharged.

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/experiences: PTSD and Major Depressive Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed and service connected by the VA for PTSD and Major Depressive Disorder. Service connection establishes that the conditions existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. While PTSD and Major Depressive Disorder have a nexus with self-medication, neither condition has a natural sequela with wrongful distribution of a controlled substance which involves a purposeful choice to provide controlled substances to others and is unrelated to one's own self-medication. PTSD and MDD also have no natural sequela with making a false official statement since neither condition interferes with the ability to distinguish between right and wrong and act in accordance with the right. Accordingly, none of the misconduct in the basis of separation is mitigated by the applicant's BH conditions.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's medically unmitigated offenses of distribution of a controlled substance and making a false official statement.

b. Response to Contention(s):

(1) The applicant contends they were innocent of the charges alleged against them. The Board considered this contention and found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the assertion that the applicant did not commit the offenses of distribution of a controlled substance and making a false official statement.

(2) The applicant was diagnosed with PTSD and believes all actions were a result of the PTSD. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's medically unmitigated offenses of distribution of a controlled substance and making a false official statement.

c. The Board determined that the discharge is, at this time, proper and equitable, considering 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210000585**

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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder did not outweigh the serious and medically unmitigated offenses of distribution of a controlled substance and making a false official statement. The Board also considered the applicant's contention that the applicant was innocent of the offenses and found that the totality of the available evidence does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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 criminal and administrative due process. Therefore, the applicant's Bad Conduct discharge was proper and equitable.

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

11/27/2024

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