

1. Applicant's Name: [REDACTED]**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 the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, after completing initial entry training, the applicant was assigned to Fort Benning for Airborne training. While off duty, the applicant was going out with friends but had to return to the barracks for the applicant's wallet. The applicant was stopped by a noncommissioned officer (NCO) on Charge of Quarters duty. The NCO ordered the applicant to do pushups while the applicant wore a miniskirt. When the applicant stood up, the NCO fondled the applicant's buttocks and vagina. The applicant told their friends about the pushups, but not the sexual assault. The applicant blocked the situation out and prepared for jump week. The applicant was eager to see their family after training. The applicant did not receive their jump wings because of a broken left tibia. The applicant was placed on convalescent leave, returned, and received orders for Fort Stewart and then to Hunter Army Airfield. The applicant received an Article 15 for driving without a license because the applicant was trying to help a sick friend who was diagnosed with walking pneumonia and was prescribed cough medicine. The applicant had a chest cold and used their friend's cough medicine, which resulted in the applicant testing positive for codeine. An officer in the unit offered to help the applicant get back on the applicant's feet, including to receive the applicant's jump wings, but the officer sexually assaulted the applicant at the end of a field training exercise. At this point, the applicant was broken and had stopped communicating with their family. The applicant began confiding in another Soldier of the same sex who was going through similar situations. The sexual assaults resulted in the applicant being paranoid, scared, and not sleeping well. The applicant made the terrible decision to use marijuana offered by another Soldier, and the applicant tested positive for illegal use. The applicant began going to the chapel and met a Soldier who the applicant confided in, with the exception of the sexual assaults. The Soldier advised the applicant to request a rehabilitative transfer and alcohol and drug counseling. The applicant's section sergeant agreed to look into alcohol and drug rehabilitation but the transfer was up to the commander. The commander was busy preparing the unit for deployment. The applicant deployed with the unit to Kuwait and Iraq. The commissioned officer assaulted the applicant while they were deployed. After the applicant redeployed, the applicant was sexually assaulted in the applicant's barracks room by a Soldier who gave the applicant a ride from an off post gathering. The applicant is remorseful of their actions. The applicant's parent was proud of everything the applicant did and pushed the applicant to become a Soldier. The applicant believes things would have been different if the applicant had addressed the first assault or if the applicant were older and wiser while coping with military sexual trauma (MST). The applicant did wonderful things for the country during deployment. The applicant was victimized and became a shooting target for Soldiers of the opposite sex. The applicant was young and immature but still had rights, which were infringed upon. After multiple sexual assaults, the applicant lost trust in everyone, became paranoid, suffered severe sleep disturbance, and was unable to function with a sound mind. The applicant requested rehabilitation but had no guidance or protection. The applicant requests their service be considered and not their mistakes.

b. Board Type and Decision: In a records review conducted on 6 February 2025, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighing the applicant's AWOL and illegal substance abuse offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined the reentry code is proper and equitable and voted not to change it.

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 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 10 March 2005

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 28 January 2005, the applicant was charged with:

Charge I: Violating Article 86, UCMJ:

Specification 1: On 19 October 2004, without authority was absent from their unit until 11 January 2005;

Specification 2: On 16 September 2004, without authority was absent from their unit until 20 September 2004;

Specification 3: On 27 August 2004, without authority was absent from their unit until 30 August 2004;

Specification 4: On 24 August 2004, without authority, was absent from their unit until 25 August 2004.

Charge II: Violating Article 112a, UCMJ:

Specification 1: Did between 30 June and 30 July 2004, wrongfully use marijuana, a controlled substance.

Specification 2: Did between 29 May and 29 June 2004, wrongfully use marijuana, a controlled substance.

(2) Legal Consultation Date: 14 February 2005

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 28 February 2005 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 November 2001 / 3 years

b. Age at Enlistment / Education / GT Score: 18 / GED / 100

c. Highest Grade Achieved / MOS / Total Service: E-3 / 92Y10, Unit Supply Specialist / 3 years, 11 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq-Kuwait (25 February 2003 – 21 August 2003)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 5 November 2002, for failing to obey a lawful general regulation by wrongfully driving with a blood alcohol content (BAC) above .02 and being under the age of 21 (17 September 2002); wrongfully using codeine, a controlled substance (between 26 September and 3 October 2002); and failing to go to their appointed place of duty (23 October 2002). The punishment consisted of a reduction to E-1; forfeiture of \$552 pay per month for two months (suspended); and extra duty and restriction for 45 days.

FG Article 15, 21 January 2003, for wrongfully using marijuana (between 28 October and 27 November 2002). The punishment consisted of forfeiture of \$575 pay per month for two months and extra duty and restriction for 45 days.

Memorandum, subject: Bar to Reenlistment Review for [Applicant], 5 February 2004, the immediate commander, after review, recommended the bar to reenlistment be removed.

Electronic Copy of DD Form 2624, 8 July 2004, reflects the applicant tested positive for THC 31 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 29 June 2004.

CID Report of Investigation - Final, 11 August 2004, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Use of a Marijuana when the applicant submitted a urine specimen on 29 June 2004, during the conduct of a unit urinalysis test, which subsequently tested positive for Tetrahydrocannabinol (THC – Marijuana), marijuana. The applicant was interviewed and admitted to the offense.

CID Report of Investigation - Initial Final, 17 August 2004, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Use of Marijuana when the applicant submitted a urine specimen on 30 July 2004, during the conduct of a random unit level urinalysis test, which subsequently tested positive for THC (Marijuana). The applicant invoked their rights.

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 24 August 2004;
From AWOL to PDY, effective 25 August 2004;
From PDT to AWOL, effective 27 August 2004;
From AWOL to PDY, effective 30 August 2004;
From PDY to AWOL, effective 16 September 2004;
From AWOL to PDY, effective 20 September 2004;
From AWOL to PDY, effective 5 October 2004;
From PDY to AWOL, effective 19 October 2004;
From AWOL to Dropped From Rolls (DFR), effective 18 November 2004; and
From DFR to PDY, effective 11 January 2005.

Eight Developmental Counseling Forms, for reporting late for extra duty; testing positive on urinalysis for marijuana; driving without license or insurance; leaving the scene of an accident; being charged for driving under the influence of alcohol, improper backing, underage drinking, and driving without a license; failing to be at the appointed place of duty; using medicine prescribed to another Soldier and testing positive for codeine; and pending separation.

i. Lost Time / Mode of Return: 99 days:

AWOL, 24 August 2004 – 25 August 2004 / NIF
AWOL, 27 August 2004 – 30 August 2004 / NIF
AWOL, 16 September 2004 – 20 September 2004 / NIF
AWOL, 19 October 2004 – 11 January 2005 / NIF
AWOL, 8 March 2005 – 10 March 2005 / NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: RCS Client Information Record, 4 November 2013, reflecting the applicant was assessed with having a mental health condition because of military sexual trauma.

(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: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; self-authored statement; and RCS Client Information Record.

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 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.

(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) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(7) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(8) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

(9) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends a series of military sexual assaults affected behavior which led to the discharge and the applicant was diagnosed mental health condition. The applicant submitted medical documents reflecting the applicant was assessed with a mental health condition because of MST. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant contends harassment by a member of the unit. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

The applicant contends requesting rehabilitation and a rehabilitative transfer. Army Regulation 600-85, paragraph 7-3 entitled voluntary (self) identification and referral, states voluntary (self) ID is the most desirable method of identifying substance use disorder. The individual whose performance, social conduct, interpersonal relations, or health becomes impaired because of these problems has the personal obligation to seek help. Soldiers seeking self-referral for problematic substance use may access services through BH services for a SUD evaluation. The Limited Use Policy exists to encourage Soldiers to proactively seek help. The AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

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 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: Depression, PTSD, MST.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with Depression and is service connected by the VA for PTSD related to MST. Service connection establishes that the PTSD and MST existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the discharge. Given the nexus between Depression, PTSD, MST, avoidance, and self-medicating with substances, the AWOLs and wrongful uses of marijuana that led to the separation are mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighed the applicant's AWOL and illegal substance abuse offenses.

b. Response to Contention(s):

(1) The applicant contends a series of military sexual assaults affected behavior which led to the discharge and the applicant was diagnosed mental health condition. The Board liberally considered this contention and determined that the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighed the applicant's AWOL and illegal substance abuse offenses. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service, including a combat tour. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighing the applicant's AWOL and illegal substance abuse offenses.

(3) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighing the applicant's AWOL and illegal substance abuse offenses.

(4) The applicant contends harassment by a member of the unit. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighing the applicant's AWOL and illegal substance abuse offenses.

(5) The applicant contends requesting rehabilitation and a rehabilitative transfer. The Board considered this contention during proceedings, but ultimately did not address the

contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighing the applicant's AWOL and illegal substance abuse offenses.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighing the applicant's AWOL and illegal substance abuse offenses. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder, Depression, and Military Sexual Trauma outweighed the applicant's AWOL and illegal substance abuse offenses. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

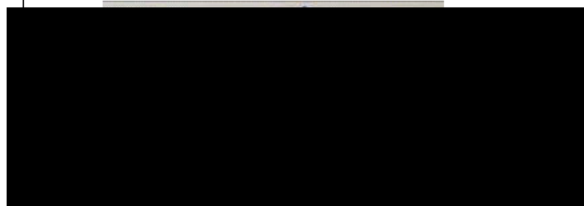
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

2/19/2025



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

