

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the overall health condition was not considered during the discharge process. The applicant was suffering from PTSD, TBI, depression, anxiety disorder, headaches, memory loss, insomnia, and back injury from the gulf war.

b. Board Type and Decision: In a records review conducted on 26 September 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Anxiety, Major Depression, Traumatic Brain Injury, and Post Traumatic Stress Disorder outweighing the applicant's 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 to the separation authority to AR 600-8-24. Accordingly, the narrative reason for separation changed to Miscellaneous/general reasons, with a corresponding separation code of JND.

Please see Section 9 of this document for more details 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, Paragraph 3-13 / DFS / General (Under Honorable Conditions)

b. Date of Discharge: 12 May 2009

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 23 February 2009, the applicant was charged with: The Charge: Violating Article 112a, UCMJ. The Specification: Between on or about 7 December 2008 and 6 January 2009, the applicant wrongfully used marijuana.

(2) Legal Consultation Date: 13 March 2009

(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: 23 April 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Appointment:** 13 July 2006 / NIF
- b. Age at Appointment: / Education:** 29 / Bachelor's Degree
- c. Highest Grade Achieved / MOS / Total Service:** O-2 / 25A, Signal, General / 6 years, 1 month, 12 days
- d. Prior Service / Characterizations:** RA, 1 April 2003 – 12 July 2006 / HD
- e. Overseas Service / Combat Service:** SWA / Iraq (19 June 2007 – 14 May 2008; 27 January 2005 – 20 January 2006)
- f. Awards and Decorations:** BSM, ARCOM-2, AAM, AGCM, NDSM, GWOTEM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR-2, AFRM-M, CAB
- g. Performance Ratings:** 17 March 2007 – 9 February 2008 / Best Qualified
10 February 2008 – 15 November 2008 / Fully Qualified
- h. Disciplinary Action(s) / Evidentiary Record:** Physical Evaluation Board (PEB) Proceedings, 13 August 2008, reflect the PEB found the applicant was fit for duty within the limitations of the profile. The applicant concurred with the findings.

Electronic Copy of DD Form 2624, 16 January 2009, reflects the applicant tested positive for THC 17 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 6 January 2009.

CID Report of Investigation – Initial Final (c) - 0042-2009-CID013-61870 – 5L2D1, 30 January 2009, reflects the commander reported the applicant tested positive for THC, the active chemical substance found in marihuana, during a unit urinalysis inspection. Investigation disclosed the applicant consumed THC as determined by a positive urinalysis.

Illegible Developmental Counseling Form.

Charge sheet as described in previous paragraph 3c(1).

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

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

(1) Applicant provided: Health Record, Chronological Record of Medical Care, 25 April 2008, reflects the applicant's condition.

Saint Francis Discharge Record, 10 February 2009, reflects a diagnosis.

S. S, LCSW Letter, 15 Mach 2009, reflects the applicant's condition.

VA Rating Decision, 17 September 2009, reflects the applicant was granted a combined rating of 60 percent for service-connected disabilities. The rating contains a diagnosis.

An undated VA Rating extract, reflects the applicant was granted a new percentage of 100 percent disability rating.

(2) AMHRR Listed: Health Record, Chronological Record of Medical Care, 11 February 2009, reflects a diagnosis.

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; self-authored statement; Department of the Air Force letter; Physical Evaluation Board letter; DA Form 199; two VA Rating Decision letters; VA letter; two Certificates of Release or Discharge from Active Duty; Saint Francis Discharge Instructions; Health Record; S. S. LCSW letter; six third-party letters.

6. POST SERVICE ACCOMPLISHMENTS: Since being properly diagnosed and treated medically and psychologically, the applicant has maintained a respectful relationship with the ex-spouse and a thriving relationship with the kids and family.

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 1-23 provides the authorized types of characterization of service or description of separation.

(2) 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.

(3) 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.

(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 (previously 3-13), 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 (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 "DFS" as the appropriate code to assign Officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 3-13, 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.

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

The applicant contends the event which led to the resignation from the Army was an isolated incident. Army Regulation 600-8-24, paragraph 1-23, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends suffering from PTSD, TBI, depression, anxiety disorder, headaches, memory loss, insomnia, and back injury from the gulf war. The applicant provided a Health Record, Chronological Record of Medical Care, 25 April 2008, which reflects the applicant's condition. A Saint Francis Discharge Record, 10 February 2009, reflects a diagnosis. S. S, LCSW letter, 15 March 2009, reflects the applicant's condition. A VA Rating Decision, 17 September 2009, reflects the applicant was granted a combined rating of 60 percent for service-connected disabilities. The rating contains a diagnosis. A VA Rating, undated, reflects the applicant was granted a new percentage of 100 percent disability rating. A third-party letter from the applicant's ex-spouse which described the applicant's change in behavior after returning from combat and supported the applicant's contention. The applicant's AMHRR contains a Health Record, Chronological Record of Medical Care, 11 February 2009, which reflects a diagnosis. The Health Record, Chronological Record of Medical Care was considered by the separation authority.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The third-party statements provided with the application reflect the applicant's good conduct while serving in the Army and after being discharged.

Since being properly diagnosed and treated medically and psychologically, the applicant has maintained a respectful relationship with the ex-spouse and a thriving relationship with the kids and family. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an

unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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: Major Depression, Anxiety, TBI, and PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with Anxiety, Major Depression, TBI, and PTSD, and the VA has service connected the PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions and experiences mitigate the discharge. The applicant was diagnosed in service with Anxiety, Major Depression, TBI, and PTSD, and the VA has service connected the PTSD. Given the nexus between Anxiety, Major Depression, TBI, PTSD and self-medicating with substances, the marijuana use that led to the separation is 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 Anxiety, Major Depression, Traumatic Brain Injury, and Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse offenses.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD, TBI, depression, anxiety disorder, headaches, memory loss, insomnia, and back injury from the gulf war. The Board liberally considered this contention and determined that it was valid due to the applicant's Anxiety, Major Depression, Traumatic Brain Injury, and Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offenses. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service, including two combat tours. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Anxiety, Major Depression, Traumatic Brain Injury, and Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offenses.

(3) The applicant contends the event which led to the resignation from the Army was an isolated incident. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Anxiety, Major Depression, Traumatic Brain Injury, and Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offenses.

(4) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention during proceedings, but ultimately did not address it in detail due to an upgrade being granted based on the applicant's Anxiety, Major Depression, Traumatic Brain Injury, and Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse offenses.

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(6) Since being properly diagnosed and treated medically and psychologically, the applicant has maintained a respectful relationship with the ex-spouse and a thriving relationship with the kids and family. The Board noted the applicant's post-service accomplishments but ultimately did not address this matter in detail after determining that a discharge upgrade was warranted based on medical mitigation.

c. The Board determined the discharge is inequitable based on the applicant's Anxiety, Major Depression, Traumatic Brain Injury, and Post Traumatic Stress Disorder outweighing the applicant's 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 to the separation authority to AR 600-8-24 and the narrative reason for separation to Miscellaneous/general reasons with a corresponding separation code of JND.

d. Rationale for Decision:

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

(2) The Board voted to change the reason for discharge to Miscellaneous/general reasons under the same pretexts. Thus, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JND.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Miscellaneous/general reasons / JND
- d. Change Authority to: AR 600-8-24

Authenticating Official:

9/27/2024

Army Discharge Review Board
Signed by: USA

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000785

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