

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, diagnosed with post-traumatic stress disorder (PTSD). The applicant contends they were in trouble during their medical board due to having PTSD. The applicant was not in their right mind when they returned from Afghanistan. The applicant states they were told their discharge would be upgraded after six months. The applicant believes their service was honorable but had difficulty adjusting once they returned from Afghanistan.

b. **Board Type and Decision:** In a records review conducted on 13 August 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:** 3 December 2010

c. **Separation Facts:**

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 4, 24 March 2010, on 16 December 2009, the applicant was found guilty of the following:

Charge I, in violation of Article 112a. Plea: Guilty; Finding: Guilty.

Specification 1: the applicant, did, at or near Fort Lewis, Washington, on or about 10 December 2008, wrongfully distribute approximately 24 pills of 3, 4-Methylenedioxymethamphetamine, a Schedule I controlled substance. Plea: Guilty, except the words and figures "3, 4-Methylenedioxymethamphetamine," substituting therefore the words and figures "1- Benzylpiperazine," to the excepted words and figures: Not Guilty, to the substituted words and figures: Guilty. Finding: Guilty, as pled.

Specification 2: the applicant, did, at or near Fort Lewis, Washington, on or about 15 December 2009, wrongfully possess approximately 100 pills of 3, 4-Methylenedioxymethamphetamine, a Schedule I controlled substance, with the intent to distribute the said controlled substance. Plea: Guilty, except the words and figures "15 December 2009," "100," and

“3, 4- Methylenedioxyamphetamine,” substituting therefore the words and figures “22 December 2008,” “70,” and “1-Benzylpiperazine,” to the excepted words and figures: Not Guilty, to the substituted words and figures: Guilty. Finding: Guilty, as pled.

Specification 3: the applicant, did, at or near Fort Lewis, Washington, on or about 5 February 2009, wrongfully possess approximately 16 pills of 3, 4-Methylenedioxyamphetamine, a Schedule I controlled substance, with intent to distribute the said controlled substance. Plea: Guilty, except the words and figures “3, 4-Methylenedioxyamphetamine,” substituting therefor the words and figures “1-Benzylpiperazine,” to the excepted words and figures: Not Guilty, to the substituted words and figures: Guilty. Finding: Guilty, as pled.

Specification 4: the applicant, did, at or near Fort Lewis, Washington, on or about 11 March 2009, wrongfully possess approximately 18 pills of 3, 4-Methylenedioxyamphetamine, a Schedule I controlled substance, with the intent to distribute the said controlled substance. Plea: Not Guilty. Guilty Finding: Dismissed by the Military judge with prejudice in accordance with the pre-trial agreement.

(2) Adjudged Sentence: 16 December 2009, Reduction to E-1; forfeit \$933 pay per month for six months; to be confined for 120 days and discharged from the service with a Bad Conduct discharge.

(3) Date / Sentence Approved: 24 March 2010 / Only so much of the sentence, a reduction E-1, forfeit \$933 pay per month for six months; confinement for 120 days, and a bad conduct discharge was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed.

(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, the sentence and the bad conduct discharge.

(5) Date Sentence of BCD Ordered Executed: 27 August 2010

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 12 August 2004 / 4 years, 22 weeks
- b. **Age at Enlistment / Education / GT Score:** 27 / High School Graduate / 105
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92G10, Food Service Operation / 5 years, 10 months, 29 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (2 January 2007 – 23 January 2008)
- f. **Awards and Decorations:** ARCOM, AGCM, NDSM, ACM-2CS, GWOTSM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Special Court Martial Order 4 and 121 as described in previous paragraph 3c.

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 16 December 2009; and

From Confined by Military Authorities (CMA) to Present for Duty (PDY), effective 8 May 2010.

i. Lost Time / Mode of Return: 4 months, 22 days (CMA, 16 December 2009 – 8 May 2010 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record of Medical Care, 29 September 2009, reflects a medical diagnosis.

(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: Two Applications for Correction of Military Record; two Certificates of Release or Discharge from Active Duty; self-authored letter Special Court Martial Order Number 121; four Physical Profiles; medical records; ten letters of support; Memorandum for treatment status.

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 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 being diagnosed with post-traumatic stress disorder. The applicant provided a Chronological Record of Medical Care, 29 September 2009, reflecting a medical diagnosis. The AMHRR is void of a mental status evaluation.

The applicant contends they were told the discharge would be upgraded after six months. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's issue about an upgrade based on the passage of time was carefully considered. The U.S. Army does not have, nor has it ever had, a policy to automatically upgrade

discharges. Each case is decided on its own merits when an applicant submits a DD Form 293 requesting a change in discharge. Changes may be warranted if the Board determines the characterization of service or the reasons for discharge, or both were improper or inequitable.

The applicant contends good service, including a combat tour. The third-party statements provided with the application reflect the applicant being a hardworking and respectful Soldier who would go out of their way to assist others.

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: Chronic PTSD, Depression, Adjustment Disorder with Anxiety and Depressed Mood, ADD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant has multiple potentially mitigating BH conditions diagnosed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that a review of the records reflects the applicant has BH conditions that potentially mitigates applicant's misconduct. The applicant was diagnosed in-service with Chronic PTSD, Adjustment Disorder with Anxiety and Depressed Mood, Depression, and ADD. However, applicant's misconduct characterized by multiple instances of possession and distribution of drugs is not mitigated as the misconduct is not natural sequelae to either disorder and the applicant did not have a condition that rendered the applicant unable to differentiate between right and wrong and adhere to the right.

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

b. Response to Contention(s):

(1) The applicant contends being diagnosed with post-traumatic stress disorder. The Board considered this contention and determined the applicant was diagnosed with Chronic PTSD, however the applicant's PTSD does not mitigate or excuse the applicant's multiple instances of possession and distribution of drugs, the applicant's basis for separation.

(2) The applicant contends they were told the discharge would be upgraded after six months. The Board considered this contention and determined there is insufficient evidence in the applicant's file to support the applicant was told the discharge would be upgraded after six months. The discharge is proper and equitable.

(3) The applicant contends good service, including a combat tour. The Board considered the applicant's 5 years of service, including a combat tour in Afghanistan and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's multiple instances of possession and distribution of drugs basis for separation.

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 because, despite applying liberal consideration of all the evidence before the Board, the applicant's Chronic PTSD, Depression, Adjustment Disorder with Anxiety and Depressed Mood, ADD did not excuse or mitigate the multiple instances of possession and distribution of drugs offense. 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. Therefore, the applicant's Bad Conduct discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranted for an upgrade to Honorable discharge.

(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 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:

8/22/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral Health (Issues)
OMPF – Official Military Personnel File
PTSD – Post-Traumatic Stress Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized Discharge
UOTHC – Under Other Than Honorable Conditions
VA – Department of Veterans Affairs