

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 discharge was improper as it was based on behavior exhibited by the applicant as a direct result of a medical condition for which the applicant receives treatment and 50 percent disability from Veteran's Affairs. This behavior marked only the end of a 40-month career in which the applicant received positive, including Outstanding Must Promote, OER's and no other adverse actions. Through medication, treatment, and counseling from the VA, the applicant has not had any relapses of any psychological conditions, abstained from alcohol for over ten years, and has been able to return to public service by becoming a professional firefighter and paramedic. The applicant cherishes the time spent serving the country as an Officer in the US Army. Regardless of the medical condition which prompted the applicant's departure, the applicant has never regretted or has never been ashamed of, and to this day their service fills the applicant with pride. The applicant comes from a family with a long history of military service, from WWII to the day the applicant left. The applicant requests an upgrade to honorable so it may accurately reflect the pride and honor the applicant has for having served the country alongside of fellow Soldiers.

b. **Board Type and Decision:** In a records review conducted on 15 August 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Anxiety and Panic Disorders outweighing the applicant's misconduct. 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, paragraph 2-13, the narrative reason for separation to Unacceptable Conduct, with a corresponding separation code of BNC. *Please see Section 9 of this document for more detail regarding the Board's decision.*

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 600-8-24, Para 3-13 or Para 3-15 / DFS / General (Under Honorable Conditions)

b. **Date of Discharge:** 20 March 2004

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 18 December 2003, the applicant was charged with:

Charge I: Violating Article 86, UCMJ.

Specification 1: On or about 12 August 2003, without authority, fail to go at the time prescribed to the appointed place of duty.

Specification 2: On or about 18 August 2003, without authority, fail to go at the time prescribed to the appointed place of duty.

Specification 3: On 15 December 2003, without authority, fail to go at the time prescribed to the appointed place of duty.

Charge II: Violating Article 90, UCMJ.

Specification 1: On or about 15 December 2003, willfully disobey a lawful command from MAJ R. P.

Specification 2: On or about 15 December 2003, willfully disobey a lawful command from LTC B. S.

Specification 3: On or about 18 August 2003, willfully disobey a lawful command from MAJ A. S.

Specification 4: On or about 12 August 2003, willfully disobey a lawful command from LTC N. I.

Specification 5: Between on or about 17 July 2003 and 24 July 2003, willfully disobey a lawful command from LTC N. I.

Specification 6: On or about 21 February 2003, willfully disobey a lawful command from LTC N. I.

Charge III: Violating Article 95, UCMJ.

Specification 1: On or about 16 December 2003, the applicant having been placed in arrest in the battalion area by a person authorized to order the accused into arrest, did, break said arrest.

Specification 2: On or about 16 December 2003, resist being apprehended by SGT R. L and PFC A. E., armed forces police officers, persons authorized to apprehend the accused.

Specification 3: On or about 15 December 2003, flee apprehension by PFC H. M, an armed forces police officer, a person authorized to apprehend the accused.

Specification 4: On or about 18 August 2003, resist being apprehended by SGT R. S. and CPL C. M., armed forces police officers, persons authorize to apprehend the accused.

Charge IV: Violating Article 107, UCMJ.

Specification 1: On or about 18 August 2003, with intent to deceive, make to MAJ A. S. an official statement, which statement was totally false, and then known by the applicant to be false.

Specification 2: On or about 18 August 2003, with intent to deceive, make to Investigator W., an official statement, which statement was totally false, and then known by the applicant to be false.

Specification 3: On or about 18 August 2003, with intent to deceive, make to the German Polizei, an official statement, which statement was totally false, and then known by the applicant to be false.

Charge V: Violating Article 112, UCMJ. The Specification: On or about 21 February 2003, found drunk while of duty.

Charge VI: Violating Article 128, UCMJ. The Specification: On or about 16 December 2003, unlawfully strike 1LT C. G-W, by pushing them out the door.

Charge VII: Violating Article 133, UCMJ.

Specification 1: On or about 15 December 2003, in a public place, was drunk and disorderly while in uniform, to the disgrace of the armed forces.

Specification 2: On or about 16 December 2003, in a public place, was drunk and disorderly while in uniform, to the disgrace of the armed forces.

Charge VIII: Violating Article 134, UCMJ.

Specification 1: On or about 16 December 2003; wrongfully communicate to 1LT C. G.-W. a threat to kill.

Specification 2: On or about 16 December 2003, wrongfully communicate to SSG G. T. B. a threat to kill.

Specification 3: On or about 15 December 2003, as a result of wrongful previous overindulgence in intoxicating liquor incapacitated for the proper performance of duties.

Specification 4: On or about 18 August 2003, intentionally injured oneself by cutting the chest with a knife.

Specification 5: On or about 12 August 2003, as a result of wrongful previous overindulgence intoxicating liquor incapacitate for the proper performance of duties.

(2) Legal Consultation Date: 19 December 2003

(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: 8 March 2004 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 10 May 2001 / NIF

b. Age at Appointment: / Education: 23 / bachelor's degree

c. Highest Grade Achieved / MOS / Total Service: 1LT / 21A, Engineer, General / 3 years, 4 months, 14 days

- d. Prior Service / Characterizations:** USAR, 31 October 2000 – 6 November 2000 / NA
RA, 7 November 2000 – 9 May 2001 / NA
Commissioned as a 2LT 10 May 2001
- e. Overseas Service / Combat Service:** Germany, SWA / Kosovo (11 May 2002 – 15 November 2002)
- f. Awards and Decorations:** AAM, NDSM, ASR, OSR, NATOMDL, KCM-BS, GWOTSM
- g. Performance Ratings:** 3 October 2001 – 7 September 2002 / Above Center of Mass
8 September 2002 – 8 December 2002 / Above Center of Mass
9 December 2002 – 9 July 2003 / Center of Mass
10 July 2003 – 20 March 2004 / Below Center of Mass Retain
- h. Disciplinary Action(s) / Evidentiary Record:** MPR# 01490-03-847-MPC, undated, reflects the applicant's issues of conduct unbecoming an officer and the complaints of alcohol and drug program.

Report of Proceedings by Investigating Officer, 28 August 2003, reflects the investigating officer found: The allegations of alcohol abuse and misconduct by the applicant were substantiated and recommended the following: Initiate separation from service IAW AR 600-8-24, chapter 4, Para 4-2.a.7; AR 600-85, Chapter 1, Para 1-31.e.; and 600-85, Chapter 1, Para 1-34.a.; for failure to respond to alcohol rehabilitation efforts in a reasonable length of time; review and examine the following UCMJ article for possible application to this case: Articles 86, 92 and 133; and enroll the applicant in the six-week Addiction Treatment Facility in Landstuhl, Germany.

General Officer Memorandum of Reprimand, 4 November 2003, reflects the applicant was reprimanded for failure to obey a direct order and conduct unbecoming an officer.

Serious Incident Report/Incident Feeder Report, 16 December 2003; reflects the applicant was under watch for intoxication. The applicant jumped from an open window, ran across street and entered a building and was found by SDO and SDNCO in SPC L's room. The applicant became hostile with the SDO, began pushing the SDO, and threatened to kill both SDO and SDNCO. MPs arrived and the applicant continued to be combative with them. The applicant was placed in custody and taken to the MP station. The applicant's blood alcohol content was 2.13, the highest the MPs could measure because the applicant could not standup anymore. At the time the applicant was being reported as drunk and disorderly, as well as possible assault and communicating a threat. MPs were not finished with their report and were still interviewing witnesses.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Outpatient Medical Record, 6 August 2003, reflects a diagnosis.

Medical Record, Chronological Record of Medical Care, 19 December 2003, reflects a 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: Application for the Review of Discharge; Certificate of Release or Discharge from Active Duty; college transcript; Enlistment Documents; Certificate of Live Birth; Service School Academic Evaluation Report; Orders 305-007; Permanent Orders 305-407; SGLV 8286; AAM Certificate; Three Officer Evaluation Reports; two Recommendation for Promotion to 1LT/CW2 Forms; DD Form 93; medical records

6. POST SERVICE ACCOMPLISHMENTS: Through medication, treatment, and counseling from the VA, the applicant has not had any relapses of any psychological conditions, abstained from alcohol for over ten years, and has been able to return to public service by becoming a professional firefighter and paramedic.

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 3-9 or 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 contends good service, including a combat tour.

The applicant contends the discharge was improper as it was based on behavior because of a medical condition for which the applicant receives treatment and 50 percent disability from Veteran's Affairs. The applicant provided Outpatient Medical Record, 6 August 2003, and a Medical Record, Chronological Record of Medical Care, 19 December 2003, both reflect a diagnosis. The applicant did not provide a copy of the VA Rating Decision. The AMHRR does not contain any medical documentation to support the contention.

Through medication, treatment, and counseling from the VA, the applicant has not had any relapses of any psychological conditions; abstained from alcohol for over ten years, and has been able to return to public service by becoming a professional firefighter and paramedic. 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: Anxiety Disorder NOS with panic features, Alcohol Dependence, Panic Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** Anxiety Disorder NOS with panic features and Alcohol Dependence.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between severe anxiety/panic, resulting in the in-service diagnosis and service-connected Panic Disorder, and self-medication, the basis for 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 and Panic Disorders outweighed the applicant's misconduct.

b. Response to Contention(s):

(1) The applicant contends the discharge was improper as it was based on behavior exhibited by the applicant because of a medical condition for which the applicant receives treatment and 50 percent disability from Veteran's Affairs. The Board liberally considered this contention and determined that the applicant's Anxiety and Panic Disorders outweighed the applicant's misconduct. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service, including a combat tour. The Board considered the totality of the applicant's service record but ultimately did not address it after finding that the applicant's behavioral health condition mitigated the applicant's offenses.

(3) Through medication, treatment, and counseling from the VA, the applicant has not had any relapses of any psychological conditions, abstained from alcohol for over ten years, and has been able to return to public service by becoming a professional firefighter and paramedic. The Board considered this contention but ultimately did not address it after finding that the applicant's behavioral health condition mitigated the applicant's offenses.

c. The Board determined the discharge is inequitable based on the applicant's Anxiety and Panic Disorders outweighing the applicant's misconduct. 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, paragraph 2-13, the narrative reason for separation to Unacceptable Conduct, with a corresponding separation code of BNC:

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Anxiety and Panic Disorders outweighed the applicant's misconduct. Thus, the prior characterization is no longer appropriate.

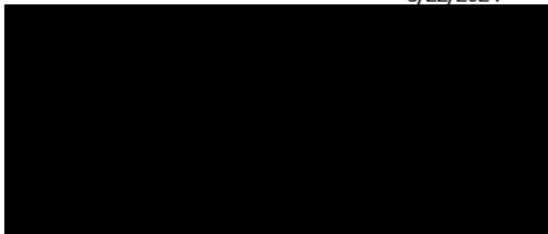
(2) The Board voted to change the reason for discharge to Unacceptable Conduct under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is BNC.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Unacceptable Conduct / BNC
- d. Change Authority to: AR 600-8-24

Authenticating Official:

8/22/2024



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