

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

The applicant seeks relief contending, in effect, at the time of discharge, the applicant had recently lost a child. The applicant was not in their right mind and truly regrets their actions. The applicant was new to Fort Campbell and had no one to turn to. The unit was deployed, and the applicant was the "New Person". There is no excuse for the applicant's actions; however, the applicant served the first enlistment honorably and received many awards. After adequate time and counseling, the applicant has a better outlook on the situation and realizes the way they were behaving was not in their best interest or in the best interest of others. Since being discharged, the applicant has enrolled in college and has been a remarkable student.

b. **Board Type and Decision:** In a records review conducted on 16 July 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 30 September 2011

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 30 August 2011, the applicant was charged with:

Charge I: Violating Article 86, UCMJ.

Specification 1: On or about 15 July 2011, without authority, fail to go at the time prescribed to the appointed place of duty.

Specification 2: On or about 21 July 2011, without authority, fail to go at the time prescribed to the appointed place of duty.

Specification 3: On about 23 July 2011, without authority, absent oneself from the unit and did remain so absent until on or about 3 August 2011.

Specification 4: On or about 5 August 2011, without authority, absent oneself from the unit and did remain so absent until on or about 10 August 2011.

Specification 5: On or about 24 August 2011, without authority, absent oneself from the unit and did remain so absent until on or about 29 August 2011.

Charge II: Violating Article 89, UCMJ. The Specification: On about 4 August 2011, behave oneself with disrespect toward 1LT M. C.

Charge III: Violating Article 91, UCMJ.

Specification 1: On or about 4 August 2011, was disrespectful in language toward SGT T. B.

Specification 2: On or about 21 July 2011, fail to obey a lawful order issued by SGT B. S.

Charge IV: Violating Article 107, UCMJ.

Specification 1: On or about 15 July 2011, with intent to deceive, make to CPT C.M. an official statement, which statement was totally false, and was then known by the applicant to be so false.

Specification 2: On or about 15 July 2011, with intent to deceive make to Sergeant B. S. an official statement, which statement was totally false, and was then known by the applicant to be so false.

Charge V: Violating Article 112a, UCMJ. The Specification: On or about 25 July 2011 and on or about 3 August 2011, the applicant wrongfully used cocaine.

(2) Legal Consultation Date: 8 September 2011

(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: 23 September 2011 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 February 2010 / 3 years / The DD Form 4 for this period is void from the AMHRR.

b. Age at Enlistment / Education / GT Score: 20 / GED / 94

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11C10, Indirect Fire Infantry / 3 years, 9 months, 5 days

d. Prior Service / Characterizations: RA, 16 January 2007 – 3 February 2010 / HD

e. Overseas Service / Combat Service: Hawaii, SWA / Iraq (12 November 2008 – 13 October 2009)

f. **Awards and Decorations:** ICM-3CS, ARCOM, AGCM, NDSM, GWOTSM, OSR, CIB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** CG Article 15, 11 July 2011, on or about 10 May 2011, was disrespectful in language toward SGT J. E.; on or about 10 May 2011, was disrespectful in language toward SGT B. R.; and on or about 2 June 2001, was disrespectful in language toward SGT C., W. The punishment consisted of a reduction to E-3; forfeiture of \$455, suspended; and extra duty for 14 days.

Six Personnel Action Forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 23 July 2011;
From AWOL to PDY, effective 3 August 2011;
From PDY to AWOL, effective 5 August 2011;
From AWOL to PDY, effective 10 August 2011;
From Present for Duty (PDY) to Confined by Civilian Authorities (CCA) effective 30 August 2011; and,
From CCA to PDY, effective 23 September 2011.

Electronic Copy of DD Form 2624, 16 August 2011, reflects the applicant tested positive for COC (cocaine) 1125, during an Inspection Other (IO) urinalysis testing, conducted on 3 August 2011.

Checklist for Pretrial Confinement, 30 August 2011, reflects a summary of the reasons for the applicant's confinement along with a memorandum from the Company Commander.

Memorandum, Synopsis letter, 1 September 2011, reflects the applicant was self-referred to the Army Substance Abuse Program (ASAP) due to concerns about daily alcohol use and also other substance use. The memorandum outlines the applicant's treatment plan.

Several Developmental Counseling Forms, for various acts of misconduct.

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

i. **Lost Time / Mode of Return:** 40 days:

AWOL, 23 July 2011 – 9 August 2011 / NIF / There appears to be an error in block 29 of the DD Form 214 as the DA Forms 4187 reflect different periods of AWOL.

CCA, 9 August 2011 – 22 September 2011 / Released from Confinement

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

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

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 214; Certificate of Death; Honorable Discharge Certificate; two Certificates of Achievement.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has enrolled in college and has been a remarkable student.

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) 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.

(5) 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.)

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 applicant contends good service, including a combat tour, serving honorably during their first enlistment, and receiving many awards. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends at the time of discharge recently losing a child and was not in their right mind and truly regrets their actions. The applicant was new to Fort Campbell and had no one to turn to. The unit was deployed, and the applicant was the "New Person". After adequate time and counseling, the applicant has a better outlook on the situation and realizes the way they were behaving was not in their best interest or in the best interest of others. The applicant provided a copy of Certificate of Death. The AMHRR does not contain a Mental Status Evaluation (MSE). There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

Since being discharged, the applicant has enrolled in college and has been a remarkable student. 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: djustment Disorder and Bereavement without Complication.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant has in-service diagnoses of Adjustment Disorder and Bereavement without Complications.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's BH conditions do not mitigate the discharge. The applicant has an in-service diagnosis of Adjustment Disorder, however, the condition was not of a severity to impair behavior, cognition, and judgement, and therefore does not mitigate the applicant's misconduct. The applicant also has a Bereavement Without Complications diagnosis that does not mitigate his misconduct for the same reasons referenced for Adjustment Disorder. While the loss of a child is a significant

event, the applicant had resources available that the applicant did not avail in a meaningful way. Regarding the issues of limited use, records reflect that the applicant self-referred on 10 August 2011, which was after submitting a UA on 3 August 2011 that was later deemed positive for Cocaine. Given the self-referral was after submitting a UA, it is not a valid self-referral, thus not covered under limited use.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder and Bereavement without Complications outweighed the applicant's medically unmitigated offenses of AWOL, FTR, illegal substance abuse, disrespect toward an officer, failure to obey a lawful order, and making false official statements.

b. Response to Contention(s):

(1) The applicant contends at the time of discharge recently losing a child and was not in their right mind and truly regrets their actions. The applicant was new to Fort Campbell and had no one to turn to. The unit was deployed, and the applicant was the "New Person". After adequate time and counseling, the applicant has a better outlook on the situation and realizes the way they were behaving was not in their best interest or in the best interest of others. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder and Bereavement without Complications outweighed the applicant's medically unmitigated offenses of AWOL, FTR, illegal substance abuse, disrespect toward an officer, failure to obey a lawful order, and making false official statements.

(2) The applicant contends good service, including a combat tour, serving honorably during their first enlistment, and receiving many awards. The Board considered the applicant's three years of service, including a combat tour, but determined that the applicant's record does not outweigh the medically unmitigated offenses of AWOL, FTR, illegal substance abuse, disrespect toward an officer, failure to obey a lawful order, and making false official statements.

(3) Since being discharged, the applicant has enrolled in college and has been a remarkable student. The Board considered the applicant's post-service accomplishments but found that they do not outweigh the medically unmitigated offenses of AWOL, FTR, illegal substance abuse, disrespect toward an officer, failure to obey a lawful order, and making false official statements.

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 Adjustment Disorder and Bereavement without Complications did not outweigh the medically unmitigated offenses of AWOL, FTR, illegal substance abuse, disrespect toward an officer, failure to obey a lawful order, and making false official statements. The Board also considered the applicant's contentions regarding good service and post-service accomplishments but found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001014

did not present any issues of impropriety for the Board's consideration. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious 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:

7/26/2024

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