

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, they were unable to fulfill an appropriate military commitment with the Army due to hardship and stress brought on by their medical problems. The applicant claims they have been receiving care for their medical conditions from the VA Clinic in Tulsa. The applicant states they have been leading a healthy lifestyle compatible with an honorable discharge.

b. Board Type and Decision: In a records review conducted on 25 June 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and MST mitigating the applicant's wrongful use of cocaine, wrongful use of MDMA, underage drinking, AWOL and FTR basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable. Accordingly, the Board voted to change the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service. *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: Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 14 May 2007**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: undated

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant was AWOL from 5 February to 29 March 2007;

The applicant failed to report on 10 and 12 January 2007;

The applicant received an Article 15, on 31 January 2007, for a positive urinalysis for cocaine and MDMA (ecstasy); and,

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The applicant was arrested by the Killeen Police Department for consumption of alcohol by a Minor, on 22 December 2007.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: On 1 May 2007, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 4 May 2007 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 September 2005 / 5 years, 19 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 111

c. Highest Grade Achieved / MOS / Total Service: E-3 / 21B10, Combat Engineer / 1 year, 6 months

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Memorandum, subject: Summary of Rehabilitation, 11 January 2007, reflects the applicant was referred for treatment on 29 November 2006. Following a comprehensive biopsychosocial assessment, the applicant was enrolled in the Army Substance Abuse Program (ASAP) on 18 December 2006. The applicant received services for DSM-IV-TR Diagnostic Code Cocaine Abuse; Cannabis Abuse; and rule out Poly-substance Dependence. The applicant missed one of three group sessions. Initially their participation in the weekly group sessions appeared promising, as they reported a desire for sobriety and demonstrated motivation. Recently, the applicant has had a positive urinalysis for cocaine and appears to be unwilling to commit to their agreed-upon treatment objectives. after almost two months of rehabilitation services, it would be appropriate for the command to consider and initiate appropriate administrative action.

FG Article 15, 31 January 2007, for wrongfully using cocaine (between 31 October and 2 November 2006). On or about 29 September 2006, wrongfully and falsely alter their military identification card in words and figures as follows: birth year from 1988 to 1983. This is a violation of Article 134, UCMJ. On or between 25 September to 29 September 2006, wrongfully use MDMA (ecstasy). The punishment consisted of a reduction to E-1; forfeiture of \$650 pay per month for two months with one month suspended; and extra duty and restriction for 45 days. If separated from the Army prior to completion of their restriction and extra duty the remaining restriction and extra duty will be waived.

Unpreferred Charge Sheet, 7 March 2007, reflects the charges:

Charge I: Violating Article 86, UCMJ, on or about 7 March 2007, the applicant without authority and with intent to remain away therefrom permanently, absent oneself from their unit and did remain so absent in desertion until on or about;

Charge II: Violating Article 86, UCMJ, on or about 5 February 2007, the applicant without authority, absent oneself from their unit, and did remain so absent until on or about.

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

From Present for Duty (PDY) to Absent without Leave (AWOL), effective 5 February 2007;
From AWOL to Dropped from Rolls (DFR), effective 7 March 2007; and
From DFR to PDY, effective 29 March 2007.

Electronic Copy of DD Form 2624, 4 April 2007, reflects the applicant tested positive for THC 28 (marijuana), during an Inspection Other (IO) urinalysis testing, conducted on 29 March 2007.

Four Developmental Counseling Forms, for separation counseling; absent from appointed place of duty; failure to obey.

i. Lost Time / Mode of Return: 51 days (AWOL, 5 February 2007 – 28 March 2007) / Return to Military Control

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Mental Status Evaluation, 6 April 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was diagnosed with a medical condition.

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 149; DD Form 214.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought unspecified treatment for their medical condition from the VA.

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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3, prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted. .

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 they were unable to fulfill an appropriate military commitment with the Army due to hardship and stress brought on by their medical problems. The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends seeking treatment for their medical condition from the VA. 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.

The AMHRR includes a Mental Status Evaluation, 6 April 2007, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant was diagnosed with a medical condition. The mental status evaluation was considered by the separation authority.

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: PTSD secondary to MST, Adjustment Disorder with Anxiety, Depression, Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected (SC) for PTSD secondary to MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has BH conditions that mitigate applicant's misconduct as outlined in the basis for separation. The applicant is 70 percent SC for PTSD secondary to MST and given the nexus between PTSD and use of substances to self-medicate, PTSD and avoidance the applicant misconduct characterized by wrongful use of cocaine, wrongful use of MDMA, underage drinking, AWOL and FTR is mitigated by the PTSD secondary to MST diagnoses.

(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 PTSD and MST outweighed the wrongful use of cocaine, wrongful use of MDMA, underage drinking, AWOL and FTR basis for separation.

b. Response to Contention(s):

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(1) The applicant contends due to hardship and stress brought on by their medical problems, the applicant was unable to fulfill an appropriate military commitment with the Army.

(2) The applicant contends seeking treatment for their medical condition from the VA.

c. The Board determined the discharge is inequitable based on the applicant's PTSD and MST mitigating the applicant's wrongful use of cocaine, wrongful use of MDMA, underage drinking, AWOL and FTR basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable. Accordingly, the Board voted to change the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD and MST mitigated the applicant's misconduct of wrongful use of cocaine, wrongful use of MDMA, underage drinking, AWOL and FTR. Thus, the prior characterization is no longer appropriate.

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

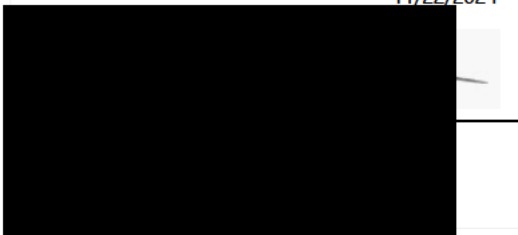
(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200, Chapter 15

Authenticating Official:

11/22/2024



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

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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