

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

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, having a diagnosis of PTSD and alcoholism. The applicant served nine years and four months to this country with two honorable enlistments. The applicant never had a problem with the law or alcohol prior to serving a tour in Iraq. The applicant desires to get their life back in order and be a responsible parent to their child. The applicant served as a Medic at Fort Hood and due to PTSD, found returning to a hospital setting was increasingly difficult. The applicant avoided getting help because of PTSD and found alcohol as comfort. The applicant has enrolled in an alcohol treatment class, and one on one therapy.

b. **Board Type and Decision:** In a records review conducted on 2 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:** 13 October 2004

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 26 July 2004, the applicant was charged with: The Charge: Violating Article 112a, UCMJ. The Specification: On or about 20 March 2004, wrongfully possess approximately 37 grams of marijuana, a Schedule I controlled substance, with the intent to distribute the said controlled substance.

(2) **Legal Consultation Date:** 16 September 2004

(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:** NIF

(5) Separation Decision Date / Characterization: 30 September 2004 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 July 2000 / 3 years / The applicant was extended at the request and for the convenience of the Government in support of a Contingency Operation.

b. Age at Enlistment / Education / GT Score: 22 / High School Letter / NIF

c. Highest Grade Achieved / MOS / Total Service: E-5 / 91G20, Patient Administration Specialist / 9 years, 2 months, 23 days

d. Prior Service / Characterizations: RA, 21 July 1995 – 22 July 1998 / HD
RA, 23 July 1998 – 27 July 2000 / HD

e. Overseas Service / Combat Service: Germany, Korea, SWA / Iraq (7 July 2003 – 23 March 2004)

f. Awards and Decorations: ARCOM-2, GWOTEM, GWOTSM, NDSM, NCOPDR, ASR

g. Performance Ratings: September 2001 – February 2002 / Fully Capable
March 2002 – August 2002 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: CID Report of Investigation – Initial Final – 0238-2004-CID034-72414-5L2F / 9G2A / 9G2B, 26 March 2004, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Possession of Marihuana with Intent to Distribute on 20 March 2004, when the applicant wrongfully possessed approximately 37 grams of Marihuana in four separate plastic bags at the Sports USA nightclub, FHTX.

Investigating Officer's Report, 27 August 2004, does not recommend pursuit of adverse UCMJ action, perhaps administrative separation.

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

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Daymark Recovery Services Inc. records, 29 July 2014, which reflect the applicant had been receiving treatment. The records contain 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: DD Form 293; self-authored statement; DD Form 457; NPRC letter; Congressional letter; certification of military service; Daymark Recover Service records; DD Form 214; Veterans Service Officer letter; separation packet; third-party letter.

6. POST SERVICE ACCOMPLISHMENTS: The applicant worked as a youth mentor for S&C Youth and Family Services from 2004 through 2009 until it closed due to lack of funding. The applicant volunteers to help at risk youth in the community and attends church. The applicant has enrolled in an alcohol treatment class, and one on one therapy.

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 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(6) 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 contends good service, including a combat tour. The applicant served nine years and four months and had two honorable enlistments.

The applicant contends never having a problem with the law or alcohol prior to serving in Iraq. The applicant served as a Medic at Fort Hood and because of PTSD found returning to a hospital setting was increasingly difficult. The applicant avoided getting help because of PTSD and found alcohol as comfort. The applicant has been diagnosed with PTSD. The applicant provided a Daymark Recovery Services records, 29 July 2014, which reflect the applicant has been receiving treatment and contain a diagnosis. 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.

The applicant worked as a youth mentor for S&C Youth and Family Services from 2004 through 2009 until it closed due to lack of funding. The applicant volunteers to help at risk youth in the community and attends church. The applicant has enrolled in an alcohol treatment class, and one on one therapy. 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 third-party statement provided with the application reflects the applicant's volunteer work as a coach for the local youth basketball programs. The statement speaks of the applicant's hard work and dedication to the youth.

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 found that, based on the Board's Medical Advisor's opine, a review of the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, Major Depressive Disorder (MDD).

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board applied liberal consideration and opined that after reviewing the available information there is no evidence the applicant has a BH condition that mitigates the misconduct as outline in the BoS. The applicant is 70 percent SC for PTSD and while there is a nexus between PTSD and the use of substances to self-medicate, in this case the applicant's misconduct characterized by possession with the intent to distribute is not mitigated as it is not a natural sequela of PTSD as the diagnosis does not impair one's ability to differentiate between right and wrong and adhere to the right.

(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 Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated misconduct of possession with the intent to distribute.

b. Response to Contention(s):

(1) The applicant contends good service, including a combat tour. The applicant served nine years and four months and had two honorable enlistments. The Board considered the applicant's 9 years of service, including a combat tour in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's wrongful possession, approximately 37 grams of marijuana with the intent to distribute.

(2) The applicant contends never having a problem with the law or alcohol prior to serving in Iraq. The applicant served as a Medic at Fort Hood and due to PTSD found returning to a hospital setting was increasingly difficult. Due to this, the applicant avoided getting help, and found alcohol as comfort. The applicant has been diagnosed with PTSD. The Board liberally considered this contention and determined while there is a nexus between PTSD and the use of substances to self-medicate, in this case the applicant's misconduct characterized by possession with the intent to distribute is not mitigated as it is not natural sequela of PTSD as the diagnosis does not impair one's ability to differentiate between right and wrong and adhere to the right. Thus, the discharge is proper and equitable.

(3) The applicant worked as a youth mentor for S&C Youth and Family Services from 2004 through 2009 until it closed due to lack of funding. The applicant volunteers to help at risk youth in the community and attends church. The applicant has enrolled in an alcohol treatment class, and one on one therapy. The Board considered this contention and determined that the applicant's post-service accomplishments do not outweigh the misconduct based on the seriousness of the applicant's offense of wrongful possession, approximately 37 grams of marijuana with the intent to distribute.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001068

(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 PTSD, Major Depressive Disorder (MDD) did not excuse or mitigate the offense of wrongful possession, approximately 37 grams of marijuana with the intent to distribute. 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, as 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:

2/3/2025

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
UOTH – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs

