

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 the under review is honorable. The applicant is considered for a change to the reentry eligibility code.

The applicant seeks relief contending, in effect, PTSD directly contributed to the discharge. The condition worsened as the military service continued, culminating in a single offense which resulted in an involuntary separation. The applicant has subsequently earned a bachelor's degree in computer science, has an excellent career, is financially stable, and has no criminal history involving illegal substances.

b. **Board Type and Decision:** In a records review conducted on 16 May 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:** Secretarial Authority / AR 635-200, Chapter 15 / JFF / RE-3 / Honorable

b. **Date of Discharge:** 29 August 2013

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 20 May 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant tested positive for marijuana during a unit conducted urinalysis on 4 December 2012.

(3) **Recommended Characterization:** General (Under Honorable Conditions)

(4) **Legal Consultation Date:** 10 June 2013

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 9 August 2013 / General (Under Honorable Conditions) / The GCMCA reviewed the medical evaluation board proceedings and determined while the medical condition may have influenced the conduct, it was not a direct or substantial contributing cause of the conduct.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 9 November 2009 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 20 / High School Graduate / 103
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 12N10, Horizontal Construction Specialist / 3 years, 9 months, 21 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Germany, SWA / Afghanistan (4 December 2010 – 15 November 2011)
- f. **Awards and Decorations:** ARCOM, NATOMDL, MUC, AGCM, NDSM, ACM-2CS, OSR-2, CAB

The applicant's AMHRR and service reflects an ASR award, however, the award is not reflected on the DD Form 214.

- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Two Developmental Counseling Forms for impending separation action; testing positive during a UA; and FG Article 15 action.

Electronic Copy of DD Form 2624, 13 December 2012, reflects the applicant tested positive for THC 26 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 4 December 2012.

CID Report of Investigation - Initial Final, 8 February 2013, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Use of a Controlled Substance (Marijuana) when the applicant submitted a urine specimen on 4 December 2012, during the conduct of a unit urinalysis test, which subsequently tested positive for THC.

FG Article 15, 27 March 2013, for wrongfully using marijuana (between 4 November and 4 December 2012). The punishment consisted of a reduction to E-1; forfeiture of \$758 pay per month for two months; extra duty and restriction for 45 days; and an oral reprimand.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**
 - (1) **Applicant provided:** VA Summary of benefits letter, 21 July 2019, reflects a combined service-connected evaluation of 40 percent.
 - (2) **AMHRR Listed:** Report of Mental Status Evaluation, 11 February 2013, reflects the applicant was not cleared for an administrative separation action. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and was being referred to a medical board. The applicant had been screened for PTSD and mTBI with positive results. The evaluation included a diagnosis of Post Traumatic Stress Disorder.

Report of Medical History, 26 February 2013, the applicant noted behavioral health issues and the examining medical physician noted the applicant's medical conditions, anxiety, depression, insomnia, anger, and PTSD, in the comments section.

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; two VA letters; transcript; employment letter; 2018 W-2; and Equifax credit report.

6. POST SERVICE ACCOMPLISHMENTS: The applicant obtained bachelor's degree in computer science and employment.

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) Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government.

(4) Paragraph 5-1, states that a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status.

(5) 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 memorandums. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided 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 identified the SPD code of "JFF" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 15, Secretarial Authority.

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 PTSD contributed directly to the discharge. The applicant's AMHRR contains documentation which supports an in-service diagnosis of PTSD. The record shows the applicant underwent a mental status evaluation (MSE) on 11 February 2013, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE with the diagnosis was considered by the separation authority.

The applicant contends as the medical condition worsened, a subsequent single offense led to the discharge. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends obtaining a bachelor's degree and employment. 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: Adjustment Disorder, PTSD, TBI, Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, PTSD, TBI, and Anxiety Disorder NOS, and the VA has service-connected the applicant's PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between PTSD, TBI, and self-medicating with substances, the marijuana use that led to the

separation is mitigated. However, the applicant already has an honorable characterization of service with a Secretarial Authority narrative reason for separation indicating that the proper mitigation has already been applied.

(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, Post Traumatic Stress Disorder, Traumatic Brain Injury, and Anxiety outweighed the applicant's re-entry eligibility code of RE-3 due to those behavioral health conditions requiring medical review prior to re-entering military service.

b. Response to Contention(s):

(1) The applicant contends PTSD contributed directly to the discharge. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Post Traumatic Stress Disorder, Traumatic Brain Injury, and Anxiety outweighed the applicant's re-entry eligibility code of RE-3 due to those behavioral health conditions requiring medical review prior to re-entering military service. The applicant's honorable characterization of service with a Secretarial Authority narrative reason for separation will remain unchanged.

(2) The applicant contends as the medical condition worsened, a subsequent single offense led to the discharge. The Board considered this contention but found that the applicant already holds an honorable characterization of service with a Secretarial Authority narrative reason for separation. Therefore, a change to the applicant's discharge is not warranted.

(3) The applicant contends obtaining a bachelor's degree and employment. The Board considered the applicant's post-service accomplishments but did not find that they warranted a change to the applicant's re-entry eligibility code.

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 determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable and a narrative Reason of Secretarial Authority; therefore, no further relief is available.

(2) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation given the applicant's behavioral health conditions.

10. BOARD ACTION DIRECTED:

a. Issue a New DD-214 / Separation Order: No

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001122

- 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:

6/11/2024

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