

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 honorable. The applicant through counsel, requests a narrative reason change and SPD code change.

The applicant seeks relief contending, in effect, the applicant's undiagnosed, service-connected Hepatitis C, including the havoc it wrecked on their body and the effects on their brain, clearly contributed to the misconduct, and has been a heavy burden the applicant has had to bear since acquiring it while on duty, caring for Soldiers. Consider the applicant's service record and outstanding pre and post service conduct. The act was not like the applicant. A fair and equitable upgrade based on these mitigating factors and extenuating circumstances would remove the lifelong stigma and inability to ever serve again which currently stain the DD Form 214 and their future, just as the applicant is recovering from their illness. The requests the Board not let this one, isolated incident, at least partially caused by undiagnosed service-related illness, define the applicant and forever stigmatize their file and DD Form 214; however, instead be an obstacle for the applicant to overcome, a learning point, and a blessing.

b. **Board Type and Decision:** In a records review conducted on 21 November 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 details regarding the Board's decision.
Board member names available upon request.*

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Miscellaneous / General Reasons / AR 600-8-24 / FND / Honorable

b. **Date of Discharge:** 27 December 2013

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** The Charge: Violation of Article 112a, UCMJ. The Specification: On or about 28 January 2013 and on or about 1 February 2013, the applicant wrongfully used cocaine.

(2) **Legal Consultation Date:** 29 May 2013

(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: 11 December 2013 / General
(Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Appointment:** 8 March 2012 to / NIF
- b. **Age at Appointment / Education:** 44 / Professional
- c. **Highest Grade Achieved / MOS / Total Service:** O-4 / 62A, Emergency Physician / 1 year, 9 months, 26 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** 8 March 2012 – 20 May 2013 / Fully Qualified
21 May 2013 – 27 December 2013 / Fully Qualified
- h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 11 February 2013, reflects the applicant tested positive for COC 352 (cocaine), during an Inspection Random (IR) urinalysis testing, conducted on 1 February 2013.

CID Report of Investigation – Initial Final – 0073-2013-CID013-33901 – 5L6D1, 27 February 2013, investigation established probable cause to believe the applicant committed the offense of Wrongful Use of Cocaine, as determined by a positive urinalysis. The applicant invoked their legal rights when they requested legal counsel.

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

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) Applicant provided: Statement of Medical Examination and Duty Status, 20 December 2013, reflects the applicant was diagnosed with service-connected Hepatitis C, the applicant also provided literature review on neuropsychiatric and psychosocial issues of patients with Hepatitis C.

VA Summary of Benefits letter, 28 September 2014, reflects the applicant was granted a combined 70 percent for service-connected disabilities effective 1 January 2014; however, the letter does not reflect the nature of the disability.

(2) AMHRR Listed: Report of Medical Examination, 28 June 2013, the examining medical physician noted in the comments section: Anxiety.

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; attorney brief with listed enclosures 1 through 40; Curriculum Vitae; Patient Progress Report; Laboratory Results; six photos.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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) 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.

(4) Paragraph 3-5, entitled unqualified resignation, states any officer on active duty for more than 90 days may tender a resignation under this paragraph except when action is pending that could result in a Resignation for the Good of the Service; officer is under a suspension of favorable actions, pending investigation, under charges; or any other unfavorable or derogatory action is pending. Table 3-1 states the resignation will be submitted to the appropriate commander and the commander will review and forward the request at least 90 days prior to the requested separation date for officers with no military service obligation. The command will provide, including but not limited to a recommendation for approval or disapproval; a justification of disapproval; a statement the officer is not under investigation or charges, or being considered for administrative elimination; and a report of any recent misconduct of the officer concerned which had not previously been reported to Human Resources command (HRC). Any misconduct committed or discovered subsequent to endorsement will be reported to HRC (AHRC-OPD-A) in an expeditious manner.

(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 "FND" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, miscellaneous/general reasons.

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 3 prescribes the criteria for enlistment in the Regular Army (RA), U.S. Army Reserve (USAR), or Army National Guard (ARNG) for prior Service applicants. Paragraph 3-13, entitled eligibility of former officers for enlistment, states all applications for enlistment will be sent to the Commanding General, U.S. Army Recruiting Command for enlistment in the RA, USAR, and ARNG, and provides the basic criteria 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 a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge should be changed. Based on the applicant's AMHRR, the applicant was separated under the provisions of AR 600-8-24, with a narrative reason "Miscellaneous / General Reasons" and an honorable discharge. Army Regulation 635-8, Separation Processing and Documents, governs preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation further stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends good service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 600-8-24, paragraph 1-23, 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 suffering from an undiagnosed medical condition. The applicant provided a Statement of Medical Examination and Duty Status, 20 December 2013, which reflects the applicant was diagnosed with service-connected Hepatitis C. The applicant also provided a literature review on neuropsychiatric and psychosocial issues of patients with Hepatitis C. A VA Summary of Benefits letter, 28 September 2014, reflects the applicant was granted a combined 70 percent for service-connected disabilities effective 1 January 2014; however, the letter does not reflect the nature of the disability. The applicant's AMHRR contains no documentation of PTSD diagnosis. The AMHRR includes a Report of Medical Examination,

28 June 2013, in which the examining medical physician noted in the comments section: Anxiety. The Report of Medical Examination was considered by the separation authority.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The third-party statements provided with the application reflect the applicant's good character, hard work while being in the Army and after being discharged.

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: Anxiety, PTSD, and Depressive Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant experienced symptoms of Anxiety in service and is service connected by the VA for PTSD and Depressive Disorder. Service connection establishes that the PTSD and Depressive Disorder also existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. Given the nexus between Anxiety, PTSD, Depressive Disorder, and self-medicating with substances, the applicant's BH conditions likely contributed to the cocaine use that led to the separation. However, the applicant has an honorable characterization of service, indicating 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 Anxiety, Post Traumatic Stress Disorder, and Depression outweighed the applicant's offense of illegal substance abuse as the applicant already holds an honorable characterization of service with a Miscellaneous / General Reasons narrative reason for separation.

b. Response to Contention(s):

(1) The applicant contends suffering from an undiagnosed medical condition. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Anxiety, Post Traumatic Stress Disorder, and Depression outweighed the applicant's offense of illegal substance abuse as the applicant already holds an honorable characterization of service with a Miscellaneous / General Reasons narrative reason for separation.

(2) The applicant contends the narrative reason for the discharge should be changed. The Board considered this contention and found that the applicant's Miscellaneous / General Reasons narrative reason for separation is proper and equitable. The Board found insufficient mitigating factors to warrant upgrade to Secretarial Authority.

(3) The applicant contends good service. The Board considered the applicant's two years of service and determined that the service record does not warrant upgrade.

(4) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention and found that the applicant's discharge would not merit further upgrade even if the misconduct were treated as an isolated incident.

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a 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 as the applicant already holds an honorable characterization and further relief is not available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts. The reason the applicant was discharged was both proper and equitable.

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 Authority to:** No Change

Authenticating Official:

11/26/2024

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