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 reviewd under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was unjust and did not reflect the type of Soldier who earned numerous honors, medals, badges, and campaign ribbons, and military education. The Army is great and was very accommodating to the applicant, who aspired to be a career Soldier. The applicant fulfilled the four-year enlistment contract; nevertheless, the issues began while deployed to Afghanistan for twelve months as part of Operation Enduring Freedom. The applicant sought assistance by enrolling in the Fort Bragg Substance Abuse Program. The applicant has realized and now understands it was wrong to use alcohol and drugs to self-medicate because of the deep depression and coping with personal tragedy circumstances at home. The Army should not view the actions as intentional misconduct, but rather as an effort to block out the ex-spouse's miscarriage and depression. When the applicant was evaluated for mental health services at Womack Hospital, the attending physician found the applicant abused substances as codependency rather than addiction. As a result, the applicant was rejected for an inpatient treatment program for military addicts in Virginia. The choice of accepting under other than honorable conditions in lieu of a court-martial was unfair and unjust since the command extended the discharge process, added days to the four-year enlistment term, and denied the applicant an inpatient treatment. For the most part, the applicant was a good Soldier and a contributing member of society. The downfall was caused by a lack of life experience and poor decisions during the events leading up to the discharge. The applicant has since worked as a contractor, deployed to Kuwait, and is now employed as a warehouse lead at the Special Forces Compound. The applicant desires to further the education to provide a better future for the family and oneself, and to one day own a home or business. The applicant loved the Army and had since remained involved as a contractor. The applicant further details the contentions in an allied self-authored statement provided with the application.

b. Board Type and Decision: In a records review conducted on 21 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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions
 - b. Date of Discharge: 29 September 2011
 - c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 8 September 2011, the applicant was charged with: The Charge: Three Specifications of Violating Article 112a, UCMJ, for wrongfully using marijuana:

Specification 1: between 4 October and 4 November 2010.

Specification 2: between 12 November and 12 December 2010.

Specification 3: between 7 May and 7 June 2011.

- (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:** 14 September 2011 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. Date / Period of Enlistment: 19 September 2007 / 4 years / The AMHRR is void of any enlistment contract retaining the applicant on active duty after the initial enlistment period.
 - **b.** Age at Enlistment / Education / GT Score: 18 / High School Graduate / 97
- **c. Highest Grade Achieved / MOS / Total Service:** E-4 / 92A10, Automated Logistical Specialist / 4 years, 11 days
 - d. Prior Service / Characterizations: None
 - e. Overseas Service / Combat Service: SWA / Afghanistan (15 April 2009 15 April 2010)
 - f. Awards and Decorations: AAM-2, MUC, AGC, ACM-2CS, GWOTSM, ASR, OSR
 - g. Performance Ratings: NA
- h. Disciplinary Action(s) / Evidentiary Record: Nine Developmental Counseling Forms for testing positive on a urinalysis; receiving a FG Article and reduction in grade; being arrested; domestic violence, being in confinement and restriction; failing to go at the time prescribed to the appointed place of duty on numerous occasions; and disobeying an order.

Military Police Report, 2 November 2008, reflects the applicant was apprehended for: driving by persons under 21 years old after consuming alcohol, and traffic violations, failing to maintain lane (on post).

General Officer Memorandum Of Reprimand, 11 March 2009, reflects the applicant was driving while impaired. After being stopped for speeding and failing to use a signal light on 2 November 2008, the applicant's breathalyzer test determined a BAC of .05 percent.

Domestic Dispute incident report, 5 May 2010, reflects the applicant was arrested and charged with assault on the spouse on 2 May 2010 (off post).

Electronic Copy of DD Form 2624, 15 November 2010, reflects the applicant tested positive for THC 94 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 4 November 2010.

Electronic Copy of DD Form 2624, 3 December 2010, reflects the applicant tested positive for THC 332 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 23 November 2010.

FG Article 15, 19 January 2011, for wrongfully using marijuana (between 4 October and 4 November 2010). The punishment consisted of a reduction to E-1; forfeiture of \$723 pay per month for two months (suspended); extra duty for 45 days; and an oral reprimand.

Electronic Copy of DD Form 2624, 21 June 2011, reflects the applicant tested positive for THC 116 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 7 June 2011.

Charge sheet as described in previous paragraph 3c.

- i. Lost Time / Mode of Return: None
- j. Behavioral Health Condition(s):
 - (1) Applicant provided: None
- **(2) AMHRR Listed:** Report of Medical History, 3 February 2011, the examining medical physician noted the applicant's medical conditions in the comments section as following with mental health.

Report of Medical Examination, 3 February 2011, the examining medical physician noted the applicant's medical conditions in the comments section as continued care with mental health provider for diagnoses of depression and anxiety.

Report of Behavioral Health Evaluation (BHE), 28 February 2011, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant screened for PTSD and mTBI did not meet both criteria. The applicant was psychiatrically cleared for any administrative actions deemed appropriate by command.

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

- **5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; self-authored statement; and DD Form 214.
- **6. Post Service Accomplishments:** The applicant obtained employment as a contractor, deployed to Kuwait, and is now employed as a warehouse lead at the Special Forces Compound.
- 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) Paragraph 1–22 stipulates when investigation is initiated with view to trial by court-martial or Soldier is awaiting trial or result of trial, a Soldier may be retained after the term of service has expired when one of the following applies: (1) An investigation of the conduct has been started with a view to trial by court-martial; (2) charges have been preferred; or (3) the Soldier has been apprehended, arrested, confined, or otherwise restricted by the appropriate military authority. If charges have not been preferred, the Soldier will not be retained more than 30 days beyond the ETS unless the general court-martial convening authority approves retention. (See paragraph 1–31.) A Soldier who is awaiting trial or result of trial by court-martial when the Soldier would otherwise be eligible for discharge or release from AD will not be discharged or released until final disposition of the court-martial charges. (For effective date of discharge, see Section V) Soldiers under sentence to an unsuspended dishonorable or bad conduct discharge will not be discharged before appellate review is completed, unless so directed by HQDA. If the Soldier is absent without leave at the time appellate review is completed, the punitive discharge may still be carried out. This paragraph does not apply to Soldiers processed for discharge under the provisions of chapter 10.
- **(2)** Chapter 3, Section II provides the authorized types of characterization of service or description of separation.
- (3) Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.
- (4) 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.
- **(5)** 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.
- (6) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.
- (7) 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.

- (8) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40–501, chapter 8.
- **(9)** 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.)
- **(10)** Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.
- **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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends being a good Soldier and the unjust discharge does not reflect the type of Soldier, who earned numerous honors, medals, badges, campaign ribbons and military education. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the issues began while deployed to Afghanistan and seeking assistance by enrolling in the Fort Bragg Substance Abuse Program. The applicant realizes it was wrong to

use alcohol and drugs to self-medicate because of the deep depression and coping with personal tragedy circumstances at home. The applicant's AMHRR contains documentation which supports in-service diagnoses of depression and anxiety. The record shows the applicant underwent a behavioral health evaluation (BHE) on 28 February 2011, which indicates the applicant was mentally responsible with clear-thinking process. The BHE was considered by the separation authority.

The applicant contends family issues, the ex-spouse's miscarriage, and depression, affected the behavior, and ultimately caused the discharge. 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 contends the discharge was unfair and unjust since the command extended the discharge process, added days to the four-year enlistment term, and denied the applicant an inpatient treatment. The AMHRR is void of any enlistment contract retaining the applicant on active duty after the ETS date. However, according to AR 635-200, paragraph 1-22, a Soldier may be retained if charges have been preferred but will not be retained more than 30 days beyond the ETS date, unless the general court-martial convening authority approves retention. In the applicant's case, court-martial charges were preferred on 8 September 2011, and was retained approximately ten days past the ETS date of 18 September 2011. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends lacking life experiences and making poor decisions affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant contends having a desire to further their education to provide a better future for the family and oneself, and to one day own a home or business. Eligibility for veterans' benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends having been employed as a contractor, deployed to Kuwait, and currently employed as a warehouse lead at the Special Forces Compound. 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.

- (2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with Adjustment Disorder during service.
- (3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that a review of the records shows the applicant with a potentially mitigating diagnosis of Adjustment Disorder, however, the applicant adjustment was not of a severity as to have noteworthy impact on applicant's behavior, judgment, or cognition, or impair applicant's ability to differentiate between right and wrong and adhere to the right, and therefore does not mitigate the misconduct. Additionally, while the applicant asserts, being a model Soldier until after deployment, records show the applicant with multiple instances of DUI and underage drinking prior to deployment.
 - (4) Does the condition or experience outweigh the discharge? N/A.
 - **b.** Response to Contention(s):
- (1) The applicant contends being a good Soldier and the unjust discharge does not reflect the type of Soldier who earned numerous honors, medals, badges, campaign ribbons and military education. The Board considered the applicant's four years of service, including a combat tour in Afghanistan and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's marijuana use on three separate occasions.
- (2) The applicant contends the issues began while deployed to Afghanistan and seeking assistance by enrolling in the Fort Bragg Substance Abuse Program. The realizes it was wrong to use alcohol and drugs to self-medicate because of the deep depression and coping with personal tragedy circumstances at home. The Board considered this contention and determined there is not a nexus between the applicant's marijuana use on three separate occasions and the applicant's diagnosis of adjustment disorder. The applicant's file is void of medicals records showing the applicant was diagnosed with deep depression. The discharge is proper and equitable.
- (3) The applicant contends lacking life experiences, making poor decisions, family issues, the ex-spouse's miscarriage, and depression, affected the behavior, and ultimately caused the discharge. The Board considered this contention and determined that the applicant's contends lacking life experiences, making poor decisions, family issues, the ex-spouse's miscarriage, and depression does not mitigate the applicant's marijuana use on three separate occasions as the Army affords many avenues to Soldier's including seeking separation for hardship.
- (4) The applicant contends the discharge was unfair and unjust since the command extended the discharge process, and added days to the four-year enlistment term, and denied the applicant an inpatient treatment. The Board considered this contention and determined there is insufficient evidence to support the chain of command denied the applicant inpatient treatment. The applicant exceeded the enlistment term due to the administrative separation process. The discharge is proper and equitable.
- (5) The applicant contends having a desire to further the education to provide a better future for the family and oneself, and to one day own a home or business. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance. The Board

also considered this contention but does not grant relief to gain employment or enhance employment opportunities.

- **(6)** The applicant contends having been employed as a contractor, deployed to Kuwait, and currently employed as a warehouse lead at the Special Forces Compound. The Board considered this contention and determined that the applicant's post-service employment does not outweigh the misconduct based on the seriousness of the applicant's offense of marijuana use on three separate occasions.
- **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 did not excuse or mitigate the marijuana use on three separate occasions. 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or 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:

8/26/2024



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