

**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, through counsel, requests an upgrade to honorable and a narrative reason change to "Secretarial Authority."

The applicant seeks relief contending, in effect, the discharge is inequitable because the applicant's discharge was due to drug-related violation, despite documented medical diagnoses of drug addiction; the applicant voluntarily sought help for major depression just prior to the infractions. Counsel claims no one or anything was harmed or damaged because of the drug use. Additionally, the applicant was wrongfully discharged by the Army when the applicant required medical attention after returning from Afghanistan. Counsel claims the applicant's release was unfair since it denied access to much-needed medical benefits and Post 9/11 GI Bill educational benefits. The applicant claims that the applicant does not deserve the stigma associated with a less-than-honorable discharge.

**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 / General (Under Honorable Conditions)

**b. Date of Discharge:** 18 May 2010

**c. Separation Facts:**

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** On 20 April 2010, the applicant was charged with:

Charge I: Violating Article 92, UCMJ, for:

Specification 1: on or about 15 January 2010, was derelict in the performance of those duties in that they willfully failed to refrain from wrongfully possessing drug abuse paraphernalia.

Specification 2: on or about 4 April 2010, was derelict in the performance of those duties in that they willfully failed to refrain from wrongfully possessing drug abuse paraphernalia.

Charge II: Violating Article 112a, UCMJ, for:

Specification 1: on or about 8 January 2010 and on or about 10 January 2010, on divers occasions, wrongfully use cocaine, a schedule I controlled substance.

Specification 2: between on or about 11 January 2010 and on or about 15 January 2010, on divers occasions, wrongfully use cocaine, a schedule I controlled substance.

Specification 3: on or about 22 March 2010, wrongfully use marijuana. a schedule I controlled substance.

**(2) Legal Consultation Date:** NIF

**(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:** 29 April 2010 / Under Other Than Honorable Conditions

#### **4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 12 July 2006 / 5 years

**b. Age at Enlistment / Education / GT Score:** 20 / High School Graduate / 120

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 11B20, Infantryman / 3 years, 10 months, 7 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Afghanistan (23 June 2008 – 24 June 2009)

**f. Awards and Decorations:** ACH-CS, ARCOM, OSR, NATOMDL

**g. Performance Ratings:** 14 January 2010 – 29 April 2010 / Marginal

**h. Disciplinary Action(s) / Evidentiary Record:** Charge sheet as described in previous paragraph 3c.

**i. Lost Time / Mode of Return:** None

**j. Behavioral Health Condition(s):**

**(1) Applicant provided:** Red River Hospital Psychiatric Evaluation, 22 October 2009, includes a medical diagnosis.

Rose Street Mental Health Care Confidential Psychological Evaluation, 23 October 2009, includes a medical diagnosis.

**(2) AMHRR Listed:** None

*The ARBA's medical advisor reviewed DoD and VA medical records, including documents listed in 4j(1) and (2) above.*

**5. APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 214; DD Form 293, legal brief; medical records, Enlisted Record Brief, Orders; awards and training certificates; Timeline from high school until starting college; two letters of support.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant sought treatment and is off drugs for three years.

**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.)

**(7)** 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 contends the narrative reason for the discharge needs changed to "Secretarial Authority." The applicant was separated under the provisions of Chapter 10, AR 635-200, with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." Army Regulation 635-8 (Separation Processing and Documents), governs the 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 as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends being depressed. The applicant provided Red River Hospital Psychiatric Evaluation and a Rose Street mental Health Care Confidential Psychological Evaluation, both evaluations included a medical diagnosis.

The applicant contends the other than honorable conditions discharge is inequitable because the applicant's drug use did not result in harm or damage to anyone or thing. Furthermore, the Army unfairly discharged the applicant when the applicant needed medical support following their return from Afghanistan. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is evidence in the AMHRR the applicant sought assistance before committing the misconduct (presented to counseling center on 19 Oct 09), which led to the separation action under review. Army Regulation 600-85, paragraph 7-3 entitled voluntary (self) identification and referral, states voluntary (self) ID is the most desirable method of identifying substance use disorder. The individual whose performance, social conduct, interpersonal relations, or health becomes impaired because of these problems has the personal obligation to seek help. Soldiers seeking self-referral for problematic substance use may access services through BH services for a SUD evaluation. The Limited Use Policy exists to encourage Soldiers to proactively seek help.

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 applicant contends an upgrade would allow veteran's benefits including educational benefits through the GI Bill. Eligibility for veteran's benefits including educational benefits under the Post-9/11 or Montgomery GI Bill 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 third-party statements provided with the application reflect the applicant's hard work and dedication to completing the mission.

The applicant contends seeking treatment and obtaining 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 determined that, based on the Board Medical Advisor opine resulting from 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), Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant Major Depressive Disorder (MDD), Adjustment Disorder and PTSD existed 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 70 percent SC for PTSD with additionally potentially mitigating diagnosis of MDD. While PTSD and MDD typically mitigates substance use, in this case, the applicant's misconduct does not appear to be secondary to PTSD or MDD but the result of a significant opiate abuse/dependence history that existed prior to service. Records show the applicant with a significant history of drug use prior to service to include failed inpatient, Intensive Out Patient (IOP), and outpatient drug treatment. Records further show that upon enlistment the applicant continued abusing drugs, to include while in BCT/AIT, while stationed at Fort Hood, during applicant's deployment in Afghanistan, and upon redeployment to garrison. The applicant's drug use history trajectory appears typical of an individual with a long history of abuse and does not appear to have been exacerbated by military service. Further, records show that the applicants MDD and depressive episodes were secondary to applicant's substance addiction, as opposed to using substance to mitigate depressive symptoms.

(4) Does the condition or experience outweigh the discharge? **No**

**b. Response to Contention(s):**

(1) The applicant contends the narrative reason for the discharge needs changed to "Secretarial Authority, The Board considered this contention and determined based on the applicant medical and service records that a discharge upgrade is not warranted because, despite the applicant's admission of drug use and rehabilitative failures, the applicant illegal drug use preceded his military service and continued throughout his military service, including while deployed to Afghanistan.

(2) The applicant contends being depressed. The Board determined that this contention was valid as the applicant is diagnosed with MDD, however, the Board also considered the totality of the applicant's record, including the applicant's BH condition and determined that a discharge upgrade is not warranted based on the applicant's MDD being secondary to the applicant's significant substance abuse, as opposed to applicant using substances to mitigate depressive symptoms.

(3) The applicant contends the other than honorable conditions discharge is inequitable because the applicant's drug use did not result in harm or damage to anyone or thing. Furthermore, the Army unfairly discharged the applicant when the applicant needed medical support following the applicant's return from Afghanistan. The Board considered this contention and determined that a SA characterization does not apply in this situation given the circumstances surrounding the discharge. Also the board considered the applicant has significant history of drug use prior to service to include failed inpatient, IOP, and outpatient drug treatment. Ultimately, the applicant continued with drug use throughout military service until the applicant failed urinalysis testing and was discharged. There is insufficient evidence in the applicant's official record or provided by the applicant that the applicant was not provided sufficient access to BH resources. Therefore, no change is warranted.

(4) The applicant contends that the UOTH (previously upgraded to General) is inequitable because the applicant does not deserve the stigma of a less than honorable discharge based on the applicant's years of exemplary service. The Board considered this contention and given the previous upgrade and the applicant's significant history of drug use, failed inpatient, IOP, and outpatient drug treatment, chose not to upgrade further. The Board determined the current discharge is proper and equitable.

(5) The applicant contends that the UOTH (previously upgraded to General) is inequitable because it disqualifies the applicant from accessing much-needed medical benefits. The applicant provided no evidence of lack of medical benefits given the previous upgrade to General.

(6) 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.

(7) The applicant contends an upgrade would allow veteran's benefits including educational benefits through the GI Bill. 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.

(8) The applicant contends seeking treatment and obtaining employment. The Board applied liberal consideration and determined that, based on the Board Medical Advisor's opinion, the applicant's (medical condition) did/did not mitigate the applicant's dereliction of duty (wrongful possession of drug abuse paraphernalia)(x2) and wrongful use of controlled substances (x3) offenses because [insert rationale for mitigation or no mitigation here].

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 PTSD, Major Depressive Disorder (MDD), Adjustment Disorder did not outweigh the offenses of wrongfully possessing drug abuse paraphernalia, wrongful use of cocaine and wrongful use of marijuana. 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, 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

1/13/2025

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

## ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

**AR20210001146**

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