

**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 period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, while deployed to Afghanistan from November 2009 to December 2010, the applicant experienced several tragic events, which caused the applicant to suffer from post-traumatic stress disorder (PTSD). The applicant was diagnosed with PTSD while stationed at Fort Campbell. The applicant was not receiving the treatment needed at the time of the diagnosis and began self-medicating, which led to the discharge. The applicant, and the chain of command, disagreed with the decision and did not recommend the applicant for an Other Than Honorable (OTH) discharge.

b. **Board Type and Decision:** In a records review conducted on 2 May 2024, and by a 3-2 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:** 7 May 2013

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On [date unavailable], and 16 April 2013, the applicant was charged with:

Charge I: The applicant's AMHRR is void of the Original Charge Sheet, with Charge I.

Charge II: Violating Article 112a, UCMJ, Specifications 1 to 3: Did on three occasions, wrongfully use cocaine, between 19 and 21 December 2012; 26 and 28 January 2013; and 17 and 19 February 2013.

Additional Charge I: Violating Article 134, UCMJ, The Specification: Did on 28 January 2013, attempt to pass a drug urinalysis test ordered by Captain J. W., by wrongfully providing a urine sample belonging to Private First Class D. F., which conduct was prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces.

**(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 / The applicant's AMHRR reflects the company and battalion commanders recommended the Chapter 10 request be disapproved. The brigade commander recommended approval with an under other than honorable conditions discharge.

**(5) Separation Decision Date / Characterization:** 1 May 2013 / Under Other Than Honorable Conditions / The separation authority directed the applicant be reduced to the lowest enlisted pay grade.

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

**a. Date / Period of Enlistment:** 8 October 2008 / 3 years, 21 weeks / 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:** 26 / HS Graduate / 81

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 11C20, Indirect Fire Infantry / 4 years, 7 months

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

**e. Overseas Service / Combat Service:** Germany, SWA / Afghanistan (1 December 2009 – 1 November 2010)

**f. Awards and Decorations:** ACM-CS, AAM-2, AGCM, NDSM, GWOTSM, NCOPDR, ASR, OSR-2, NATOMDL, CIB

**g. Performance Ratings:** NIF

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

Two Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 5 March 2013; and  
From PDY to AWOL, effective 19 March 2013.

Memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial, Pursuant to AR 635-200, Chapter 10, 1 May 2013, reflects the applicant requested for discharge. The Staff Judge Advocate (SJA) informed the separation authority the applicant was charged with one specification of Article 86, Absent Without Leave; three specifications of Article 112a, Wrongful Use of Cocaine; and one specification of Article 134, False Sample for Drug Urinalysis. The Staff Judge Advocate recommended approval.

The applicant's Enlisted Record Brief (ERB), 2 May 2013, reflects the applicant was flagged for Adverse Action (AA), effective 7 January 2013; was ineligible for reenlistment because of

Adverse Action Flag (Flag Codes A, H, L, M, U, V, and X) (9B). The Assignment Eligibility Availability code reflects the applicant was temporarily ineligible for reassignments because medical, convalescence, confinement because of trial by court martial, enrollment in Track III ASAP, or local bar to reenlistment. The applicant was reduced from E-5 to E-4 effective 14 February 2013.

i. **Lost Time / Mode of Return:** None / AWOL for 14 days, 5 to 18 March 2013. This period is not annotated on the DD form 214, block 29.

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

(1) **Applicant provided:** Department of Veterans Affairs (VA) letter, 29 August 2014, reflecting the applicant was referred for evaluation and treatment in the VA Trauma Recovery Program, an outpatient program for treatment of PTSD, in May 2014. The applicant was diagnosed with PTSD and major depression, severe. The applicant was in treatment with TRP for symptoms associated with the diagnoses.

(2) **AMHRR Listed:** None

*The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.*

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; VA letter; and two letters of support.

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 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'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 record is void of the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial; however, the applicant's AMHRR reflects the applicant did submit the request. The general (under honorable conditions) discharge received by the applicant was appropriate under the regulatory guidance.

The applicant contends PTSD affected behavior which led to the discharge. The applicant provided a medical document from the VA reflecting the applicant was diagnosed with PTSD and major depression. The applicant provided two third party letters, one from the parent, which described the applicant's change in behavior after returning from combat and supported the applicant's contention. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends members of the chain of command disagreed with the decision and did not recommend an OTH discharge. The applicant's AMHRR reflects the company and battalion commanders recommended disapproval of the request for Chapter 10, but the record does not reflect what type of action the commanders recommended. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

#### 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: PTSD, Adjustment Disorder, and Major Depression.

(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 and Major Depression. The applicant is diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between PTSD, Major Depression, avoidance, and self-medicating with substances, the AWOL and wrongful uses of cocaine are mitigated. The additional charge of attempting to pass a UA by providing a urine sample belonging to someone else is not mitigated since neither PTSD, Major Depression, or an Adjustment Disorder interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD, Adjustment Disorder, and Major Depression outweighed the applicant's medically unmitigated offense of attempting to pass a UA by providing a urine sample belonging to someone else.

b. Response to Contention(s):

(1) The applicant contends PTSD affected behavior which led to the discharge. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's PTSD, Adjustment Disorder, and Major Depression outweighed the applicant's medically unmitigated offense of attempting to pass a UA by providing a urine sample belonging to someone else.

(2) The applicant contends members of the chain of command disagreed with the decision and did not recommend an OTH discharge. The Board considered this contention but found evidence indicating the command recommended that the applicant's request for voluntary separation be denied so that the applicant's court martial could go forward.

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 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 because, despite applying liberal consideration of all the evidence before the Board, the applicant's PTSD, Adjustment Disorder, and Major Depression did not outweigh the medically unmitigated offense of attempting to pass a UA by providing a urine sample belonging to someone else. The Board also considered the applicant's contention regarding the command not recommending an UOTH characterization and found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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 Honorable characterization.

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order:** No
- b. Change Characterization to:** No Change
- c. Change Reason / SPD Code to:** No Change
- d. Change RE Code to:** No Change
- e. Change Authority to:** No Change

**Authenticating Official:**

5/21/2024

**X**

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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