

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 period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

The applicant seeks relief contending, in effect, according to new guidance from the Office of the Secretary of Defense regarding upgrades of Under Other Than Honorable discharge classifications as they relate to Post-Traumatic Stress Disorder (PTSD) or related conditions, the applicant believes they fall directly into this category. The applicant's military records and other records from the time-of-service attest to one or more symptoms which fit the criteria for PTSD diagnosis or like conditions. Furthermore, it is reasonable to assume the applicant's records indicate the existence of PTSD conditions at the time of discharge. These conditions should be considered as potential mitigating factors in the misconduct which resulted in the service being classified as being performed under other than Honorable conditions.

b. **Board Type and Decision:** In a records review conducted on 28 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 600-8-24, 3-13 / DFS / General (Under Honorable Conditions)

b. **Date of Discharge:** 4 October 2012

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 8 May 2012, the applicant was charged with:

Charge I: Violating Article 86, UCMJ, two specifications:

Specification 1: on or about 19 April 2012, without authority, fail to go at the time prescribed to their appointed place of duty.

Specification 2: on or about 3 May 2012, without authority, fail to go at the time prescribed to their appointed place of duty.

Charge II: Violating Article 90, UCMJ, four specifications:

Specification 1: Having received a lawful command from MAJ W., their superior commissioned officer, then known by CPT K., to be their superior commissioned officer, to submit a urine sample or words to that effect, did, at or near Fairview, IL, on or about 19 April 2012, willfully disobey the same by wrongfully spitting in the bottle.

Specification 2: Having received a lawful command from MAJ W., their superior commissioned officer, then known by CPT K., to be their superior commissioned officer, to submit a urine sample or words to that effect, did, at or near Fairview, IL, on or about 19 April 2012, willfully disobey the same by wrongfully filling the urine bottle with toilet water.

Specification 3: Having received a lawful command from MAJ W., their superior commissioned officer, then known by CPT K., to be their superior commissioned officer, to get into the government owned vehicle to be escorted to Fort Leonard Wood, or words to that effect, did, at or near Fairview, IL, on or about 19 April 2012, willfully disobey the same, by failing to comply.

Specification 4: Having received a lawful command from MAJ W., their superior commissioned officer, then known by CPT K., to be their superior commissioned officer, to submit a urine sample or words to that effect, did, at or near Fairview, IL, on or about 19 April 2012, willfully disobey the same by wrongfully attempting to use a balloon to fill the urine specimen bottle.

Charge III: Violating Article 112a, UCMJ: Specification: On or about 18 April 2012, and on or about 20 April 2012, wrongfully use cocaine, a Schedule 1 controlled substance.

(2) Legal Consultation Date: 12 June 2012

(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: 17 September 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Appointment: 8 December 2012 / NIF

b. Age at Appointment: / Education: 36 / bachelor degree

c. Highest Grade Achieved / MOS / Total Service: O-3 / 11A 5S Infantry / 10 years, 11 months, 3 days

d. Prior Service / Characterizations: RA, 2 November 2001 – 30 November 2004 / HD
RA, 1 December 2004 – 7 December 2005 / HD

e. Overseas Service / Combat Service: Germany, SWA / Afghanistan (20 January 2010 – 1 September 2010); Iraq (27 September 2007 – 30 June 2008)

f. Awards and Decorations: ACM-CS, BSM-2, ARCOM-3, AAM-2, PUC, AGCM, NDSM, GWOTEM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR, NATOMDL, CIB

g. Performance Ratings: 30 April 2006 – 1 May 2007 / Best Qualified
2 May 2007 – 1 September 2007 / Fully Qualified

2 September 2007 – 30 September 2010 / Best Qualified
1 October 2010 – 3 February 2011 / Best Qualified
15 December 2011 – 31 July 2012 / Other

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

General Officer Memorandum Of Reprimand, reflects between 16 and 26 September 2006, the applicant repeatedly harassed and made unwanted sexual advances towards another officer's spouse, conduct which is unbecoming an officer and gentleman; the applicant failed to go to their appointed place of duty on at least two occasions, the applicant unlawfully entered another Soldier's house and stole a bottle of alcohol and was drunk and disorderly in front of enlisted members in the unit. The applicant's conduct was in violation of the Uniform Code of Military Justice.

FG Article 15, 30 October 2006, between on or about 16 and 26 September 2006, repeatedly harass and made unwanted sexual advances towards N., another officer's spouse, conduct unbecoming of an officer and gentlemen. On or about 18 September 2006, with intent to deceive, make to CPT L., an official statement, to wit: "I have not had anything to drink" or words to that effect, which statement was totally false, and was then known by the applicant to be so false. On or about 19 September 2006, as a result of wrongful previous overindulgence in intoxicating liquor or drugs incapacitated for the proper performance of their duties. This is in violation of Article 134, UCMJ. On or about 23 September 2006, drunk and disorderly, which conduct was of a nature to bring discredit upon the armed forces. The punishment consisted of a forfeiture of \$1,500 pay per month for two months (suspended); and a memorandum of reprimand.

DD Form 2624, 4 May 2012, reflects the applicant tested positive for cocaine, during an Inspection Probable Cause (PO) urinalysis testing, conducted on 23 April 2012.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Medical progress notes, 16 October 2014, reflect a medical diagnosis.

(2) AMHRR Listed: Mental Status Evaluation, 2 October 2006, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The evaluation included a diagnosis.

Memorandum for Record, 12 October 2006, Certificate of Psychiatric Examination. The applicant was admitted to Winn Army Community Hospital for comprehensive psychiatric evaluation. The applicant had mild withdrawal symptoms on the ward. The applicant displayed no suicidal behavior on the ward and participated cooperatively in individual and group therapy. The applicant was not regarded as a danger to self or others at the time of discharge. The evaluation included a diagnosis.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; online application; separation file; medical records; VA Form 21-526ez; two letters of support; Article of the applicant's time in Baghdad.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment from the VA.

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) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Paragraph 1-23c, states a discharge under other than honorable conditions is an administrative separation from the service. A discharge certificate will not be issued. An officer will normally receive an under other than honorable conditions when he or she: Resigns for the good of the Service; is dropped from the rolls (DFR) of the Army in accordance with paragraph 5-9; (3) is involuntarily separated due to misconduct, moral or professional dereliction, or for the final revocation of a security clearance under DODI 5200.02 and AR 380-67 as a result of an act or acts of misconduct, including misconduct for which punishment was imposed; and, is discharged following conviction by civilian authorities.

(5) 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.

(6) 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.

(7) 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 "DFS" as the appropriate code to assign Officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 3-13, in lieu of trial by court-martial.

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 applicant contends suffering from PTSD. The applicant provided medical progress notes, 16 October 2014, reflecting a medical diagnosis. The AMHRR includes a Mental Status Evaluation, 2 October 2006, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The evaluation included a diagnosis. Also, a Memorandum for Record, 12 October 2006, Certificate of Psychiatric Examination, showing the applicant was admitted to Winn Army Community Hospital for comprehensive psychiatric evaluation. The applicant had mild withdrawal symptoms on the ward. The applicant displayed no suicidal behavior on the ward and participated cooperatively in individual and group therapy. The applicant was not regarded as a danger to self or others at the time of discharge. The evaluation included a diagnosis. All of the medical documents in the AMHRR were considered by the separation authority.

The third-party statements provided with the application reflect the applicant's hard work, selfless service, and dedication to their Soldiers.

The applicant contends seeking treatment from the VA. 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: PTSD, Major Depressive Disorder (MDD), Generalized Anxiety Disorder (GAD).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is an association between PTSD and comorbid substance abuse there is a nexus between the applicant's misconduct characterized by wrongful use of cocaine and PTSD, such that the

misconduct is mitigated. However, the applicant's misconduct during the attempted urine screen is not mitigated as applicant's behavior demonstrated a willful and informed intent to deceive and a willful and informed decision to disobey lawful orders. There is no evidence in the records that at the time of the attempted UA the applicant had a condition that rendered applicant unable to differentiate between right and wrong and adhere to there right. The misconduct is also not mitigated by MDD and GAD for the same reasons outlined above.

(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 PTSD, GAD, and MDD outweighed the basis for applicant's separation – tampering with and failing to submit a urine sample from the applicant, and disobeying a lawful order.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board considered this contention and determined the applicant's PTSD does not excuse the applicant's remaining misconduct of tampering with and failing to submit a urine sample from the applicant and disobeying a lawful order. Due to the severity of the remaining misconduct the board determined the discharge is proper and equitable.

(2) The applicant contends seeking treatment from the VA. 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.

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, GAD, and MDD did not excuse or mitigate the offenses of tampering with and failing to submit a urine sample from the applicant and disobeying a lawful order. 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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001238

- 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:

8/31/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs