

1. Applicant's Name: [REDACTED]

- 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 under other than honorable conditions. The applicant requests an upgrade honorable.

The applicant seeks relief contending, in effect, being young and experiencing a traumatic event. One night in the barracks, the applicant was raped by a Soldier in their platoon. Upon reporting this to the team leader, SGT J., the applicant was advised by them to not report the rape to anyone else because it would be too hard to prove, and recommended the applicant see the chaplain. The applicant believed the Army turned its back on them, which sent the applicant on a downward spiral of drugs and depression. It ultimately cumulated in them going AWOL and running away from their problems. After realizing what they did was wrong the applicant turned them self in. Since being released, the applicant has developed personally. The applicant went back to school and launched their own company. The applicant's most significant errors during their time in the Army have shaped who they are now. The applicant cannot go back in time and undo what caused them to be discharged but an upgrade would represent the person they have become.

b. **Board Type and Decision:** In a records review conducted on 14 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's MST outweighing the applicant's AWOL, missing movement, and cocaine use basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and a change to the reentry eligibility (RE) code to 1.

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:** Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 28 October 2008

c. **Separation Facts:**

(1) **Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge:** As announced by Special Court-Martial Order Number 1, 11 January 2008, on 31 October 2007, the applicant was found guilty of the following:

Charge I, in violation of Article 85: Specification: On or about 1 June 2007, absent oneself from their unit and did remain so absent in desertion until on or about 13 August 2007. Plea: Guilty; Finding: Guilty.

Charge II, in violation of Article 87: Specification: On or about 1 June 2007, through design miss movement of which they were required in the course of duty to move. Plea: Guilty; Finding: Guilty.

Charge III, in violation of Article 112: Specification: Between on or about, 7 April 2007, and on or about, 10 April 2007, wrongfully use cocaine. Plea: Guilty; Finding: Guilty.

(2) Adjudged Sentence: Reduction to E-1; to be confined for four months, and to be discharged from the service with a Bad Conduct discharge.

(3) Date / Sentence Approved: 11 January 2008 / Only so much of the sentence, confinement for 70 days, and a bad conduct discharge was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed. The applicant was credited with 7 days of confinement towards the sentence to confinement.

(4) Appellate Reviews: The Record of Trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: 16 July 2008

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 14 April 2005 / 4 years

b. **Age at Enlistment / Education / GT Score:** 18 / GED / 100

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 25Q10, Multichannel Transmission Systems Operator-Maintainer / 2 years, 4 months, 4 days

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

e. **Overseas Service / Combat Service:** Korea / None

f. **Awards and Decorations:** NDSM, GWOTSM, KDSM, ASR, OSR

g. **Performance Ratings:** NA

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

CID Report of Investigation - Initial Final, 20 April 2007, reflects an investigation established insufficient evidence to prove or disprove the accused committed the offense of burglary, indecent assault; and maltreatment of subordinates as alleged by the applicant. When the accused entered the applicant's bedroom and touched the applicant without their consent. Interviews and physical evidence could not corroborate the applicant's report. However, there was no evidence to diminish the credibility of the applicant's report.

i. **Lost Time / Mode of Return:** 73 days (AWOL, 1 June 2007 – 13 August 2007) / NIF

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(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; Order 316-0666; Special Court Martial Order.

6. POST SERVICE ACCOMPLISHMENTS: The applicant went back to school and launched their own company.

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), dated 25 September 2019, 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

(4) 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.

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as

announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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 Resource Record (AMHRR) indicates the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends youth and immaturity 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 being raped by a Soldier. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR includes a CID Report of Investigation - Initial Final, 20 April 2007, reflecting an investigation established insufficient evidence to prove or disprove the accused committed the offense of burglary, indecent assault; and maltreatment of subordinates as alleged by the applicant. When the accused entered the applicant's bedroom and touched the applicant without their consent. Interviews and physical evidence could not corroborate the applicant's report. However, there was no evidence to diminish the credibility of the applicant's report.

The applicant contends the Army turned their back on them, which sent the applicant on a downward spiral of drugs and depression and ultimately cumulated in them going AWOL and running away from their problems. 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's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends going back to school and launching their own company. 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, MST.

(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 the active-duty medical record supports the applicant's asserted MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of a mitigating experience. The applicant was diagnosed in service with an Adjustment Disorder, and the active-duty medical record supports the applicant's asserted MST. Given the nexus between being a victim of MST, avoidance, and self-medicating with substances, the AWOL, missing movement, and use of cocaine that led to the applicant's separation are mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's MST outweighed the AWOL, missing movement, and cocaine use basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's MST outweighing the applicant's AWOL, missing movement, and cocaine use basis for separation.

(2) The applicant contends being raped by a Soldier. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's MST outweighing the applicant's AWOL, missing movement, and cocaine use basis for separation.

(3) The applicant contends the Army turned their back on them, which sent the applicant on a downward spiral of drugs and depression. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being

granted based on the applicant's MST outweighing the applicant's AWOL, missing movement, and cocaine use basis for separation.

(4) The applicant contends going back to school and launching their own company. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's MST outweighing the applicant's AWOL, missing movement, and cocaine use basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's MST outweighing the applicant's AWOL, missing movement, and cocaine use basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and a change to the reentry eligibility (RE) code to 1.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's MST outweighed the applicant's misconduct of AWOL, missing movement, and cocaine use. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

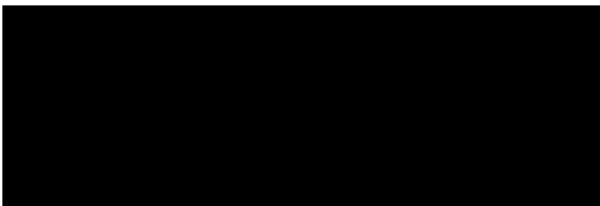
(3) The Board voted to change the RE code to 1.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: RE-1
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:

5/2/2024



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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001246

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury

UNC – Uncharacterized
Discharge

UOTHC – Under Other Than
Honorable Conditions

VA – Department of Veterans
Affairs