

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, being addicted to pain medication because of injuries received while on active duty, which resulted in the drug charges and ultimately led to the discharge from active duty. The applicant was not offered any type of rehabilitation treatment and was discharged to avoid court-martial proceedings. The medical treatment the applicant did receive caused the applicant's addiction to pain medication. Drugs were the only pain management treatment the applicant was offered. The applicant had an excellent service record until the drug issues. The applicant served in combat operations in Desert Storm, Operation Enduring Freedom, and Operation Iraqi Freedom, and received various awards and decorations. The applicant found it extremely hard to find gainful employment and has not had much of a quality of life since the discharge. The applicant is suffering from post-traumatic stress disorder from the most recent enlistment and, as a result, is unable to seek treatment at the local Department of Veterans Affairs (VA) Hospital because of the discharge status. The applicant further details the contentions in the allied applications.

b. **Board Type and Decision:** In a records review conducted on 16 January 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 August 2008

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 16 July 2008, the applicant was charged with:

Charge I: Violating Article 92, UCMJ:

Specification 1: Did in Iraq between 15 April and 1 May 2008, violate a lawful general order by wrongfully introducing approximately 51 tablets of Benzhexol (Benzex 5) a prescription medication onto an installation used by the armed forces or under control of the armed forces.

Specification 2: Did in Iraq on 1 May 2008, violate a lawful general order by wrongfully using Benzhexol without a prescription.

Charge II: Violating Article 112a, UCMJ:

Specification 1: Did in Iraq, between 15 March and 1 April 2008 wrongfully distribute some amount of Diazepam (Valiapam) while receiving special pay.

Specification 2: Did in Iraq, between 15 April and 1 May 2008, wrongfully introduce approximately 381 tablets of Diazepam (Valiapam) onto an installation used by the armed forces or under control of the armed forces while receiving special pay.

Specification 3: Did in Iraq, between 15 April and 1 May 2008, wrongfully introduce approximately 41 tablets of Alprazolam (Xanax) onto an installation used by the armed forces or under control of the armed forces.

(2) Legal Consultation Date: 18 July 2008

(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: 24 July 2008 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 November 2006 / 3 years

b. Age at Enlistment / Education / GT Score: 36 / HS Graduate / 96

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B20, Infantryman / 13 years, 8 months, 8 days

d. Prior Service / Characterizations: RA, 7 July 1988 – 6 July 1991 / HD
USARCG, 7 July 1991 – 7 August 1991 / NA
ARNG, 8 August 1991 – 7 August 1998 / HD
USAR (NIF)

e. Overseas Service / Combat Service: SWA / Iraq (20 September 2007 – 28 July 2008), Kuwait – Saudi Arabia (16 August 1990 – 27 March 1991)

f. Awards and Decorations: ICM, ARCOM, AGCM, NDSM-2, SWASM-2BSS, GWOTSM, NCOPDR, ASR, OSR-2, CIB, EIB, KU-LIB-MDL-SA, KU-LIB-MDL-KU

g. Performance Ratings: 1 January 2008 – 24 July 2008 / Marginal

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

Developmental Counseling Form, 1 August 2008, for a debt of \$14,216.80 owed to the government.

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

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

(1) **Applicant provided:** Department of Veterans Affairs medical records from 25 September 2008 to 12 August 2015, reflecting the applicant, among other conditions was diagnosed with:

PTSD;
chronic back, knees, and hips pain;
knee injury;
substance abuse;
altered mental status;
cocaine dependence (provisional);
alcohol dependence;
cannabis abuse
opioid use disorder provisional;
depressive disorder;
polysubstance dependent;
derangement of meniscus;
limited social support, underemployed;
adjustment disorder with mixed anxiety and depressed mood;
homelessness.
Head injuries;
shoulder fractures
hypnotic or anxiolytic dependence.

Department of Veterans Affairs letter, 10 September 2021, reflecting the applicant was diagnosed with PTSD and traumatic brain injury (TBI) and the conditions were well documented in the VA medical center electronic medical record. Based on the psychiatrist's view, it is at least likely than not the applicant's behavior which led to the discharge was secondary to the PTSD and TBI.

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** Four DD Forms 214; two DD Forms 293; self-authored statement; military awards' certificates and orders; Enlisted Record Brief; Army Review Boards, Case Management Division letter; VA medical records; VA letter.

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 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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends PTSD and an addiction to pain medication affected behavior, which led to the discharge. The applicant provided VA medical records indicating, among other conditions, diagnoses: TBI; PTSD; chronic back, knees, and hips pain; knee injury; polysubstance abuse; altered mental status; cocaine dependence; alcohol dependence; cannabis abuse; opioid use disorder; depressive disorder; polysubstance dependence; adjustment disorder with mixed anxiety and depressed mood; head injuries; and hypnotic or anxiolytic dependence. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends the command did not offer any rehabilitation. 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's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including combat tours.

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 of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] 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: Post Traumatic Stress Disorder, Depressive Disorder, and Traumatic Brain Injury.

(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,

and 10 percent SC for TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge?

Partially. The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD and TBI partially mitigate the applicant's discharge. As there is an association between PTSD and comorbid substance abuse, there is a nexus between the applicant's diagnoses and the wrongful use of Benzhexol. However, the applicant's offenses of wrongful introduction of drugs onto a military installation and distribution of drugs are not mitigated by the disorder as the disorder did not impact the ability to differentiate between right and wrong and adhere to the right. The misconduct would also not be mitigated by Depressive Disorder for the same reasons. The applicant's TBI also does not mitigate the misconduct as there is no indication in the records the applicant's TBI was of severity to impair, behavior, cognition, or ability to differentiate between right and wrong and adhere to the right.

(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 Post Traumatic Stress Disorder, Depressive Disorder, and Traumatic Brain Injury outweighed the medically unmitigated offenses of introducing and distributing illegal substances.

b. Response to Contention(s):

(1) The applicant contends PTSD and an addiction to pain medication affected behavior, which led to the discharge. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Depressive Disorder, and Traumatic Brain Injury outweighed the medically unmitigated offenses of introducing and distributing illegal substances. A review of the applicant's records shows the applicant was initially prescribed opioid medication by the VA to treat chronic pain related to a 1995 accident; however, the records also show the medication was discontinued by recommendation of the neurology and pain management clinics. Furthermore, the applicant was offered and did engage in physical therapy but elected to discontinue as it interfered with the applicant's work schedule and was later prescribed Tylenol with codeine along with other non-narcotic medications due to continued complaints of chronic pain. Finally, records show the applicant self-asserted that the addiction developed in 2009 during a PTSD DBQ, which is after the applicant committed the instances of misconduct.

(2) The applicant contends the command did not offer any rehabilitation. The Board considered this contention but determined that that the applicant's discharge was appropriate in light of the applicant's medically unmitigated offenses of wrongful introduction of illegal substances onto a military installation and the wrongful distribution of illegal substances.

(3) The applicant contends good service, including combat tours. The Board considered the applicant's 13 years of service, including multiple combat tours and numerous awards received, but determined that the applicant's record does not outweigh the medically unmitigated offenses of introducing and distributing illegal substances.

(4) 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.

(5) The applicant contends an upgrade of the discharge would allow veterans benefits. 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. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 Post Traumatic Stress Disorder, Depressive Disorder, and Traumatic Brain Injury did not outweigh the medically unmitigated offenses of wrongful introduction of illegal substances onto a military installation and the wrongful distribution of illegal substances. The Board also considered the applicant's contentions regarding not receiving rehabilitative opportunities and good service but 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 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, 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:

2/26/2024

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