

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

The applicant seeks relief contending, in effect, the basis for the discharge for use of an illegal substance after testing positive on a urinalysis while taking a prescription has been shown to induce false positives for the stated illegal substance. The applicant was never properly notified, and not informed of the urinalysis results until four months later, from a third party. Despite when informed, the discharge packet had already been approved. The applicant is an asset to the Army and refused to be discharged. The supporting facts including the character as an American Soldier should be considered. The applicant used every available resource, including JAG, the Inspector General, and the office of the local Senator. However, no one appeared to be interested in assisting because the matter had already been mishandled and approved by a Commanding General by the time the applicant became aware of it. Before being discharged, the applicant was never provided the right to due process or the option to appeal or plead the case. The applicant is trying to get some attention for the case. The applicant is delighted and eager to demonstrate the worthiness and to represent the Army favorably. The applicant is willing to travel to Washington, D.C. to demonstrate in person of deserving to retain the title of a Soldier. The applicant, as an 88M, stood out among Soldiers in the unit and as a Cadet in ROTC, attaining the E-4 rank 10 months after completing basic training and AIT, earning an AAM for serving as platoon leader and being the only Soldier to obtain a gold badge in German Military Proficiency. The applicant further details the contentions in an allied self-authored statement provided with the application.

b. **Board Type and Decision:** In a records review conducted on 5 December 2023, and by a 5-0 vote, the Board determined that the discharge is inequitable based on the applicant's length of service and no other misconduct outweighing the applicant's illegal drug use basis for separation. Accordingly, 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 135-178, Chapter 11-1a and the narrative reason for separation to Misconduct (Minor Disciplinary Infractions).

*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:** Use of Illegal Drugs / AR 135-178, Chapter 12-1d / NA / NA / General (Under Honorable Conditions)

b. **Date of Discharge:** 12 November 2014

c. **Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 23 July 2013

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant abused illegal drugs.

**(3) Recommended Characterization:** Under Other Than Honorable Conditions

**(4) Legal Consultation Date:** The applicant failed to respond within 30 days of the date of receiving the notification of separation proceedings, which constituted a waiver of the rights specified in paragraphs 5a through 5f of the notification.

**(5) Administrative Separation Board:** Waived by failure to respond.

**(6) Separation Decision Date / Characterization:** 25 October 2013 / Under Other Than Honorable Conditions / In an undated memorandum for record, the GCMCA, after carefully reviewing the matters presented in the request for reconsideration, denied the request for reconsideration.

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 1 June 2010 / 6 years (TPU) with an 8-year MSO

**b. Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 129

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 88M10, Motor Transport Operator / 4 years, 5 months, 12 days

**d. Prior Service / Characterizations:** USAR, 1 June 2010 – 15 August 2010 / NA  
 IADT, 15 August 2010 – 17 December 2010 / HD  
 USAR, 18 December 2010 – 25 September 2012 / NA  
 ROTC, 26 September 2012 – 14 August 2014 / UNC  
 (Concurrent Service)

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

**f. Awards and Decorations:** NDSM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of Results by Collect Date, 22 May 2013, reflects the applicant tested positive for COC 384 (cocaine), during an Inspection Random (IR) urinalysis testing, conducted on 4 May 2013.

Affidavit of Service by Mail reflects the notification of separation proceedings memorandum was mailed to the applicant's last known address on 23 July 2013.

Orders 14-0801, 19 August 2014, reflect the applicant was discharged from the U.S. Army ROTC, effective 6 August 2014, with an uncharacterized service.

Orders 15-225-00044, 12 August 2016, reflect the Orders separating the applicant with an under other than honorable conditions character of service, was amended to reflect a general

(under honorable conditions) character of service as directed by the ARBA docket number AR20150007949 on 12 November 2014.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** Online application; five self-authored statements; prescription; two photos depicting applicant; three third-party statements; Request and Authorization for TDY Travel of DOD Personnel; AAM certificate; and German certificate.

**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 135-178 prescribes the policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) Paragraph 2-9a prescribes an honorable characterization 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.

(2) Paragraph 2-9b prescribes if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as general (under honorable conditions). Characterization of service as general (under honorable conditions) is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

(3) Chapter 11 (previously Chapter 12) establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(4) Paragraph 11-1d prescribes illegal drug use is serious misconduct. Discharge action normally will be based upon commission of a serious offense. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug offense may be combined with one or more disciplinary infractions or incidents or other misconduct and processed for discharge.

(5) Paragraph 11-8 states an under other than honorable conditions discharge is normally considered appropriate; however, a general (under honorable conditions) or an honorable discharge may be granted.

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

The applicant contends the basis for the discharge was for use of an illegal substance based on testing positive on a urinalysis while taking a prescription which has been shown to induce false positives. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends not being properly notified of the imminent discharge and of the urinalysis results until four months later from a third party, and not being provided the right to due process or the option to appeal or plead the case. The record shows the 143rd Sustainment Command attempted to contact the applicant of the separation proceedings by a notification memorandum and mailing the discharge packet to the applicant's last known address via certified mail on 23 July 2013, which met the notification requirement of AR 135-178. The attempt to have the Soldier respond or comply with orders or correspondence resulted in the Soldier's refusal to comply with correspondence and the notice sent by certified mail was refused, unclaimed, or otherwise undeliverable, and the reasonable attempts to contact the Soldier had failed. AR 135-178, paragraph 3-5a(8) states failure to respond within 30 calendar days from the date of receipt of the notification will constitute a waiver of the rights.

The applicant contends no one appeared to be interested in assisting the applicant because the separation proceedings had already been mishandled and approved by the Commanding General prior to the applicant becoming aware. The applicant's AMHRR indicates the Senior Defense Counsel assisted the applicant with a request for reconsideration of the 25 October 2013 separation Orders based on the unit's failure to abide by AR 135-178, paragraph 3-5b, in that a reasonable effort should have been made to provide the notice to the applicant through personal contact by a representative of the command.

The applicant contends the character as an American Soldier should be considered. The third-party statements provided with the application lauded the applicant's character and performance by showing great leadership capabilities in every situation and tasks and accomplishing them without fail and earning the respect of the command and peers.

The applicant contends as an 88M, the applicant stood out among the Soldiers in the unit and as a Cadet in ROTC and attained the E-4 rank 10 months after completing basic training and AIT, including earning an AAM for serving as a platoon leader and being the only Soldier to obtain a gold badge in German Military Proficiency.

**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? **No.** The Board's Medical Advisor, a voting member, reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no

documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

- (2) Did the condition exist or experience occur during military service? **N/A.**
- (3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.**
- (4) Does the condition or experience outweigh the discharge? **N/A.**

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

(1) The applicant contends the basis for the discharge was for use of an illegal substance based on testing positive on a urinalysis while taking a prescription which has been shown to induce false positives. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the length of service and no other misconduct outweighing fully outweighing the applicant's illegal drug use basis for separation.

(2) The applicant contends not being properly notified of the imminent discharge and of the urinalysis results until four months later from a third party, and not being provided the right to due process or the option to appeal or plead the case. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the length of service and no other misconduct outweighing fully outweighing the applicant's illegal drug use basis for separation.

(3) The applicant contends no one appeared to be interested in assisting the applicant because the separation proceedings had already been mishandled and approved by the Commanding General prior to the applicant becoming aware. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the length of service and no other misconduct outweighing fully outweighing the applicant's illegal drug use basis for separation.

(4) The applicant contends the character as an American Soldier should be considered. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the length of service and no other misconduct outweighing fully outweighing the applicant's illegal drug use basis for separation.

(5) The applicant contends as an 88M, the applicant stood out among the Soldiers in the unit and as a Cadet in ROTC and attained the E-4 rank 10 months after completing basic training and AIT, including earning an AAM for serving as a platoon leader and being the only Soldier to obtain a gold badge in German Military Proficiency. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the length of service and no other misconduct outweighing fully outweighing the applicant's illegal drug use basis for separation.

**c.** The Board determined that the discharge is inequitable based on the applicant's length of service and no other misconduct outweighing the applicant's illegal drug use basis for separation. Accordingly, 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 135-178, Chapter 11-1a and the narrative reason for separation to Misconduct (Minor Disciplinary Infractions). However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof

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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 to change the applicant's characterization of service to Honorable because the applicant's length of service and no other misconduct outweigh the applicant's illegal drug use basis for separation. Thus, the prior characterization is no longer appropriate.

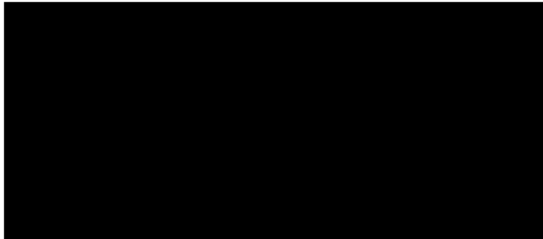
(2) The Board voted to change the reason for discharge to Misconduct (Minor Disciplinary Infractions), there were no SPD Codes listed on the applicant's discharge paperwork due to being in the Army Reserves, no upgrade actions are required for this item.

(3) The RE code will not change, as there were no RE-codes listed on the applicant's discharge paperwork due to being in the Army Reserves, no upgrade actions are required for this item.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New Separation Order: Yes**
- b. Change Characterization to: Honorable**
- c. Change Authority to: AR 135-178, Paragraph 11-1a**

**Authenticating Official:**



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