

1. **Applicant's Name:** [REDACTED]
  - a. **Application Date:** 26 April 2021
  - b. **Date Received:** 26 April 2021
  - c. **Counsel:** [REDACTED]

## 2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

**a. Applicant's Requests and Issues:** The current characterization of service for the period under review is honorable. The applicant, through counsel, requests a narrative reason change to "Secretarial Authority" and a reentry eligibility (RE) code change to RE-1.

The applicant seeks relief contending, in effect, three and a half years of honorable service with numerous awards and honors before the discharge. The applicant was a model Soldier with unlimited potential. The applicant was a leader from the beginning of basic training. The applicant was charged with three violations of Article 112a for testing positive for opiates, cocaine, and morphine. The discharge took place almost three years ago, and it is an injustice to continue to characterize and punish the applicant with the discharge. The applicant received full punishment, both by society and by the Army through the separation and has repaid the debts to society by growing as a person after the discharge, even with the post-traumatic stress disorder (PTSD) diagnosis. The applicant is still living with the consequences of this the discharge and suffering from PTSD. The applicant has moved on in life and has been pursuing a college degree in psychology with a minor in neuroscience. The applicant is pre-med, and desires to become a neurologist to help treat others with PTSD, traumatic brain injury (TBI), and addictions. The applicant became a model citizen and has had no criminal record, no involvement with drugs, no type of alcohol abuse, or any type of conviction. The applicant attends Narcotics Anonymous meetings, achieved a two-year sobriety coin in December 2014, and has been sober for over two and a half years.

The applicant has goals to further the career with more growth opportunities, which are very limited because of the discharge. The applicant loves the country and the Army and desires to remain close to them and to be counted among the honorably discharged members, which the applicant considers to be family. There is no prejudice to the government allowing the applicant to be reevaluated. In the interest of justice, it seems such a request for reconsideration is appropriate and warranted. On 3 September 2014, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records regarding discharge upgrade requests by veterans claiming PTSD. This specifically applies to the applicant in the present case and the applicant has provided evidence of support. The applicant requests a narrative reason change to "Secretarial Authority" and an RE code change to RE-1.

**b. Board Type and Decision:** In a records review conducted on 30 November 2023, and by a 5-0 vote, the Board found the characterization of service and narrative reason for separation proper and equitable. However, the Board determined the applicant's re-entry code warranted a change due to the BH conditions mitigating the basis of separation. Accordingly, the RE-code was upgraded to 3.

*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:** Drug Rehabilitation Failure / AR 635-200, Chapter 9 / JPC / RE-4 / Honorable

b. **Date of Discharge:** 24 July 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 28 June 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was deemed an Army Substance Abuse Program failure after testing positive for the illegal use of heroin, cocaine, and morphine. On 2 March 2012, the applicant drove under the influence of alcohol.

(3) **Recommended Characterization:** General (Under Honorable Conditions)

(4) **Legal Consultation Date:** 29 June 2012

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 6 July 2012 / General (Under Honorable Conditions)

### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 17 April 2008 / 4 years, 17 weeks

b. **Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 129

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 4 years, 3 months, 8 days

d. **Prior Service / Characterizations:** NA

e. **Overseas Service / Combat Service:** SWA / Iraq (14 December 2009 – 13 December 2010)

f. **Awards and Decorations:** AGCM, NDSM, ICM-CS, ASR, OSR / The applicant's AMHRR reflects award of the ARCOM and MUC; however, the awards are not reflected on the DD Form 214.

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Army Substance Abuse Program (ASAP) Enrollment form, 31 March 2011, reflects the applicant self-referred in the ASAP.

Electronic Copy of DD Form 2624, 7 February 2012, reflects the applicant tested positive for 6AM 747 (heroin), COC 1912 (cocaine) and MOR>LOL (morphine), during an Inspection Random (IR) urinalysis testing, conducted on 20 January 2012.

Georgia Department of Driver Services Incident Data, 2 March 2012, reflects the applicant was arrested for driving under the influence (DUI). The applicant refused submit to a designated state administered chemical test.

Field Grade Article 15, 3 April 2012, for wrongfully using morphine, heroin, and cocaine (between 15 and 20 January 2012). The punishment consisted of a reduction to E-1; forfeiture of \$745 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Four Developmental Counseling Forms, for but not limited to:

Driving under the influence, refusing the breathalyzer, and driving with no headlights;  
Failing to report;  
Testing positive on the urinalysis for cocaine, heroin, and opium; and  
Being an alcohol or other drug abuse rehabilitation failure.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Medical Assessment, 9 February 2012, reflects the examining medical physician noted in the comments section: Medical prescription for sleep, anxiety, and pain.

Memorandum, subject: Summary of Army Substance Abuse Program Rehabilitation Efforts for (Applicant), 10 February 2012, reflects the applicant was a self-referral to the ASAP because of being unable to control opioid use. The applicant's rehabilitation team met on 8 February 2012, and determined the applicant failed to comply with treatment plans and goals and because of the dependence diagnosis, the applicant had a diminished potential for continued military service. Further rehabilitation efforts in a military environment were not justified considering the applicant's lack of progress. The rehabilitation team declared the applicant a rehabilitation failure and recommended discharge from military service should be effected.

Report of Medical History, 22 February 2012, the examining medical physician noted in the comments section: Treated at Army Substance Abuse Program, currently; and self-admitted to Behavioral Health.

Report of Mental Status Evaluation, 7 March 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mild TBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Substance Abuse Disorder.

Rebuttal documents, including a letter from the applicant's civilian defense counsel, presented at the time of the separation proceedings, reflect the drug use began after the applicant became addicted to pain medication, which was prescribed for neck and back injuries sustained during deployment. The attorney contended the drug test was improper. The applicant sought assistance through civilian doctors for the injuries, out-of-pocket, and self-enrolled in ASAP.

Third party statements attested to the applicant's issues with the injuries and drugs, as well as the applicant's good service.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214 (Copies 2 and 4); DD Form 293; Legal Brief; and electronic mail message.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant paid the debts to society by growing as a person, pursuing a degree in psychology with a minor in neurosciences; is pre-med with a desire to become a neurologist; a model citizen, with no criminal record, no involvement with drugs, no alcohol abuse, or any type of conviction; and Narcotics Anonymous awarded the applicant the two-year sobriety coin.

**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 600-85 (The Army Substance Abuse Program Headquarters Department) defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes a Soldier's self-referral to BH for SUD treatment.

**e.** 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)** Chapter 9 outlines the procedures for discharging individuals because of alcohol or other drug abuse. A member who has been referred to the Army Substance Abuse Program (ASAP) for alcohol or drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

**(4)** Paragraph 9-4 stipulates the service of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600-85.

(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.

f. 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 "JPC" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 9, for drug rehabilitation failure.

g. 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

RE-4 Applies to: Person separated from last period of service with a nonwaivable 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 a narrative reason change and a reentry eligibility code change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The evidence of Army Military Human Resource Record (AMHRR) indicates on 8 February 2012, the unit commander in consultation with the Clinical Director/Army Substance Abuse Program (ASAP), declared the applicant a rehabilitation failure. The applicant did not have the potential for continued military service because the applicant failed to comply with treatment plans and goals and because of the dependence diagnosis.

The applicant's separation packet includes a DA Form 8003 (Army Substance Abuse Program (ASAP) Enrollment form, DD Form 2807-1 (Report of Medical History), and Summary of Army Substance Abuse Program Rehabilitation Efforts memorandum. The government introduced these documents into the discharge process, revealing the applicant had self-referred to the Army Substance Abuse Program (ASAP) for substance abuse. The documents are limited use

information as defined in AR 600-85. Use of this information mandates award of an honorable discharge. The current characterization of service for the period under review is honorable.

The applicant contends the narrative reason for the discharge needs changed to change to "Secretarial Authority." The applicant was separated under the provisions of Chapter 9, AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "drug rehabilitation failure," and the separation code is "JPC." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant requests a reentry eligibility (RE) code change to "RE-1." Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

Applicant has received full punishment, both by society and by the U.S. Army through the applicant's separation. The applicant has repaid the applicant's debts to society by growing as a person after the discharge, even with the applicant's PTSD diagnosis. To this date Applicant is still living with the consequences of this unfortunate situation as the applicant is still suffering from PTSD. The applicant provided the applicant's statement to support the contention the discharge resulted from PTSD. The applicant's AMHRR contains documentation which supports a diagnosis of in-service substance abuse disorder and prescribed medication for sleep, anxiety, and pain. The record shows the applicant underwent a mental status evaluation (MSE) on 7 March 2012, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant was screened for PTSD and mild TBI with negative results. The applicant provided rebuttal documents, at the time of separation, explaining the applicant had medical issues, including addiction, but provided good military service. The MSE and rebuttal matters were considered by the separation authority.

The applicant contends prior to this incident, Applicant served Honorably for over 3 ½ years and during that time the applicant had received numerous awards and honors.

The applicant contends paying the debts to society by growing as a person; pursuing a degree in psychology with a minor in neuroscience; is pre-med with a desire to become a neurologist; is a model citizen, with no criminal record, no involvement with drugs, no alcohol abuse, or any type of convictions; and Narcotics Anonymous awarded the applicant the two-year sobriety coin. 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 determined that the applicant received an upgrade to Honorable by a previous Board that now warrants reconsideration of the applicant's narrative reason, SPD and RE Code. The Board found, based on the Board Medical Advisor's opine and the evidentiary record, that the applicant's Adjustment Disorder, PTSD, and TBI may potentially mitigate the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined that the evidentiary record indicated that the applicant's Adjustment Disorder, PTSD and TBI existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board applied liberal consideration and determined that the applicant's PTSD and TBI mitigate the Drug Rehabilitation Failure and DUI offenses as there is a nexus between these conditions and self-medicating with substances.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, the Board determined that the applicant's PTSD and TBI outweighed the medically mitigated basis of separation misconduct. The applicant holds an Honorable characterization of service, awarded by a previous board. The applicant did fail rehabilitation by using substances while enrolled in a program. The Board found the RE code inequitable and determined an upgrade is warranted to RE-3.

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

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined the applicant's narrative reason for discharge is appropriate. The applicant used drugs while enrolled in ASAP, constituting a valid and substantiated drug rehabilitation failure. Therefore, no further relief is warranted.

(2) The applicant requests a reentry eligibility (RE) code change. The Board considered this contention and found it valid due to the diagnosed BH conditions and basis of separation (drug rehabilitation failure). The RE code was changed to RE-3, by which the applicant may obtain a waiver to reenter military service.

(3) The applicant contends receiving full punishment, both by society and by the U.S. Army through the applicant's separation. The applicant has repaid debts to society by growing as a person after the discharge, even with a PTSD diagnosis. To this date, the applicant is still living with the consequences of this unfortunate situation and is still suffering from PTSD. The Board considered this contention, commended the noted personal growth, and determined the current characterization of service is Honorable. Therefore, no further relief is warranted.

(4) The applicant contends serving Honorably for over 3 ½ years and during that time receiving numerous awards and honors. The applicant further contends good service, including a combat tour. The Board considered the totality of the evidentiary record and service accomplishments. The Board determined that an RE-code change is warranted based on the applicant's BH diagnoses.

(5) The applicant contends the discharge took place almost 3 years ago and it is an injustice to continue to characterize and punish the applicant for this discharge. The Board considered the totality of the evidentiary record and determined that the applicant holds an Honorable characterization of service. The narrative reason is proper and equitable as the applicant did in fact fail rehabilitation by using substances while enrolled. The Board



determined that a RE-code change to "RE-3" is warranted based on the applicant's BH conditions.

(6) The applicant contends paying the debts to society by growing as a person, pursuing a degree in psychology with a minor in neurosciences; is premed with a desire to become a neurologist; a model citizen, with no criminal record, no involvement with drugs, no alcohol abuse, or any type of convictions; and Narcotics Anonymous awarded the applicant the two-year sobriety coin. The Board considered the totality of the evidentiary record and noted the post-service accomplishments during deliberation.

c. The Board found the characterization of service and narrative reason for separation proper and equitable. The Board determined the applicant's re-entry code warranted a change due to applicant's BH conditions. Accordingly, the RE-code changed to 3. The applicant may request a personal appearance hearing to address further issues before a Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board determined the applicant's characterization of service is proper and equitable as the applicant has an Honorable discharge and no further relief is available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the applicant did in fact fail rehabilitation by using substances while enrolled in a program. Therefore, the narrative reason/SPD are proper and equitable.

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

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: RE-3
- e. Change Authority to: No Change

**Authenticating Official:**

4/29/2024



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

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001493**

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