

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 and a change to the narrative reason.

The applicant seeks relief contending, in effect, before being discharged, the applicant spent sixteen years and seven months as an enlisted Soldier who had never been in any trouble or failed a unit urinalysis before 9 September 2014. On 9 September 2014, the applicant was notified of a failed urinalysis which was conducted on 19 August 2014, the test showed positive for cocaine which was shocking because the applicant had never used any type of illegal drugs in their military career. The command enrolled the applicant in the Army Substance Abuse Program (ASAP) in which the applicant was never diagnosed with a dependency for drugs and shortly thereafter was reduced from Staff Sergeant to Sergeant. Around the time of the failed urinalysis the applicant had been on medication prescribed by a doctor on base (Oxycodone, Celebrex and Ibuprofen) for pain in the back and knee. The applicant stopped taking the medication after the failed test because they did not know if this was causing a positive urinalysis. The applicant was given multiple urinalysis tests and had not failed any other urinalysis. The applicant attended an administrative separation board on 25 March 2015 at which the applicant was given a general (under honorable discharge) which was a shock because of their clean military record and never being in trouble. The applicant states being in the Army afforded the applicant the ability to care for their 14 year old child who is Autistic and has epileptic seizures and the costly medication the child takes for this was greatly appreciated. The children mean the world to the applicant and is truly grateful for the care and costly services the Army provided. The applicant would not jeopardize it for the child or the applicant's career. The applicant gave sixteen plus years of their life to the military and to have been discharged for something the applicant did not do has been a heavy burden on the applicant's life. The applicant cannot just let the time they gave to this country go to waste. The applicant served three deployments to Iraq and served the country to the best of their ability. The applicant is submitting character reference letters, medications list and documents from the Federal Drug Administration (FDA) addressing the medication (Oxycodone) the applicant took and how it could cause a false positive for cocaine. The information was not received from the FDS until after the applicant was discharged. Being out of the military has devastated the applicant and the family, and especially for something the applicant did not do. The reentry code of 4, will not allow a recruiter to issue a waiver for eligibility. Ultimately, the applicant would like to reenter the United States Army.

b. Board Type and Decision: In a records review conducted on 9 November 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Generalized Anxiety Disorder (GAD) outweighing the applicant's 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, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-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:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 24 April 2015

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 6 January 2015

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 19 August 2014, the applicant submitted to a unit urinalysis which was determined to be positive for cocaine by the Fort Meade Drug Testing Laboratory. The applicant waived their rights and rendered a sworn statement to SA B. S. M., Fort Lee CID, denying the use of cocaine. Illegal drug use is serious misconduct and adversely affect military discipline, good order, and morale.

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

(4) **Legal Consultation Date:** 15 January 2015

(5) **Administrative Separation Board:** On 15 January 2015, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than an honorable discharge.

On 4 March 2015, the applicant's conditional waiver was denied.

On 5 March 2014, the applicant was notified to appear before an administrative separation board and advised of rights

On 25 March 2015, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the allegation for a commission of a serious offense, in the notification of proposed separation was supported by the preponderance of the evidence. The board recommended the applicant's discharge with a characterization of service of general (under honorable conditions).

On 31 March 2015, the separation authority approved the findings and recommendations of the administrative separation board.

(6) **Separation Decision Date / Characterization:** 31 March 2015 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 28 December 2008 / 6 years

b. **Age at Enlistment / Education / GT Score:** 30 / some college / 96

c. **Highest Grade Achieved / MOS / Total Service:** E-6 / 92F38, Petroleum Supply Specialist / 16 years, 7 months, 24 days

d. Prior Service / Characterizations: RA, 1 September 1998 – 3 December 2001 / HD
 RA, 4 December 2001 – 7 September 2004 / HD
 RA, 8 September 2004 – 19 April 2006 / HD
 RA, 20 April 2006 – 27 December 2008 / HD

e. Overseas Service / Combat Service: Korea, SWA / Iraq (17 April 2003 – 18 May 2004;
 1 November 2005 – 26 September 2006; 12 September 2008 – 14 September 2009)

f. Awards and Decorations: ICM-4CS, ARCOM-3, AAM-7, AGCM-5, GWOTEM,
 GWOTSM, KDSM, NCOPDR-2, ASR, OSR-4

g. Performance Ratings: 1 September 2008 – 1 June 2009 / Fully Capable
 2 June 2009 – 1 June 2010 / Among The Best
 2 June 2010 – 31 March 2011 / Fully Capable
 1 April 2011 – 31 March 2014 / Among The Best
 1 April 2014 – 27 October 2014 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Electronic Copy of DD Form 2624,
 4 September 2014, reflects the applicant tested positive for COC 308, during an Inspection Unit
 (IU) urinalysis testing, conducted on 19 August 2014.

CID Report of Investigation – Initial Final (C) - 0150-2014-CID022-76702-5L6D1,
 15 September 2014, an investigation determined probable cause existed to believe the
 applicant committed the offense of Wrongful Use of Cocaine when the applicant submitted a
 urine specimen, which subsequently tested positive for Cocaine.

FG Article 15, 9 October 2014, for wrongfully using cocaine, a Schedule II controlled drug on or
 about 19 August 2014. The punishment consisted of a reduction to E-5; forfeiture of \$1,547 pay
 per month for two months (suspended).

Memorandum, 15 November 2014, reflects the applicant was counseled for the wrongful use of
 controlled substance and initiation of chapter 14 proceedings.

Report of Proceedings by Board of Officers, 25 March 2015, reflects the Board determined the
 allegation for a commission of a serious offense, in the notification of proposed separation was
 supported by the preponderance of the evidence. The board recommended the applicant's
 discharge with a characterization of service of general (under honorable conditions).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 28 October 2014, the examining medical
 physician noted in the comments section: Anxiety attacks, trouble sleeping, counseling-
 psychiatric therapy, behavioral health, and ASAP

Report of Mental Status Evaluation, 6 November 2014, 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 mTBI with negative results. The applicant was diagnosed with: Axis I: Anxiety Disorder NOS.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored statement; DD Form 214; medication profile; daily med article; United States Senate letter; ten third-party letters; ten DA Forms 2166-8; Permanent Orders 301-00009; Permanent Orders 301-00010; Permanent Orders 301-00011; Permanent Orders 301-00012; Permanent Orders 288-00004; Permanent Orders 324-07; Permanent Order 045-04; 24 certificates; eight DA Forms 638; two DA Forms 1059.

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 14 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, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

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 "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, Misconduct (Drug Abuse).

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 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 of 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 contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." 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 contends good service, including three combat tours.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends failing a unit urinalysis test; however, the applicant states they never used illegal drugs and believes the prescribed medication the applicant was taking was the reason for the failed urinalysis. The applicant provided a copy of the medication profile which reflects the applicant was prescribed oxycodone/acetaminophen and the prescription was last

filled on 18 August 2014. The applicant also provided a copy of an article from daily med which further details drug/laboratory test interactions. Letter of Support, 8 October 2014, reflects the supervisory social worker at ASAP supported and recommended the retention of the applicant. The applicant had completed the ASAP assessment and was given no diagnosis as the applicant did not meet the criteria for substance abuse or dependence. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant desires to rejoin the Military Service. 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.

The third-party statements provided with the application speak highly of the applicant. They are from the spouse and child who speak of the applicant's good character. The other statements all recognize the applicant's good conduct while serving in the Army.

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: GAD, PTSD, Unspecified Anxiety Disorder, Unspecified Depressive Disorder, and Unspecified Trauma and Stress Related Disorder.

(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 GAD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that, as there is an association between GAD and comorbid substance use, there is a nexus between the applicant's misconduct characterized by wrongful use of cocaine and his SC BH diagnosis such that the diagnosis mitigates the misuse.

(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 GAD outweighed the cocaine use basis of separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention during proceedings and agreed with the applicant. The board voted to change the applicant's narrative reason for discharge from Misconduct (Drug Abuse) to Misconduct (Minor Infractions) based on the applicant's GAD outweighing the applicant's wrongful use of cocaine.

(2) The applicant contends good service, including three combat tours. 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 GAD fully outweighing the applicant's cocaine use basis for separation.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. 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 GAD fully outweighing the applicant's cocaine use basis for separation.

(4) The applicant contends failing a unit urinalysis test; however, the applicant states they never used illegal drugs and believes the prescribed medication the applicant was taking was the reason for the failed urinalysis. 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 GAD fully outweighing the applicant's cocaine use basis for separation.

(5) The applicant desires to rejoin the Military Service. The Board considered this contention and voted to change the RE-code to a RE-3, which is a waivable code, to ensure that the applicant's BH conditions are evaluated prior to any reentry into military service. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate.

c. The Board determined the discharge is inequitable based on the applicant's Generalized Anxiety Disorder (GAD) mitigating applicant's 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 to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3. 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 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 GAD mitigated the applicant's misconduct of cocaine use. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The Board voted to change the RE code to RE-3 based on the need to have the applicant's BH conditions evaluated prior to any reentry into military service.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001620

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

1/30/2024



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

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