

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, being discharged because of a failed urinalysis test. The applicant was beginning treatment for post-traumatic stress disorder (PTSD) and learning to live with the disabilities incurred in the line of duty. When the applicant returned from combat, the applicant struggled with reintegration into civilian life. The applicant was unable to transition gracefully and struggled with day to day living. It had become difficult for the applicant to operate a vehicle safely on public roads. The applicant was cautious and nervous about debris, roadkill, and aggressive drivers; triggers in a combat zone because of improvised explosive devices (IEDs). The applicant had little compromise for discipline, had a very short temper, and patience with the family was nonexistent. Sleeping had become an issue because of having dreams about the negative experiences.

The applicant was a combat medic, exposed to a multitude of scenarios, which became repetitive, and grief from all angles weighed heavy on the applicant's heart. The applicant began consulting with a doctor about the issues and was directed to a psychologist, who diagnosed the applicant with PTSD. The process of medicinal therapy began to determine the best treatment for the applicant. The applicant decided to treat the stress with marijuana, which calmed the applicant down and had few side effects, unlike the medication from the doctors. It was a poor choice on the applicant's part, and the applicant fully understands and accepts blame for the actions. The applicant was attending drill and performing duties as a Soldier and as a senior medic to the new Soldiers assigned to the unit. The applicant was informed of the urinalysis test. The applicant's fellow Soldiers took measures to prevent taking the urinalysis test but the applicant decided to face the test and the applicant's mistake. The applicant assumed the applicant would receive help given the applicant's issues and circumstance.

The applicant was informed of the results of the urinalysis and of the discharge proceedings. The applicant's medical status was irrelevant. The majority of the command had changed and there was no familiarity between the applicant and the new personnel. The command was not willing to help the applicant. The applicant received the discharge and was relieved to be done with it. The applicant is coping with the ramifications of the discharge. The applicant is visiting a doctor regularly and making changes to be an asset to the community. The applicant believes the applicant's pristine military record should have been considered. Throughout applicant's career in the Army, the applicant had no negative actions and performed as a Soldier. The applicant is facing the degradation of character because of the discharge and desires to become a better person for the family and the youth the applicant coaches. The applicant requests consideration and to be pardoned for a single mistake. The applicant understands the discharge was a product of the applicant's decisions. The applicant accepts responsibility for the poor decision. The applicant is a better person for having been through it and seeking to move forward. The charge of the applicant's character reaches much farther than the applicant had anticipated at the time.

b. Board Type and Decision: In a records review conducted on 28 September 2023, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's Post-Traumatic Stress Disorder diagnose. Therefore, the Board voted to recommend relief with issuance of a new NGB Form 22a, with an upgrade of the characterization of service to Honorable, the separation authority to NGR 600-200, paragraph 6-8a. As there was no SPD Code listed on the applicant's discharge paperwork, no upgrade actions are required for this item. The Board also determined the reentry eligibility (RE) code was proper and equitable and voted not to change it. The Board's recommendation was forwarded to the Chief, National Guard Bureau, Texas Military Department, to the Adjutant General, State of Texas, under the provisions of 10 USC § 1553, for final approval.

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: Acts or Patterns of Misconduct under the UCMJ, State Military Code, or Similar Laws / NGR 600-200, Paragraph 6-35i(1) / NA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 9 May 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 15 August 2010

(2) Basis for Separation: The applicant was informed of the following reasons: On 9 November, the command was notified by the Counter Drug section, the applicant tested positive for THC during a urinalysis test conducted on 13 September 2009. This type of behavior will not be tolerated from members of the command.

(3) Recommended Characterization: General (Under Honorable Conditions) / The intermediate commanders recommended discharge under other than honorable conditions.

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: On 15 August 2010, the applicant signed the Election of Rights indicating the applicant consulted with counsel and requested consideration of the case by an administrative separation board. The form was void of a name or signature of a defense counsel or a Trial Defense Services representative.

Memorandum, 14 February 2011, from the recorder (trial counsel) of the pending administrative separation board proceedings, reflects the memorandum notified the applicant of the schedule for the board proceedings and the applicant's rights. The memorandum included the memorandum of notification to appear before the board and a blank copy of a Conditional Waiver for the applicant to consider. The memorandum states, "If the separation authority accepts the request, you will receive a general discharge and your service will be characterized as, 'honorable.' Please be advised that I will not consider this waiver valid until it has been reviewed and endorsed by a trial defense attorney that has contacted you to discuss your options."

The applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge. The waiver was not dated, but on 7 March 2011, the form, endorsed by the applicant, was received by the Office of General Counsel.

(6) Separation Decision Date / Characterization: 9 May 2011 / General (Under Honorable Conditions) / Initially the separation was approved on 23 February 2011; however, on 9 May 2011, the separation authority signed a second approval letter, which included approval of the applicant's conditional waiver, and additional instructions.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 6 July 2005 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 23 / GED / 120
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 68W10, Health Care Specialist / 5 years, 10 months, 4 days
- d. **Prior Service / Characterizations:** IADT, 2 August 2005 – 24 February 2006 / HD
(Concurrent Service)
AD, 14 May 2007 – 21 May 2008 / HD
(Concurrent Service)
- e. **Overseas Service / Combat Service:** SWA / Iraq (22 July 2007 – 28 April 2008)
- f. **Awards and Decorations:** ARCOM, AAM-2, NDSM, GWOTSM, ICM, ASR, OSR, AFRM-MD, CAB
- g. **Performance Ratings:** NA / The applicant provided four Leadership Appraisal Forms Grade E-4 Mobilized, 23 November 2007 (one undated), from different raters reflecting the applicant was rated "Fully Capable."
- h. **Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 5 November 2009, reflects the applicant tested positive for THC 100 (marijuana), during an Inspection Random (IR) urinalysis testing, conducted on 18 October 2009.

Developmental Counseling Form, 5 December 2009, for testing positive for drug use.

Memorandum, 17 October 2010, reflects the commander recommended the applicant be reduced to the lowest grade for failure to attend unit drill on 16 and 17 October 2010.

Orders 343-1036, 9 December 2010, reflects the applicant was reduced from E-4 to E-3 for inefficiency.

- i. **Lost Time / Mode of Return:** NIF
- j. **Behavioral Health Condition(s):**

(1) Applicant provided: Progress Notes, from 10 October 2008 to 9 November 2009, reflects the applicant was diagnosed with PTSD; chronic pain; a history of alcohol abuse; and a global assessment of functioning (GAF) of 53.

The Department of Veterans Affairs (VA), 19 March 2010, reflects the VA rated the applicant 30 percent service-connected disabled for PTSD, effective 25 October 2009. The applicant was granted a combined rating of 50 percent.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Two DD Forms 214; DD Form 293; Recommendation for Award; commendation letter; Four Leadership Appraisal Forms Grade E-4 Mobilized; ARNG discharge orders; VA Rating Decision; VA Progress Notes; and Army Review Boards Agency Case Management Division letter.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is visiting a doctor regularly and making changes to become a better person for the family and the youth the applicant coaches and to be an asset to the community.

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 135-91 states that a member is an unsatisfactory participant when nine or more unexcused absences from scheduled drills accrue during a one-year period and attempts to have the Soldier respond or comply with orders or correspondence have resulted in - the Soldier's refusal to comply with orders or correspondence; or a notice sent by certified mail was refused, unclaimed, or otherwise undeliverable; or verification that the Soldier has failed to notify the command of a change of address and reasonable attempts to contact the Soldier have failed. Discharge action may be taken when the Soldier cannot be located or is absent in the hands of civil authorities in accordance with the provisions of AR 135-91, paragraph 2-18, and Chapter 3, section IV, of AR 135-178.

e. 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) provides in pertinent part, a Soldier may be discharged for misconduct when it is determined under the guidance set forth in chapter 2,

section I, that the Soldier is unqualified for further military service by reason of one or more of the following circumstances: Minor disciplinary infractions; A pattern of misconduct; Commission of a serious offense; Abuse of illegal drugs or alcohol; and Civil conviction.

(4) Paragraph 11-1b states a pattern of misconduct consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline include conduct which violates the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(5) Paragraph 11-8 prescribes a characterization of service normally will be under other than honorable conditions, but characterization as general (under honorable conditions) may be warranted under the guidelines in chapter 2, section III. When characterization of service under other than honorable conditions is not warranted for a Soldier in entry level status under chapter 2, section III, the service will be described as uncharacterized.

f. National Guard Regulation (NGR) 600-200, establishes standards, policies, and procedures for the management of the Army National Guard (ARNG) and the Army National Guard of the United States (ARNGUS) enlisted Soldiers in the functional areas of: Classification and Reclassification; Personnel Management; Assignment and Transfer, including interstate transfer; Special Duty Assignment Pay; Enlisted Separations; and Command Sergeant Major Program.

(1) Chapter 6 sets the policies, standards, and procedures for the separation of enlisted Soldiers from the ARNG/ARNGUS.

(2) Paragraph 6-25, prescribes the discharge of Soldiers on active duty, (Title 10, USC) in AGR, IET, ADT, and ADOS status, as well as those ordered to active duty for contingency operations or under mobilization conditions, is governed by AR 635-200. All Outside Continental United States (OCONUS) training, including AT is conducted in Title 10 ADT status. Refer to AR 135-178 when considering enlisted Soldiers not on active duty and those on full-time National Guard duty (FTNGD) under Title 32 USC for discharge from the ARNG and as a Reserve of the Army.

(3) Paragraph 6-35i(1) defers to AR 135-178, chapter 11 (previously chapter 12), for the following reasons for discharge: Acts or patterns of misconduct under the UCMJ, State Military Code, or similar laws: This includes abuse of illegal drugs to include testing positive, 2 serious incidents of alcohol-related misconduct within a 12-month period, IAW AR 600-85, chapter 10, involved in illegal trafficking, distribution, possession, use or sale of illegal drugs and convicted of driving while intoxicated or driving under the influence a second time during their career. All Soldiers identified as abusers of illegal drugs will be referred for treatment as appropriate regardless of the commander's intent to take administrative, nonjudicial, or judicial actions. Commanders must initiate separation action within 45 days of the act or referral, regardless of the commander's recommendation. Recommendations for retention or separation will be forwarded through command channels to the separation authority. See AR 135-178, chapter 2, when the discharge authority decides to retain and as a condition of retention, enroll in a rehabilitation program as soon as possible. Enrollment and participation will be at no expense to the government. Commanders will immediately begin discharge actions for Soldiers who refuse or fail to enroll in a rehabilitation program because of committing a drug offense. RE 3 or 4. LC: AD (Drug abuse) or MM (Misconduct) RE 3 or 4.

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 suffering from PTSD caused by service in combat and the VA rated the applicant 30 percent service-connected disabled for PTSD. The applicant provided medical documents reflecting the applicant suffered from in-service PTSD; chronic pain; a history of alcohol abuse; and a GAF of 53. The VA rated the applicant 30 percent service-connected disabled for PTSD and a combined rating of 50 percent. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends the command did not help the applicant with medical issues. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, 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 good service, including a combat tour.

The applicant contends visiting a doctor regularly and making changes to become a better person for the family and the youth the applicant coaches and to be an asset to the community. 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.

The third party statement provided with the application speak highly of the applicant. It recognizes the applicant's good military service.

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: Post-Traumatic Stress Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed and service connected by the VA for combat-related Post-Traumatic Stress Disorder. Service connection establishes that applicant's Post-Traumatic Stress Disorder existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that, given the nexus between Post-Traumatic Stress Disorder and self-medicating with substances, the applicant's Post-Traumatic Stress Disorder mitigates the marijuana use that led to his separation.

(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 Post-Traumatic Stress Disorder outweighed the marijuana use basis for separation for the aforementioned reason.

b. Response to Contention(s):

(1) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board determined that this contention was valid and voted to upgrade the characterization of service due to Post-Traumatic Stress Disorder mitigating the applicant's marijuana use misconduct.

(2) The applicant contends suffering from PTSD cause by service in combat and the VA rated the applicant 30 percent service-connected disabled for PTSD. The Board considered this contention during proceedings and voted to upgrade the characterization of service due to the applicant's Post-Traumatic Stress Disorder mitigating the applicant's marijuana misconduct.

(3) The applicant contends the command did not help the applicant with the medical issues. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's marijuana use basis for separation.

(4) The applicant contends good service, including a combat tour. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's marijuana use basis for separation.

(5) The applicant contends visiting a doctor regularly and making changes to become a better person for the family and the youth the applicant coaches and to be an asset to the community. 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 Post-Traumatic Stress Disorder fully outweighing the applicant's marijuana use basis for separation.

c. The Board determined that the characterization of service was inequitable based on the applicant's Post-Traumatic Stress Disorder diagnose. Therefore, the Board voted to recommend relief with issuance of a new NGB Form 22a, with an upgrade of the characterization of service to Honorable, the separation authority to NGR 600-200, paragraph 6-8a. As there was no SPD Code listed on the applicant's discharge paperwork, no upgrade actions are required for this item. The Board also determined the reentry eligibility (RE) code was proper and equitable and voted not to change it. The Board's recommendation was forwarded to the Chief, National Guard Bureau, Texas Military Department, to the Adjutant General, State of Texas, under the provisions of 10 USC § 1553, for final approval.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's misconduct of marijuana use. Thus, the prior characterization is no longer appropriate. This recommendation was forwarded to the NGB for approval.

(2) There was no SPD Codes listed on the applicant's discharge paperwork, no upgrade actions are required for these items.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001672

(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 NGB Form 22a: Yes
- b. Change Characterization to: Honorable
- c. Change Reason: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

12/14/2023

X

Presiding

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