

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 DD Form 214 indicating drug abuse has physically harmed the applicant, although AR 600-85 was violated to substantiate the accusation by not waiting 48 hours to ensure the information was correct. The rank on the drug test was incorrect. The drug test was supervised by the platoon sergeant and squad leader, which was a conflict of interest. The results took four months, after being promoted to E-4, which was a hard-earned promotion. The applicant had a P2 Physical Profile and was to be medically discharged. The applicant was on back pain medication at the time, which the VA classified as 10 percent service-connected disability. Because of the discharge, the applicant has suffered for five years. The DD Form 214 with the words "drug abuse" and "misconduct" violates the Privacy Act and has proved detrimental to civilian life. The applicant has been treated and has a pending claim with the VA for Anxiety and Depression caused by being bullied, forced into submission, picked on, singled out, and put down in the unit. The applicant was terrified after being forced out of the military for an unknown reason. The applicant has evidence the unit violated regulations, messed up the paperwork to rush the applicant out, and did not allow the applicant to complete treatment in the ASAP before the discharge. The applicant should not be punished any longer for a minor mistake and a poor decision-making on the part of a young man in need of assistance who desires to move on from the recurring nightmare.

b. Board Type and Decision: In a records review conducted on 31 August 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and MST mitigating applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement 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, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's PTSD and MST diagnoses.

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: 22 July 2010**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 16 June 2010

(2) Basis for Separation: The applicant was informed of the following reasons:

The applicant tested positive for Morphine on 28 January 2010.

The applicant received a Company Grade Article 15 on 4 November 2009, for failing to obey a lawful order issued by a commissioned officer.

The applicant received a Field Grade Article 15 for wrongfully using Morphine, a controlled substance.

Although the applicant had been counseled repeatedly for failing to obey orders, the applicant failed to show any improvement.

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

(4) Legal Consultation Date: 22 June 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 28 June 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 January 2008 / 3 years, 22 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 101

c. Highest Grade Achieved / MOS / Total Service: E-4 / 74D10, Chemical Operations Specialist / 2 years, 5 months, 23 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Seven Developmental Counseling Forms for various acts of misconduct.

Electronic Copy of DD Form 2624, 19 February 2010, reflects the applicant tested positive for MOR 17509 (Morphine), during a Probable Cause (PO) urinalysis testing, conducted on 28 January 2010.

CG Article 15, 9 November 2009, for failing to obey a lawful order issued by LTC M. W. C. on 18 September 2009. The punishment NIF (Commander's Report, undated, reflects the applicant received extra duty for 14 days.)

FG Article 15, 23 April 2010, for wrongfully using morphine (between 28 December 2009 and 28 January 2010). The punishment consisted of a reduction to E-1; forfeiture of \$723 pay per month for two months; and extra duty and restriction for 45 days.

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. Additional Evidence: Counseling Statement; UA Test Packet; Separation Memo; VA letter; Article 15; DD Form 214; and Enlisted Record Brief (ERB).

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 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.

(7) 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.

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 waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

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 the 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 AR 600-85 was violated; the rank on the drug test was incorrect; the drug test supervised by the platoon sergeant and squad leader was a conflict of interest; the words "drug abuse" and "misconduct" violates the Privacy Act; the unit violated regulations and messed up the paperwork to rush the applicant out; and the applicant was not allowed to complete

treatment in the ASAP before the discharge. Army Regulation 635-200, paragraph 1-17d(2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality Soldier. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends having a P2 Physical Profile and was to be medically discharged. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. Army Regulation 635-200, in pertinent part, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

The applicant contends being on back pain medication at the time, which the VA classified as 10 percent service-connected disability. Veterans Administration summary of benefits letter, 22 September 2015, reflects the applicant was rated 10 percent service-connected disability. The available evidence in the AMHRR is void of any indication the applicant was suffering from a disabling medical or mental condition during the discharge processing, warranting separation processing through medical channels.

The applicant contends having been treated for and has a pending claim with the VA for Anxiety and Depression. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The applicant contends working hard to earn the promotion to E-4. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends being harassed, bullied, forced into submission, picked on, singled out, and put down in the unit. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The applicant contends being punished for a minor mistake and a poor decision-making on the part of a young man in need of assistance. The applicant's AMHRR indicates the applicant committed many discrediting offenses. Army Regulation 635-200, in pertinent part, stipulates circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization. The applicant's AMHRR shows the applicant met entrance qualification standards to include age.

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: Adjustment Disorder, Anxiety, PTSD, MST.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Anxiety. The VA has also diagnosed and service connected applicant for PTSD related to

an MST and other mistreatment by fellow service members. Service connection establishes that applicant's PTSD existed during military service. There is no medical evidence to support that applicant's post-service diagnosis of Schizophrenia 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 there is evidence of multiple potentially mitigating BH conditions. The applicant was diagnosed in service with an Adjustment Disorder and Anxiety. The VA has also diagnosed and service connected him for PTSD related to an MST and other mistreatment by fellow service members. Given the nexus between PTSD/MST, self-medicating with substances, and difficulty with authority, applicant's PTSD/MST mitigate the wrongful drug use and disobeying orders that led to his separation. Due to the service connection for an MST, the Board's Medical Advisor recommends an upgrade to HD with Secretarial Authority. The RE Code should remain a 4 due to applicant's service connection for a BH condition and diagnosis of a severe mental illness.

(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 PTSD and MST outweighed the morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis for 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, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD and MST fully outweighing the applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis for separation.

(2) The applicant contends AR 600-85 was violated; the rank on the drug test was incorrect; the drug test supervised by the platoon sergeant and squad leader was a conflict of interest; the words "drug abuse" and "misconduct" violates the Privacy Act; the unit violated regulations and messed up the paperwork to rush the applicant out; and the applicant was not allowed to complete treatment in the ASAP before the discharge. 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 PTSD and MST fully outweighing the applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis for separation.

(3) The applicant contends having a P2 Physical Profile and was to be medically discharged. Insufficient evidence supporting a MEB being initiated. 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 PTSD and MST fully outweighing the applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis for separation.

(4) The applicant contends being on back pain medication at the time, which the VA classified as 10 percent service-connected disability. 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 PTSD and MST fully outweighing the applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis for separation.

(5) The applicant contends having been treated for and has a pending claim with the VA for Anxiety and Depression. 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 PTSD and MST fully outweighing the applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis for separation.

(6) The applicant contends working hard to earn the promotion to E-4. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

(7) The applicant contends being harassed, bullied, forced into submission, picked on, singled out, and put down in the unit. 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 PTSD and MST fully outweighing the applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis for separation.

(8) The applicant contends being punished for a minor mistake and a poor decision-making on the part of a young man in need of assistance. 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 PTSD and MST fully outweighing the applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD and MST mitigating applicant's morphine use, failure to obey a lawful order and failure to obey orders and show improvement 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, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's PTSD and MST diagnoses. 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 PTSD and MST mitigated the applicant's misconduct of morphine use, failure to obey a lawful order and failure to obey orders and show improvement basis. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

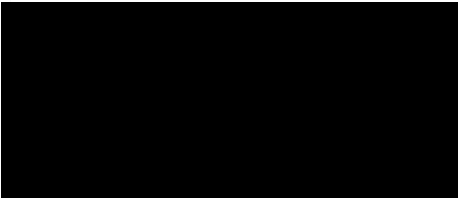
(3) The RE code will not change due to the severity of applicant's PTSD and MST diagnoses.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:

1/17/2024



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