

1. Applicant's Name:**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:****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, through counsel, requests an upgrade to honorable.

The applicant seeks relief contending, in effect, joining the Army through the Health Professions Scholarship Program (HPSP) out of a desire to serve society. During the applicant's internship in 2006 through 2007, the applicant realized the applicant was drinking more and taking whatever pills the applicant could get to cope with the stress of being in the military. The applicant could still manage some aspects of the applicant's work, but not others, which were important. After reassignment to Fort Rucker the applicant's use became worse and by early 2008, the applicant knew the applicant was an addict. The applicant sought help from the chain of command, but instead the applicant was deployed through PROFIS [Professional Filler System] to Talil, Iraq, with a full-blown addiction, where it all came apart. Rock bottom was the applicant's Article 15 for smoking marijuana with two enlisted Soldiers, after being unable to become an asset for the new unit, and it changed the applicant's life. The applicant received for treatment for the underlying issues and became sober. The applicant did better and worked towards redemption, but it was not to be. The applicant was administratively discharged, but the true consequences had only begun.

The applicant could not find work as a civilian in clinical medicine because all employers saw was the applicant's discharge and the NPDB [National Practitioner Data Bank] Adverse Action Report. The combination proved career threatening, despite years of the applicant's best corrective actions. The applicant ran out of money, had to move home, and ultimately, sought a different career path. During this difficult time, the applicant continued treatment, and grew up. The applicant is engaged, has a dog, a mortgage, and while maintains a healthy work-life balance. The applicant cared for the applicant's parents, each of whom died of cancer and the applicant ultimately became head of the extended family, contributes to the community, works as a Grant-Maker and Development Manager for an international health organization, and attends an ivy league graduate school. Though no longer a clinician, the applicant remains committed to public service (especially through medicine). The applicant made some terrible decisions while on active duty and should have sought treatment years earlier. The applicant believes parts of the discharge was executed improperly and inequitably, with subsequent military administrative actions unjust and disproportionate to the applicant's misconduct. The applicant has matured from these experiences and is accountable. The applicant requests an upgrade to move on from the past and contribute to society in the applicant's new career and achieve the things the applicant believes the applicant can achieve. The applicant further details the contentions in the Legal Brief, self-authored statements, and declarations submitted with the application.

b. Board Type and Decision: In a records review conducted on 16 November 2023, and by a 4-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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: Unacceptable Conduct / AR 600-8-24, paragraph 4-2b / JNC / General (Under Honorable Conditions)

b. Date of Discharge: 22 July 2009

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 6 April 2009

(2) Basis for Separation: The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraphs 4-2a, for substandard performance, 4-2b for misconduct, moral, or professional dereliction, and 4-2c for derogatory information because of the following reasons, specifically:

Paragraph 4-2a(1) for a downward trend in overall performance resulting in an unacceptable record of efficiency or a consistent record of mediocre service;

Paragraph 4-2a(2) for failure to keep pace or to progress with contemporaries, as demonstrated by a low record of efficiency, or a consistent record of mediocre service;

Paragraph 4-2a(5) for failure to properly perform assignments commensurate with an officer's grade and experience; and

Paragraph 4-2b(11) for commission of an act of personal misconduct involving drugs.

The action was based on the following specific reasons for elimination:

On 31 December 2008, the applicant was detained by Military Police in COB Adder, Iraq for possession of marijuana and suspicion of involvement with marijuana;

In January 2009, the Multi-National Division-Center Division Surgeon conducted a formal investigation of the medical records and care the applicant provided and found the applicant unreliable, ineffective, and incapable of practicing medicine on an independent basis;

From September to December 2008, the applicant received counseling on several occasions regarding the applicant's poor work performance and behavior, specifically, the applicant was counseled for repeatedly being late to work and absent from duty shifts and meetings, and not performing the duties to standard; and

On 4 February 2009, the applicant received a General Officer Article 15 for violation of General Order Number 1, use of a controlled substance, and fraternization. The applicant was found guilty of violating Articles 92, 112a, and 134, UCMJ.

(3) Legal Consultation Date: NIF / The applicant provided a rebuttal statement and numerous character references.

(4) Board of Inquiry (BOI): NA

(5) GOSCA Recommendation Date / Characterization: On 23 May 2009, the GOSCA recommended the applicant be involuntarily eliminated from service. / General (Under Honorable Conditions)

(6) DA Board of Review for Eliminations: On 11 June 2009, the Ad Hoc Review Board considered the GOSCA's request to involuntarily separate the applicant for unacceptable conduct in accordance with AR 600-8-24, Chapter 4-2b.

(7) Separation Decision Date / Characterization: 12 June 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 14 June 2006 / 6 years

b. Age at Appointment: / Education: 25 / Medical Doctor

c. Highest Grade Achieved / MOS / Total Service: O-3 / 62B, Field Surgeon / 6 years, 9 months, 6 days

d. Prior Service / Characterizations: USAR, 17 October 2002 – 13 June 2006 / NA

e. Overseas Service / Combat Service: SWA / Iraq (27 May 2008 – 14 February 2009)

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: 1 July 2006 – 30 June 2007 / Fully Qualified
4 September 2007 – 26 May 2008 / Fully Qualified
3 March 2009 – 22 July 2009 / Fully Qualified

h. Disciplinary Action(s) / Evidentiary Record: Memorandum for Record, subject: Counseling for [Applicant], 23 December 2008, reflects the applicant was counseled for failing to report and stand in on the Brigade Executive Officer Staff Huddle because of the requirement for the brigade surgeon to conduct a reconnaissance mission.

Receipt for Inmate or Detained Person, 1 January 2009, reflects the applicant was detained for violation Article 112a, Article 92, and General Order Number 1.

Military Police Report, 6 January 2009, reflects the applicant was apprehended for: controlled substance violations, marijuana – possession of marijuana and wrongful use of a controlled substance, Article 112a, UCMJ (on post). Investigation reveals on 31 December 2008, the Military Police were conducting a plain view search in the containerized housing unit (CHU) for personnel assigned in LA 4. The MPs knocked on the applicant's door and observed smoke and an odor of marijuana coming out of the room as the door opened. The applicant and two junior enlisted soldiers, E-4s, were found inside smoking a hookah pipe. The applicant admitted to having a drug problem and stated the MPs would find something in the hookah pipe. On 1 January 2009, the applicant submitted to a blood and urine test and tested positive for THC.

Memorandum for Record, subject: [Applicant's] Timeline with 4th Brigade, 1st Cavalry Division (4/1 CAV), 11 January 2009, provided a timeline from June 2008 to 11 January 2009, of the applicant's performance at the unit.

Memorandum, subject: Notice of Clinical Privileges / Practice for [Applicant], 13 January 2009, reflects the applicant clinical privileges / practice was placed in abeyance for 30 days because of alleged illegal drug use, consistent tardiness, and not reporting to the place of duty. On 13 January 2009, the applicant refused to sign the Receipt of Notice of Abeyance.

Memorandum for Record, subject: Formal Investigation of the Medical Records and Care Provided by [Applicant], 24 January 2009, reflects the investigating officer had significant concerns regarding the medical care rendered by the applicant. In discussions with medical providers and staff, the applicant demonstrated significant work ethic issues, was consistently unreliable, inappropriately overemphasized the applicant's training and credentials, and was reluctant to accept feedback and constructive criticism.

General Officer Article 15, 25 January 2009, for near Contingency Operating Base Adder, Iraq, on 31 December 2008:

The applicant failed to obey lawful General Order Number 1, by wrongfully using marijuana, a schedule I controlled substance;

The applicant wrongfully used marijuana, a schedule I controlled substance, while receiving special pay; and

The applicant knowingly fraternized with Specialist (SPC) J. C. and SPC R. B., enlisted persons, to wit: smoke marijuana together in the applicant's CHU.

The punishment consisted of \$2,474 per month for two months.

Memorandum for Record, subject: Letter of Concern [Applicant], 31 March 2009, reflects the supervising physician indicated the applicant was not functioning independently as a physician in the emergency room or clinic setting. The applicant lacked motivation, drive, in training for practicing medicine. The applicant's demonstrated erratic behaviors, missed shifts, and did not complete assigned work in a timely fashion.

Memorandum, subject: Notice of Enrollment in Healthcare Personnel Program, 6 April 2009, reflects the applicant was enrolled in the Healthcare Personnel Program for two years because of a recent investigation reported the applicant was smoking an illegal substance and admitted to taking a prescription medication after being told to stop by health care professionals.

Memorandum, subject: Notice of Conditional Reinstatement of Clinical Privileges, 24 April 2009, reflects the applicant's clinical privileges were conditionally reinstated, with monitoring, evaluation, consisting of supervision and 100 percent record review.

Five Developmental Counseling Forms, for but not limited to.

Initial counseling of duties and responsibilities;
Being detained by Military Police for possession and suspicion of marijuana;
Being given a no contact order regarding Soldiers of the 10th Combat Support Hospital;
Being placed on 23-hour unit watch;
Missing a routine hospital meeting and being late for work;
Duty performance requiring supervision; and

Not being capable to work with emergent medical situation in an independent manner.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Memorandum, subject: Unit Watch Guidelines for [Applicant], 1 January 2009, reflects a psychiatrist determined the applicant was at risk of harming oneself because the applicant was very depressed. The psychiatrist recommended unit watch for both support and safety.

Memorandum, subject: Cessation of Unit Watch of [Applicant], dated 6 January 2009, reflecting the applicant was evaluated at the Combat Stress Control Clinic for depression. The applicant was low risk for suicide and the psychiatrist recommended the applicant no longer be under increased supervision.

Chronological Record of Medical Care, from 25 October 2005 to 10 February 2009, reflecting diagnoses: Depression; anxiety disorder; attention deficit hyperactivity disorder (ADHD); major depressive disorder; unspecified psychoactive substance abuse; and psychoactive substance dependence combination of drugs in remission.

Aeromedical Summary Examination Flying Duty Health Screen Summary, 7 July 2007, reflecting the applicant underwent a flying duty examination. The applicant had a diagnosis of ADHD and was prescribed psychostimulant medication Adderall. On 16 August 2007, the applicant was grounded. The form indicated, "It does not make any sense to deploy [the applicant] as a Flight Surgeon with a permanent DNIF [duties not involving flying] as this will greatly impede [the applicant's] future chain of command's ability to utilize available resources." On 29 September 2008, the applicant was granted a waiver for flying duty.

Clinical Director letter, 6 May 2009, reflecting the applicant was making fair progress towards the treatment goals since enrollment on 9 March 2009. The applicant verbalized acceptance of the disease and admitted to the problems the applicant created while in the addiction. All urinalyses were negative.

Department of Veterans Affairs (VA), 9 December 2013, reflecting the VA rated the applicant 50 percent service-connected disability for depression, but the rating was increased to 70 percent for major depression with substance and alcohol abuse, effective 29 November 2012. On 14 May 2018, the VA rated the applicant 70 percent service-connected disabled for persistent depressive disorder (previously evaluated as major depression).

Vet Center letter, 3 June 2014, reflecting the applicant has been receiving treatment since April 2012, for post-traumatic stress disorder (PTSD) and substance / dependence disorder.

Department of Veterans Affairs Medical Center (VAMC), 14 August 2014, reflecting the applicant has been receiving treatment for major depressive disorder (MDD), ADHD, and stimulant dependence in remission.

Army Substance Abuse Program Acting Clinical Director, Fort Rucker, letter, 29 April 2015, reflecting the applicant was referred to ASAP on 9 March 2009 and evaluated by a Licensed Professional Counselor, Certified Addictions Professional. A DAMIS check revealed no previous enrollments. The applicant met the criteria for a diagnosis of amphetamine dependent and cannabis abuse.

Physicians Health Program (PHP) letter, 13 October 2021, reflecting the applicant contacted the PHP on 14 December 2010, because of concerns related to substance use. The applicant successfully completed treatment from 23 August through 10 November 2011. The applicant was diagnosed with cannabis dependence; amphetamine dependence; alcohol abuse; and mood disorder, not otherwise specified (NOS).

(2) AMHRR Listed: Unit Watch Guidelines for [Applicant] as described in previous paragraph 4j(1).

Alcohol and Drug Abuse Prevention Training (ADAPT), 2 January 2009, reflecting the applicant was referred to alcohol and drug preventive training. The applicant had a diagnosis of depression and ADHD. The form is in part illegible. The form is endorsed by the applicant's commander and the applicant (applicant's signature blackened out).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, 11 September 2015, with Supplemental Document, self-authored statement, résumé, academic record, medical licensing record, Military Selectee Training Agreement for Continuous Graduate Medical Education, military service record, National Personnel Records Center letter, numerous third party character references, VA letter regarding request for medical records, Army Regulations, civilian medical records, correspondence regarding the National Resident Matching Program (NRMP) and/or employment, and credit score history;

DD Form 293, 15 October 2021, with all listed Exhibits 1 through 16, and Legal Brief;

Declaration of Applicant, with all listed Exhibits (Ex) A through H – five third party character references, Certificate Residential Substance Abuse Treatment Program, 5 year Physician Assistant PHP Agreement, and letter certifying completion of five year Physician assistant PHP);

Self-Authored Statement, with document of education and experience and three third party character references.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has been rehabilitated, earned a master's in public administration, is working as a public servant, serving as a county-level representative, and was recognized as a Research Fellow by the Department of Urban and Social Policy, and as a New Leaders Council State Fellowship Awardee in New Jersey.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. DODI 1332.28 provides each case must be decided on its individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

b. 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.

c. 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.

d. 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.

e. Army Regulation 600-8-24, Officer Transfers and Discharges, sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23 provides the authorized types of characterization of service or description of separation.

(2) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(3) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation; Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.

(4) Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.

(5) Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.

(6) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.

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 "JNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct.

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 changed. The applicant was separated under the provisions of Chapter 4, paragraph 4-2b, AR 600-8-24 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Unacceptable Conduct," and the separation code is "JNC." 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 exactly as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation further stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the SPD code should be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 4, paragraph 4-2b, is "JNC."

The applicant contends ADHD, persistent depressive disorder, an addiction to alcohol and drugs, and other mental health conditions affected behavior, which led to the discharge, and the VA rated the applicant 70 percent service-connected disabled for persistent depressive disorder (previously evaluated as major depression). The applicant provided several medical documents indicating a diagnosis of in-service depression, anxiety disorder, ADHD, major depressive disorder, unspecified psychoactive substance abuse, and a psychoactive substance dependence combination of drugs in remission. The applicant has been treated for PTSD and substance / dependence disorder since 2012. The applicant's AMHRR contains an Alcohol and Drug Abuse Prevention Training (ADAPT) form, which reflects the applicant was referred to ASAP and at the time had been diagnosed with depression and ADHD. The ADAPT form, was considered by the separation authority. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends the event which led to the elimination from the Army was an isolated incident. Army Regulation 600-8-24, paragraph 1-23, 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 the severity of the offense leading to the discharge was not very high and is now legal in some states. The applicant's AMHRR indicates the applicant committed more than one discrediting offense in violation of the Uniform Code of Military Justice.

The applicant contends the applicant sought help for the addictions but was deployed and the Army providers treated the applicant with minimal success. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends being rehabilitated, earning a master's in public administration, working as a public servant, serving as a county-level representative, and being recognized as a Research Fellow by the Department of Urban and Social Policy, and as a New Leaders Council State Fellowship Awardee in New Jersey. 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 statements provided with the application speak highly of the applicant and recognize the applicant's good military service and good conduct after leaving the Army.

The applicant contends the ADRB upgraded the discharge to honorable (Docket Number AR20200009252), a case involving a physician in the grade of O-4 who tested positive for cocaine. The DODI 1332.28 provides each case must be decided on its individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] 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: Major Depression, Anxiety Disorder NOS, PTSD, Dysthymic Disorder.

(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 Major Depression and Anxiety Disorder NOS, and the applicant is service connected by the VA for Dysthymic Disorder. Service connection establishes that the Dysthymic Disorder also existed during military service. The applicant was diagnosed post-service with PTSD.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions mitigate the applicant's possession and use of marijuana given the nexus between Major Depression, Dysthymic Disorder, PTSD, and self-medicating with substances. Further, the applicant's PTSD, Major Depression and Dysthymic Disorder mitigate the applicant's poor work performance given the nexus between avoidance, low motivation, and difficulties concentrating. However, none of the applicant's behavioral health conditions mitigate the applicant's offense of fraternization as none of these conditions, including PTSD, interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence does not support a conclusion that the any of the applicant's above-mentioned behavioral conditions outweighed the medically unmitigated fraternization offenses.

b. Response to Contention(s):

(1) The applicant contends that ADHD, a persistent depressive disorder, an addiction to alcohol and drugs, and other mental health conditions affected behavior, leading to the discharge and VA ratings (70 percent service-connected disabled for persistent depressive disorder (previously evaluated as major depression)). The Board liberally considered this contention and determined that the available evidence did not support a conclusion that any of

the applicant's above-mentioned behavioral conditions outweighed the medically unmitigated fraternization offenses.

(2) The applicant contends the ADRB upgraded the discharge to honorable, (Docket Number AR2020009252), a case involving a physician in the grade of O-4 who tested positive for cocaine. The Board considered this contention but determined that the facts of the cases are distinguishable. In the referenced case, the officer submitted a resignation for the good of the service in lieu of court-martial for based solely on the applicant's wrongful use of cocaine. In the subject case, the applicant was administratively discharge for misconduct (wrongful use of marijuana and fraternization), moral or professional dereliction and substandard performance of duty. While the Board determined that applicant's behavioral health conditions mitigated the applicant's drug use as discussed above in 9a(3), the applicant's fraternization was not. The Board is not bound by its discretionary decisions because no two cases present the same issues of equity. The Board did not consider this contention for purposes of propriety as the applicant failed to submit prior decisions or explain the relevance of the cited case to the applicant's case. Therefore, a discharge upgrade is not warranted.

(3) The applicant contends the narrative reason and SPD code for the discharge needs to be changed. The Board considered this contention. In the absence of sufficient mitigating factors and considering the applicant's misconduct while in a position of trust, the Board determined that the Unacceptable Conduct narrative reason for separation is proper and equitable.

(4) The applicant contends the event which led to the elimination from the Army was an isolated incident. The Board considered this contention but determined that the applicant's fraternization offenses constitute a single event which may properly and equitably serve as the basis of characterization in accordance with Army Regulation 600-8-24, paragraph 1-23. Therefore, no relief is warranted.

(5) The applicant contends the severity of the offense leading to the discharge was not very high and is now legal in some states. The Board considered this contention but determined that the applicant's behavioral health conditions mitigated the applicant's wrongful marijuana use but did not mitigate the applicant's fraternization offense. Therefore, no relief is warranted.

(6) The applicant contends the applicant sought help for the addictions but was deployed and the Army providers treated the applicant with minimal success. The Board considered this contention and determined as noted in paragraph 9a that the applicant's behavioral health conditions mitigated the applicant's drug use. However, the Board determined that the totality of the applicant's record, including the applicant's behavioral health conditions, does not mitigate the applicant's fraternization misconduct. The applicant violated his position of trust when the applicant used drugs with multiple subordinates while deployed.

(7) The applicant contends good service, including a combat tour. The Board considered the totality of the applicant's service record but found that it does not outweigh the applicant's medically unmitigated fraternization misconduct and position of trust violation.

(8) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(9) The applicant contends being rehabilitated, earning a master's in public administration, working as a public servant, serving as a county-level representative, being recognized as a Research Fellow by the Department of Urban and Social Policy, and being a

New Leaders Council State Fellowship Awardee in New Jersey. The Board considered these post-service accomplishments but determined that they do not outweigh the applicant's medically unmitigated fraternization misconduct and position of trust violation.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the 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 not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence, the applicant's PTSD, Major Depression, Anxiety Disorder NOS, and Dysthymic Disorder did not outweigh the medically unmitigated fraternization offenses. The Board also considered the applicant's contentions regarding good service, post-service accomplishments, and the misconduct being an isolated incident. The Board found that the totality of the applicant's record and misconduct does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts as the reason the applicant was discharged was both proper and equitable.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

1/26/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

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)

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001718

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