

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (under honorable conditions). The applicant, through counsel, requests an upgrade to honorable and a change to the narrative reason for discharge.

The applicant seeks relief contending, in effect, accepting responsibility for the conduct which resulted in the discharge from the Army, and now seeks to correct the military records based on factors which were unknown to the chain of command at the time of the misconduct. Further the applicant has since found purpose in life and now has high aspirations but will continue to be judged and stigmatized by the five months in the Army. Therefore, the applicant respectfully requests the application for a record correction is granted to allow the applicant to continue moving forward in life without any undue hardship.

b. Board Type and Decision: In a records review conducted on 13 June 2023, and by a 5-0 vote, the Board determined that the discharge was improper based on the proper discharge and separation procedures were not followed in this case. The record shows the government introduced into the discharge packet the results of a biochemical test which was coded CO (Command Directed). The inclusion of the test is limited use information as defined in AR 600-85, paragraph 10-12a(1) and is protected evidence, also the applicant's challenges experienced in the military as a homosexual shown in medical records. Use of this information mandates award of an honorable characterization of service. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable, change the separation authority to AR 635-200, Chapter 15, the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and the reentry code to RE-3. *Please see Section 9 of this document for more detail regarding the Board's decision.*

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 17 October 2007

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 3 October 2007

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant wrongfully used marijuana and was also AWOL from 14 July 2007 to 13 August 2007.

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

(4) Legal Consultation Date: 4 October 2007

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 12 October 2007 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 March 2007 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / GED / 108

c. Highest Grade Achieved / MOS / Total Service: E-3 / None / 5 months, 25 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: None

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Two Personnel Action Forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)" to "Absent Without Leave (AWOL)," effective 14 July 2007; and,

From "AWOL" to "PDY," effective 13 August 2007.

Military Police Report, dated 18 July 2007, reflects at 1340 hours on 18 July 2007, CPT S. notified the station at 0430 hours on 14 July 2007, the applicant departed from the place of duty and was still at large. At 0924 hours, 17 August 2007, CPT S. notified the station the applicant returned to the unit, effective 1100 hours 13 August 2007. The applicant was charged with the offense of AWOL – Surrendered to Military/Civilian Authorities (Article #86, UCMJ) (On Post) and AWOL – Departed from place of duty (Article #86, UCMJ) (On Post).

Electronic Copy of DD Form 2624, dated 22 August 2007, reflects the applicant tested positive for THC 62, during a Command Directed (CO) urinalysis testing, conducted on 13 August 2007.

FG Article 15, dated 28 August 2007, for being absent from the unit on or about 14 July 2007 until on or about 13 August 2007. The punishment consisted of a reduction to E-1; forfeiture of \$729 pay per month for two months; extra duty and restriction for 45 days; and oral reprimand.

i. Lost Time / Mode of Return: 30 days (AWOL, 14 July 2007 – 13 August 2007) / Returned to Military Control

j. Behavioral Health Condition(s):

(1) Applicant provided: Community Behavioral Health Service letter, dated 4 September 2007, reflects Dr. H. H. recommends administrative separation action under chapter 15 be approved for the applicant. The justification was the applicant made it known to CBHS, the applicant intends to live a gay lifestyle, and this potentially could pose problems for the applicant within the military environment. The applicant had not discussed this with anyone in the unit. The applicant without any prompting made statements during a session at CBHS. The applicant had previously been seen at CBHS for issues relating to attention span and mood swings. The applicant had recently concluded AWOL directly connected to the intent to live an openly gay lifestyle. The applicant had verbalized suicidal and homicidal ideation but denied having any plan or intent to end the life of anyone else's life.

(2) AMHRR Listed: Community Behavioral Health Service letter as previously described in previous paragraph 4j(1)

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; attorney brief with listed exhibits 1 through 21.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has earned an Associate's Degree in General Studies, Criminal Justice, and Visual Fine Arts. The applicant earned a 3.503 GPA and is on the Dean's List. The applicant is also a member of the Phi Theta Kappa Honor Society.

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or

sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 600-85, paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes: Results of command-directed drug or alcohol testing that are inadmissible under the MRE.

e. 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) Paragraph 3-9 states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status except when characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

(5) 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.

(6) 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.

(7) 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.

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 "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).

g. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation, or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

The applicant requests an upgrade to honorable. The applicant's record of service, the issues and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason should be changed to entry-level. Army Regulation 635-200 provides that a Soldier is in entry-level status for the first 180 days of continuous active duty. The purpose of the entry-level status is to provide the Soldier a probationary period. Soldiers who are found to lack the necessary motivation, adaptability, self-discipline, ability, or attitude to become productive Soldiers may be expeditiously separated while in entry-level status. It also provides that a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when characterization under other than honorable conditions is authorized under the reason for

separation and is warranted by the circumstances of the case. An under other than honorable characterization of service is authorized under the provisions of chapter 14.

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 14, paragraph 14-12c(2), is "JKK."

The applicant contends being discharged based on factors which were unknown to the chain of command at the time of the misconduct. There is no evidence in the Army Military Human Resource Record (AMHRR) the applicant ever sought assistance before committing the misconduct, which led to the separation action under review. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant has earned an Associate's Degree in General Studies, Criminal Justice, and Visual Fine Arts. The applicant earned a 3.503 GPA and is on the Dean's List. The applicant is also a member of the Phi Theta Kappa Honor Society. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board'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. Additionally, the applicant asserts presence of behavioral health conditions/PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with adjustment disorder on active duty and has asserted a pre-enlistment history of behavioral health issues

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has in essence asserted the presence of behavioral health conditions associated with service/discharge, and was diagnosed with adjustment disorder while on Active Duty. Although applicant asserts a pre-enlistment history of behavioral health concerns, the nature of this is unclear per available medical records other than a diagnosis of ADHD confirmed on active duty, which is not considered a potentially mitigating condition. Adjustment disorder of the nature documented in applicant's records does not rise to the level of severity to be considered a mitigating factor for the AWOL and drug use described as the basis of separation for applicant's

discharge. The advisor appreciates evidence to support the impact of applicant's reported sexual orientation that was incongruent with Army standards at the time of applicant's service, and concerns for how this may impact applicant's physical and psychological health; however, from a psychiatric/medical perspective there is no evidence in support of mitigation of either AWOL or substance use.

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends the narrative reason should be changed to entry-level. The Board considered this contention and determined that the inclusion of the UA test is limited use information as defined in AR 600-85, paragraph 10-12a(1) and is protected evidence, also the applicant's challenges experienced in the military as a homosexual shown in medical records outweighed the applicant's AWOL and marijuana use basis for separation. The Board voted to change the narrative reason to Secretarial Authority.

(2) The applicant contends the SPD code should be changed. The Board considered this contention and voted to change the narrative reason to Secretarial Authority due to the inclusion of the UA test which is limited use information as defined in AR 600-85, paragraph 10-12a(1) and is protected evidence, along with the applicant's challenges experienced in the military as a homosexual shown in medical records outweighed the applicant's AWOL and marijuana use basis for separation, therefore the corresponding SPD code is now JFF.

(3) The applicant contends being discharged based on factors which were unknown to the chain of command at the time of the misconduct. The Board considered this contention during proceedings, but ultimately did not address the contention due the inclusion of the UA test which is limited use information as defined in AR 600-85, paragraph 10-12a(1) and is protected evidence, along with the applicant's challenges experienced in the military as a homosexual shown in medical records outweighed the applicant's AWOL and marijuana use basis for separation.

(4) The applicant has earned an Associate's Degree in General Studies, Criminal Justice, and Visual Fine Arts. The applicant earned a 3.503 GPA and is on the Dean's List. The applicant is also a member of the Phi Theta Kappa Honor Society. The Board considered this contention during proceedings, but ultimately did not address the contention due the inclusion of the UA test which is limited use information as defined in AR 600-85, paragraph 10-12a(1) and is protected evidence, along with the applicant's challenges experienced in the military as a homosexual shown in medical records outweighed the applicant's AWOL and marijuana use basis for separation.

c. The Board determined that the discharge was improper based on the proper discharge and separation procedures were not followed in this case. The record shows the government introduced into the discharge packet the results of a biochemical test which was coded CO (Command Directed). The inclusion of the test is limited use information as defined in AR 600-85, paragraph 10-12a(1) and is protected evidence, also the applicant's challenges experienced in the military as a homosexual shown in medical records. Use of this information mandates award of an honorable characterization of service. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable, change the separation authority to AR 635-200, Chapter 15, the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and the reentry code to RE-3. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents

or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's record shows the government introduced into the discharge packet the results of a biochemical test which was coded CO (Command Directed). The inclusion of the test is limited use information as defined in AR 600-85, paragraph 10-12a(1) and is protected evidence, also the applicant's challenges experienced in the military as a homosexual shown in medical records. Use of this information mandates award of an honorable characterization of service. 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.

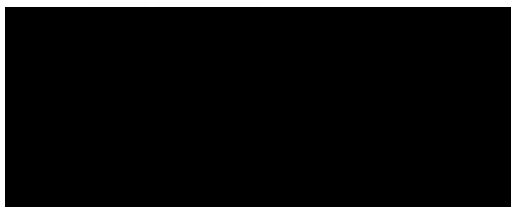
(3) The Board voted to change the RE code to RE-3.

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: RE-3
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:

3/20/2024



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