

1. Applicant's Name:

- a. **Application Date:** 20 August 2020
- b. **Date Received:** 25 August 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is under other than honorable conditions (UOTHC). The applicant requests an upgrade to an honorable discharge.

b. The applicant seeks relief contending, in effect, the upgrade would allow them to work in law enforcement and move forward with their life to be an asset to their community; their current characterization of service does not adequately describe their military service.

(1) The applicant contends in a self-authored statement, they were a young 21-year-old and made quick and immature decisions, not realizing the effects that it could have on others. After finding out their ex-partner had relations with their former barracks roommate, the applicant sent personal photographs of the ex-partner to the former barracks roommate who was now dating the ex-partner. After this occurred, the commander of their unit placed a military protection order on them and reassigned them to the CQ of their former barracks assignment, even though they were moved to another barracks. The applicant states one night they went to their former barracks to speak with a Soldier from their unit. Afterwards, they walked past their ex-partner's room and immaturely removed their name tape off the wall and left it on the floor. Shortly after, they were advised of violating a military protective order. The applicant stated after being under investigation by CID for a year, their defense counsel advised them to take the under other than honorable conditions discharge, and they did.

(2) They are now working at a local Sheriff's Office as a corrections officer. Even though they are no longer in the Army, they still felt compelled to serve in some capacity. They have sense learned to control their emotions as a man and to rationally think about their decision making. Further contending, if their discharge is upgraded, they can continue serving their community and possibly their state in a higher capacity. The applicant understands their past decisions brought shame on themselves, the Military Police Company, and the Military Police Corps; however, they strive to never let their emotions rule their rational decision making. They believe serving the citizens is the highest calling and they want to be able to do so.

c. **Board Type and Decision:** In a records review conducted on 08 December 2023, and by a 3-2 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 13 December 2019

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** Pursuant to the applicant's request for voluntary discharge under provision of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** NIF

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 26 November 2019 / Under Other Than Honorable Conditions

4. **SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 17 January 2017 / 5 years

b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 99

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 31B1O / 2 years, 5 months

d. **Prior Service / Characterizations:** NA

e. **Overseas Service / Combat Service:** Korea / None (12 July 2017 – 1 July 2018)

f. **Awards and Decorations:** NDSM, GWTSM, KDSM, ASR, OSR, COA

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 29 November 2016, the applicant enlisted in the United States Army Reserve's Delayed Entry Program as an E-1; they enlisted in the Regular Army on 17 January 2017 for 5 years.

(2) The ERB provides the applicant served an overseas tour in Korea from 12 July 2017 to 1 July 2018. On 4 April 2019, a Suspension of Favorable Personnel Action (FLAG) was placed on their record for law enforcement investigation adverse action (MA).

(3) Three United States Army Criminal Investigation Division Command (USACIDC) Reports, provides the following:

(a) On 26 July 2019, provides, in effect, based on allegations/preliminary investigation, the applicant was alleged of violating Article 112a, UCMJ with four specifications, wrongful possession of cocaine, wrongful use of cocaine – detected by urinalysis, wrongful use of cocaine – not detected by urinalysis, and wrongful use of marijuana – not detected by urinalysis. The applicant was advised of their rights, which they waived and denied consuming or providing cocaine to PV2; however, the applicant admitted to consuming marijuana; the

opportunity was afforded to undergo a polygraph examination; they declined. Trial Counsel, OSJA, opined probable cause existed to believe the applicant committed the offense of wrongful use of marijuana and cocaine and wrongful possession of cocaine. No additional investigative efforts were required; there is sufficient evidence to provide to command for consideration of action.

(b) On 29 August 2019, provides, in effect, based on allegations/preliminary investigation, the applicant was alleged of violating Article 117a (wrongful broadcast/distribution of intimate visual images), Article 107 (false official statement) and Article 92, UCMJ (violation of a military protective order). PFC reported the applicant for distributing a nude photograph and video of them without their consent. The evidence provides the applicant was interviewed and admitted they sent an intimate image and a video of PFC to another Soldier on Facebook Messenger; however, denied they knew the image and video was of PFC. PFC provided copies of messages which depicted the applicant had offered the images and knew they depicted PFC engaged in sexual intercourse. As a result of the investigation, a military protective order was issued against the applicant, in which the applicant violated when they tampered with PFC's barracks room door.

(c) On 26 September 2019, provides a supplemental to the CID report dated 26 July 2019, to include an interview with the applicant was advised of their rights, which they invoked and did not want to be questioned or say anything.

(4) Two Commander's Report of Disciplinary or Administrative Action, provides the charges were referred by Schofield Barracks Criminal Investigative Command (CID) Office for suspected violation of:

(a) On 1 August 2019, provides CID referred charges to the commander for Article 112a, UCMJ, with four specifications as listed below; trial counsel opined that there was probable cause for the possession of cocaine and the wrongful use of marijuana and cocaine. No action taken.

- 17 December 2018, wrongful use of marijuana – not detected by urinalysis
- 18 December 2018, wrongful use of marijuana – not detected by urinalysis
- 11 April 2019, wrongful use of cocaine – not detected by urinalysis
- 25 May 2019, wrongful possession of cocaine

(b) On 1 October 2019 provides CID referred charges to the commander for:

- Article 117a, UCMJ, 28 March 2019, wrongful broadcast/distribution of intimate visual images
- Article 107, UCMJ, 29 March 2019, false official statement
- Article 92, UCMJ, 14 June 2019, violation of a military protective order

(c) On 26 November 2019, the commander decided to take administrative and judicial action for the articles listed above; the evidence provides the "Trial/NJP Finding" is listed as settlement for all three charges.

(5) The applicant's request to be voluntarily discharged in lieu of trial by court-martial IAW AR 635-200, Chapter 10, is missing from the record as well as the defense counsel's acknowledgement of the request; additionally, the evidence is void of chain of command endorsements.

(6) On 26 November 2019, notwithstanding administrative irregularity, the separation approval authority approved the separation with a characterization of service of under other than honorable conditions and reduction to the lowest enlisted rank.

(7) On 13 December 2019, the applicant was discharged accordingly. A DD Form 214 (Certificate of Release of Discharge from Active Duty) reflects the applicant completed 3 years and 18 days of net active service. The applicant has not completed their first full term of service.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** The applicant marked "Sexual Assault/Harassment" on their application; however, evidence provides the applicant supported a person who survived a sexual assault with their mental health [as documented by 1SG's statement below]; the applicant provided a statement; however, they did not reference the incident.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); Six Third-Party Statements that read as follows:

a. An undated letter provides SFC [redacted] was the applicant's squad leader and platoon sergeant. The applicant was a vital member to their platoon and the type of Soldier they could give added responsibility to who continually outshined their peers and subordinates. SFC would often ask the applicant to help with new Soldiers, helping them prepare for Army life and life overseas in Korea, showing them around post and teaching them the proper techniques while working in Law Enforcement duties. The applicant was up to any challenge and performed excellent during their field rotations, while working the road, and everyday unit activities.

b. An undated letter provides SSG [redacted] is a military police officer and served with the applicant in Korea as their 1st Squad Leader in 1st Platoon. They conducted numerous field exercises together, worked hundreds of law enforcement hours and served as ready platoon for evacuation procedures in the event of a crisis. SSG states the applicant was always respectful, prepared, and executed their missions above the standards. SSG concluded there are some decisions made that we cannot take back, all we can do is learn from them and be better in the future. SSG is requesting the applicant's discharge be reconsidered to give them a second chance at life so the applicant can continue to be the great man they know them to be.

c. A letter dated 30 June 2020, provides CPT [redacted] states the applicant displayed outstanding character, commitment, and energy while under their command. They applicant phenomenally served in their company, nearly immediately volunteered for, and won, the Soldier of the month board. They additionally won the Soldier of the quarter board at the battalion level, beating out 3 other competitors with true grit and determination: they out-shot, out-finessed, and out-worked every other competitor. They left their mark as a great law enforcement professional executing their duties with zeal and diligence. The company was responsible for a land area roughly the size of West Virginia and the applicant regularly operated in a law enforcement capacity alone, unsupervised, and with limited backup, performed flawlessly. CPT concluded the applicant will be a value-added asset at any organization they join and without a doubt be the dependable workhorse who is always there when needed.

d. A letter dated 2 July 2020 provides 1SG [redacted] was the applicant's 1SG while stationed in Korea. 1SG states the applicant displayed impeccable integrity and honor and was a top performer, always one of the Soldiers that they could count on. The applicant took it upon themselves to learn Army doctrine and regulation to put everyone around in a better position to improve the organization. 1SG never questioned the level of integrity or morality they displayed; they were a peer leader amongst those around them and they supported numerous Soldiers within the unit during troubling circumstances. One of the incidents involved a sexual assault that happened within the unit. The applicant took it upon themselves to assist the survivor during their recovery and helped with their mental health. The Soldier they experienced in Korea is not that of their current discharge characterization. 1SG fully supports the applicant on their way forward and hope the entirety of their Army career is taken into consideration while reviewing their case, and not a mere moment in time, that 1SG feel does not demonstrate who they truly are.

e. A letter dated 5 December 2021, provides CSM [redacted] wholeheartedly attest to the applicant's character, stating the best intentions of the Army and the Nation have consistently remained at the forefront of the applicant's mind. The applicant served with them for 3 years distinguishing themselves at every duty station and location they served and continually outperformed their peers with their work ethic and competence. This event was out of character and assess that the applicant has learned from this mistake. In conclusion, CSM asks that the applicant's full Army career be considered so that they may fulfill their potential by continuing to serve in positions of responsibility in their community.

f. A letter dated 6 December 2021 provides the Sherriff who is the applicant's current supervisor, states the applicant immediately earned their respect during the interview when they voluntarily shared the incident that led to their discharge, knowing it could have prevented them from getting this job. The applicant has been employed there for 2 years and is an exemplary employee who is dependable, trustworthy, and professional. The applicant has expressed an interest in pursuing their career as a deputy sheriff and their discharge status will prevent them from attaining that goal; under their state law the applicant must have an Honorable discharge to qualify for certification. Moreover, the applicant knows and has accepted their mistake, stating for the Board to sincerely consider the impact for this young person's law enforcement career and the lifelong affect.

6. POST SERVICE ACCOMPLISHMENTS: None submitted.

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), dated 25 September 2019, 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) 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) 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) An Under Other-Than-Honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

e. Chapter 10, Discharge in Lieu of Trial by Court Martial is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable.

(1) After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions.

(2) The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel
- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

(3) 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.

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court Martial.

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:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

h. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provides a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

i. Manual for Courts-Martial (2016 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the

constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces.

(1) Article 92 (failure to obey order or regulation) states in subparagraph the maximum punishment consists of bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(2) Article 107 (false official statements) states in subparagraph the maximum punishment consists of confinement for 5 years.

(3) Article 117 (provoking speeches or gestures) states in subparagraph the maximum punishment consists of confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

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

a. The applicant requests an upgrade to honorable. A review of the record provides there was administrative irregularity in the proper retention of official military records, specifically, the applicant's voluntary request for discharge IAW AR 635-200, Chapter 10, and the defense counsel's acknowledgement of the request with chain of command endorsements.

b. The applicant enlisted in the Regular Army and promoted to E-4. They served overseas for 12 months in Korea as a military police Soldier and received four statements of support from their chain of command [SSG, SFC, 1SG and CPT], all imploring the Board to reconsider the applicant's discharge characterization, stating the applicant served honorably beside them; Moreover they noted the applicant assisted a sexual assault survivor during their recovery helping with their mental health; concluding the applicant displayed outstanding character, commitment, and execution in their profession.

(1) The applicant was under two adverse law enforcement investigations in violation of articles 92 (violation of a military protective order), 107 (false official statement), and 117 (wrongful broadcast/distribution of intimate visual images), UCMJ; CID referred the charges to the commander who took administrative/judicial action; in a pre-trial diversion a settlement was reached; however, no additional information is provided.

(2) The four specifications of Article 112a, UCMJ referred by CID that the trial counsel opined had probable cause, however, the commander elected not to act.

(3) The applicant's voluntary discharge request IAW AR 635-200, Chapter 10 including defense counsel's acknowledgement, and chain of command endorsements are missing from the AMHRR. Notwithstanding administrative irregularities, the separation authority approved the discharge with a characterization of under other than honorable conditions and reduced the applicant to the lowest enlisted grade.

(4) A medical and mental examination was not required for the voluntary discharge ILO trial by court-martial but could have been request by the service member.

c. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate

for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

d. Published DoD guidance indicates the guidance is not intended to interfere or impede on the Board's statutory independence. The board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A.**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.**

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

b. Response to Contention(s):

(1) The applicant requests an upgrade to an honorable discharge. The Board considered this contention and determined that an upgrade to Honorable is not warranted at this time because the quality of the applicant's service was not consistent with the Army's standards for acceptable personal conduct and performance of duty by military personnel. By committing the misconduct(s) of making a false official statement, wrongful broadcast or distribution of intimate visual images, violation of a military protective order and possession and distribution of cocaine and marijuana. Thus, the applicant's discharge was proper and equitable.

(2) The applicant seeks relief contending, in effect, the upgrade would allow them to work in law enforcement and move forward with their life to be an asset to their community; their current characterization of service does not adequately describe their military service. The board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(3) The applicant contends in a self-authored statement, they were a young 21 year old and made quick and immature decisions, not realizing the effects that it could have on others. After finding out their ex-partner had relations with their former barracks roommate, the applicant sent personal photographs of the ex-partner to the former barracks roommate who was now dating the ex-partner. After this occurred, the commander of their unit placed a military protection order on them and reassigned them to the CQ of their former barracks assignment, even though they were moved to another barracks. The applicant states one night they went to their former barracks to speak with a Soldier from their unit. Afterwards, they walked past their

ex-partner's room and immaturely removed their name tape off the wall and left it on the floor. Shortly after, they were advised of violating a military protective order. The applicant stated after being under investigation by CID for a year, their defense counsel advised them to take the under other than honorable conditions discharge, and they did. The Board considered this contention and determined that the applicant's discharge was proper and equitable because the applicant service was not consistent with the Army's standards as outlined above in paragraph 9b (1).

(4) The applicant contends, they can continue serving their community and possibly their state in a higher capacity if their discharge is upgraded; their current discharge status will prevent them from attaining that goal; under their state law the applicant must have an Honorable discharge to qualify for certification. Moreover, the applicant knows and has accepted their mistake, stating for the Board to sincerely consider the impact for this young person's law enforcement career and the lifelong affect. The board considered this contention but does not grant relief to gain employment or enhance employment opportunities

c. The Board determined that the discharge is, at this time, proper and equitable, in light of 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, there were no mitigating factors for the board to consider. Since the applicant was discharged for the offenses of making a false official statement, wrongful broadcast or distribution of intimate visual images, violation of a military protective order and possession and distribution of cocaine and marijuana. 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.

(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.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New 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:

1/31/2024

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)
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