

1. Applicant's Name: [REDACTED]**a. Application Date:** 8 April 2021**b. Date Received:** 8 April 2021**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

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

The applicant states in effect, their discharge was unfair because it was based on one isolated incident, during their service with no adverse action. Additionally, their discharge was unfair because they were unjustly discharged after being advised by their chain of command to sign their rights away.

b. Board Type and Decision: In a records review conducted on 23 August 2024, and by a 5-0 vote, the Board determined that the characterization of service was too harsh based on the applicant's length of service and one-time drug use outweighing the applicant's basis for separation (tested positive for cocaine). As a result, the discharge is inequitable. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions.

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:** NIF / AR 135-178 / NIF / UOTHC**b. Date of Discharge:** 25 August 2014**c. Separation Facts:****(1) Date of Notification of Intent to Separate:** 23 April 2024

(2) Basis for Separation: A urinalysis test of a specimen collected from the applicant on 17 August 2013 indicated that they had ingested cocaine (COC), an illegal drug.

(3) Recommended Characterization: Retained**(4) Legal Consultation Date:** NIF**(5) Administrative Separation Board:** N/A

(6) Separation Decision Date / Characterization: NIF / Under, other than honorable conditions.

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 7 January 2011 / 8 years
- b. **Age at Enlistment / Education / GT Score:** 17 / NIF / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 (Specialist) / 91E10 Allied Trades Specialist / NIF
- d. **Prior Service / Characterizations:** NIF
- e. **Overseas Service / Combat Service:** None.
- f. **Awards and Decorations:** NDSM, ASR
- g. **Performance Ratings:** N/A
- h. **Disciplinary Action(s) / Evidentiary Record:** Applicant Provided

(1) A Developmental Counseling Form dated 21 September 2013 provides the applicant was notified they tested positive for cocaine after a command directed urinalysis was administered on 17 August 2013.

- Their first time testing positive for cocaine
- Separation action was initiated to separated them from the army prior to their scheduled ETS date; general discharge recommendation.

(2) An Army Substance Abuse Program (ASAP) Enrollment document provides the applicant was referred to ASAP for a comprehensive assessment to determine if they met the criteria for enrollment.

(3) On 23 April 2014, the applicant was notified of the intent to separation from the USAR for abuse of illegal drugs. The initiating authority recommended retaining the applicant in the USAR.

(4) Orders 14-302-0007, provides the applicant received a rank deduction to E-1 and they were discharged from the United States Army Reserve with an under other than honorable conditions discharge on 25 August 2014.

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

j. **Behavioral Health Condition(s):** None.

(1) **Applicant provided:** ASAP Enrollment.

(2) **AMHRR Listed:**

5. APPLICANT-PROVIDED EVIDENCE: An online DD Form 293 (Record Review) application, discharge orders, two developmental counseling forms that provides the applicant tested positive for cocaine, ASAP enrollment form, Notification of separation proceedings memorandum, a letter to the Secretary of the Army dated 20 June 2019, a letter from the Acting

Deputy Assistant Secretary of the Army (Review Boards) dated 3 July 2019 and two additional enclosures in support of their application.

- A wrongful discharge four page memorandum dated 17 April 2016 provides the applicant and three other service members were wrongfully discharged. During annual training, sleep deprived soldiers were told to sign the dotted line and they would be retained. No one was given a chance to read the packets.
- A letter of recommendation from the applicant's BN Commander that initiated the separation dated 22 June 2018 provides they recommended four soldiers for retention and the applicant was one of them. The applicant waived their right to a board; they signed them away in the middle of the night during a 10 day 24 hour field exercise.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their application.

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health

condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

c. Army Regulation 15-180 (Army Discharge Review Board), 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 135-178 sets forth the policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard and USAR enlisted Soldiers for a variety of reasons. The separation policies throughout the different Chapters in this regulation promote the readiness of the Army by providing an orderly means to judge the suitability of persons to serve on the basis of their conduct and their ability to meet required standards of duty performance and discipline. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, and convictions by civil authorities.

(1) The possible characterizations include an honorable, general (under honorable conditions), under other than honorable conditions, or uncharacterized if the Soldier is in entry-level status. However, the permissible range of characterization varies based on the reason for separation.

(2) The characterization is based upon the quality of the Soldier's service, including the reason for separation and determination in accordance with standards of acceptable personal conduct and performance of duty as found in the UCMJ, Army regulations, and the time-honored customs and traditions of the Army. The reasons for separation, including the specific circumstances that form the basis for the discharge are considered on the issue of characterization.

e. Army Regulation 635-200, 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.

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, and a narrative reason change. The applicant's USAR Separation Orders provides the applicant received an under other than honorable conditions discharge.

b. A Review of the record provides administrative irregularity occurred in the proper retention of official records, specifically, the AMHRR is void of the applicant's entire separation. Due to the lack of evidence, we are unable to provide all the specific facts and circumstances surrounding the applicant's discharge from the Army Reserve. Notwithstanding the lack of evidence in the AMHRR, the applicant provided evidence shows they tested positive for cocaine and were referred to ASAP after their positive urinalysis. Separation orders shows they were discharged under the provisions of Army Regulation 135-178, with an under other than honorable conditions characterization of service on 25 August 2014.

c. Due to the absence of required records in the AMHRR and the lack of required information in the published separation orders, we are unable to identify the narrative reason for discharge according to Army Regulation 135-178.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impeded 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 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? **No.** The Board's Medical Advisor, a voting member, 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 contends their discharge was unfair because it was based on one isolated incident. The Board considered this contention and determined the applicant's length of service, and one-time drug use outweighed the applicant's basis for separation and voted to upgrade the applicant's discharge to General, Under Honorable Conditions.

(2) The applicant contends they were unjustly discharged after being advised to sign their rights away. The Board considered this contention and determined there is insufficient evidence in the applicant's file to support the applicant was advised to sign their rights away, ultimately the Board voted to upgrade the applicant's characterization of service to General, Under Honorable Conditions.

c. The Board determined that the characterization of service was too harsh based on the applicant's length of service, and one-time drug use outweighing the applicant's basis for separation (tested positive for cocaine), and as a result, the discharge is inequitable. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. 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 General, Under Honorable Conditions because the applicant's length of service, and one-time drug use outweighed the applicant's basis for separation (tested positive for cocaine). Thus, the prior characterization is no longer appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as there were no Reasons/SPD Codes listed on the applicant's discharge paperwork, due to being in the Army Reserves. Therefore, no upgrade actions are required for these items.

(3) The RE code will not change, as there is no RE-code listed on the applicant's discharge paperwork, due to being in the Army Reserves. Therefore, no upgrade actions are required for this item.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210008444

10. BOARD ACTION DIRECTED:

- a. Issue a New Separation Order: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Authority to: No Change

Authenticating Official:

9/18/2024



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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs