

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 19 March 2021
- b. **Date Received:** 25 March 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 under other than honorable conditions. The applicant through counsel, requests an upgrade to honorable.

b. The applicant through counsel, seeks relief contending, in effect, the applicant has been diagnosed with Autism and Bipolar, both of which the applicant has lived with undiagnosed for their entire life until recently. The applicant believes the applicant did the best the applicant could during their time of service with these conditions. The applicant's discharge does not accurately depict the applicant's time in service as a whole, and the applicant would like for their discharge to be upgraded to honorable.

c. **Board Type and Decision:** In a records review conducted on 24 July 2024, and by a 5-0 vote, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. There will be no change to the reason for discharge or the re-entry code.

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 / NGR 600-200 / NA / RE-4 / Under Other Than Honorable Conditions

a. **Date of Discharge:** 30 April 2020

b. Separation Facts:

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NIF
- (6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 11 September 2015 / 8 years
- b. **Age at Enlistment / Education / GT Score:** 20 / GED / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92W10, Water Treatment Specialist / 4 years, 3 months, and 5 days
- d. **Prior Service / Characterizations:** IADT, 26 January 2016 - 15 June 2016 / HD
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Applicant's promotions:

- Private (E1/PVT) to private two (E-2/PV2) effective 9 January 2016
- PV2 to private first class (E-3/PFC) effective 26 September 2016
- PFC to specialist (E-4/SPC) effective 10 April 2017
- SPC to corporal (E-4/CPL) effective 1 March 2019

(2) On 8 April 2020, the applicant was reduced in rank from CPL to PVT effective 3 March 2020.

(3) Orders 0000341232.00, 22 April 2020, shows the applicant was discharged from the ARNG on 30 April 2020 under the authority of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), Misconduct Drug Abuse, with an under other than honorable conditions characterization of service.

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

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

(1) **Applicant provided:**

(a) Our Lady of Peace, psychiatric assessment shows the applicant was admitted from 27 August - 6 September 2019 for extreme depression and mood swings. Diagnosis shows as bipolar disorder, most recent episode depressed, recurrent, moderate, without psychotic features.

(b) Littleton ADHD, Autism and Dyslexia Center, psychological evaluation, 26 June 2020, shows the applicant was diagnosed with Autism Spectrum disorder, Level I, without intellectual impairment and without language impairment.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Psychiatric Assessment; UofL Health Authorization for Release of Health Information; and Psychological Evaluation.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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

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

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

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

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

shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

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

d. Army Regulation 135-178 (Enlisted Administrative Separations) prescribes 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 of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) Paragraph 2-9a prescribes an honorable characterization 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.

(2) Paragraph 2-9b, prescribes, if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as general (under honorable conditions). Characterization of service as general (under honorable conditions) is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

(3) Paragraph 2-9c, prescribes the service may be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons, and under other circumstances.

(4) Chapter 11 (previously Chapter 12) provides in pertinent part, a Soldier may be discharged for misconduct when it is determined under the guidance set forth in chapter 2, section I, that the Soldier is unqualified for further military service by reason of one or more of the following circumstances: Minor disciplinary infractions; A pattern of misconduct; Commission of a serious offense; Abuse of illegal drugs or alcohol; and Civil conviction.

(5) Paragraph 11-1 b states a pattern of misconduct consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline include conduct which violates the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(6) Paragraph 11-8 prescribes a characterization of service normally will be under other than honorable conditions, but characterization as general (under honorable conditions) may be warranted under the guidelines in chapter 2, section III. When characterization of service under other than honorable conditions is not warranted for a Soldier in entry level status under chapter 2, section III, the service will be described as uncharacterized.

(7) Chapter 13 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 memorandums. Secretarial separation authority is normally exercised on a case-by-case basis.

e. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), establishes standards, policies, and procedures for the management of the ARNG and the ARNGUS enlisted Soldiers in the functional areas of: Classification and Reclassification; Personnel Management; Assignment and Transfer, including interstate transfer; Special Duty Assignment Pay; Enlisted Separations; and Command Sergeant Major Program.

(1) Chapter 6 sets the policies, standards, and procedures for the separation of enlisted Soldiers from the ARNG/ARNGUS.

(2) Paragraph 6-25, prescribes the discharge of Soldiers on active duty, (Title 10, USC) in Army Guard Reserve, Initial Entry Training, ADT, and Active Duty for Operational Support status, as well as those ordered to active duty for contingency operations or under mobilization conditions, is governed by AR 635-200. All Outside Continental United States (OCONUS) training, including AT is conducted in Title 10 ADT status. Refer to AR 135-178 when considering enlisted Soldiers not on active duty and those on full-time National Guard duty (FTNGD) under Title 32 USC for discharge from the ARNG and as a Reserve of the Army.

(3) Paragraph 6-35i(1) defers to AR 135-178, chapter 11 (previously chapter 12), for the following reasons for discharge: Acts or patterns of misconduct under the UCMJ, State Military Code, or similar laws: This includes abuse of illegal drugs to include testing positive, 2 serious incidents of alcohol-related misconduct within a 12-month period, IAW AR 600-85, chapter 10, involved in illegal trafficking, distribution, possession, use or sale of illegal drugs and convicted of driving while intoxicated or driving under the influence a second time during their career. All Soldiers identified as abusers of illegal drugs will be referred for treatment as appropriate regardless of the commander's intent to take administrative, nonjudicial, or judicial actions. Commanders must initiate separation action within 45 days of the act or referral, regardless of the commander's recommendation. Recommendations for retention or separation will be forwarded through command channels to the separation authority. See AR 135-178, chapter 2, when the discharge authority decides to retain and as a condition of retention, enroll in a rehabilitation program as soon as possible. Enrollment and participation will be at no expense to the government. Commanders will immediately begin discharge actions for Soldiers who refuse or fail to enroll in a rehabilitation program because of committing a drug offense. RE 3 or 4. LC: AD (Drug abuse) or MM (Misconduct) RE 3 or 4.

a. 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 ARNG for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(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 waiverable. Eligibility: Ineligible unless a waiver is granted.

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

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

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

b. The applicant's AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the ARNG. The applicant's AMHRR does contain a properly constituted discharge order: Orders 0000341232.00, 22 April 2020, showing the applicant was discharged on 30 April 2020 and was reduced from the rank of CPL to PVT. The orders indicate the applicant was discharged under the provisions of NGR 600-200, by reason of Misconduct Drug Abuse, with a characterization of service of under other than honorable conditions.

c. The applicant through counsel contends, in effect, the applicant has been diagnosed with Autism and Bipolar, both of which the applicant has lived with undiagnosed for their entire life until recently. The applicant believes the applicant did the best the applicant could during their time of service with these conditions. The applicant's discharge does not accurately depict the applicant's time in service as a whole, and the applicant would like for their discharge to be upgraded to honorable. The applicant provided:

(a) Our Lady of Peace, psychiatric assessment shows the applicant was admitted from 27 August - 6 September 2019 for extreme depression and mood swings. Diagnosis shows as bipolar disorder, most recent episode depressed, recurrent, moderate, without psychotic features.

(b) Littleton ADHD, Autism and Dyslexia Center, psychological evaluation, 26 June 2020, shows the applicant was diagnosed with Autism Spectrum disorder, Level I, without intellectual impairment and without language impairment.

d. Published Department of Defense guidance indicates that 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 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: The applicant submitted 2019 and 2020 records with diagnoses of Bipolar Disorder, GAD, and Autism, level 1 based solely on self-report.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant submitted 2019 and 2020 records with diagnoses of Bipolar Disorder, GAD, and Autism, level 1 based solely on self-report. There is no indication the applicant provided these records to military leadership or providers.

(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 August 2019 diagnosis of Bipolar Disorder is not supported by submitted documentation and the 2020 evaluation did not diagnose the condition either. Accordingly, it is unknown if this is an accurate diagnosis and if it was the interplay with the misconduct. The applicant submitted a 2020 diagnosis of Autism Spectrum, Level 1 which is possible, although there are validity concerns as well; however even in accepting this diagnosis at face value there is no nexus between the diagnosis and drug use. While there are vulnerabilities within neurodiverse individuals which could provide context and possible mitigation, i.e. peer influence, there is no discussion if this was involved during the misconduct. While liberal consideration was applied, there is not enough information to provide mitigation at this time.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition did not outweigh the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contention: The applicant through counsel contends, in effect, the applicant has been diagnosed with Autism and Bipolar, both of which the applicant has lived with undiagnosed for their entire life until recently. The applicant believes the applicant did the best the applicant could during their time of service with these conditions. The applicant's discharge does not accurately depict the applicant's time in service as a whole, and the applicant would like for their discharge to be upgraded to honorable. The Board considered this contention and the totality of the applicant's records and determined that the applicant's conduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

d. The Board determined that the discharge is inequitable and voted to grant relief by upgrading the characterization of service to General, Under Honorable Conditions. 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.

e. Rationale for Decision:

(1) Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation was inequitable. The Board determined that a UOTH characterization was too harsh for one-time drug use. The Board members voted to upgrade the characterization to General (Under Honorable Conditions) with no change to reason and no change to RE-Code based on the medical diagnosis. The Board members also recommended a personal appearance to afford the applicant the opportunity to plead his case for an upgrade to Honorable.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210009640

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

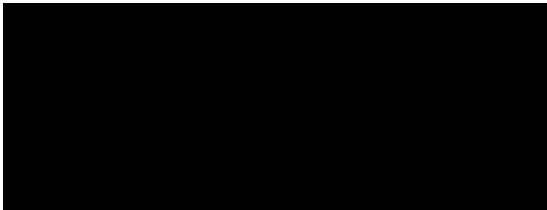
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** Yes
- b. **Change Characterization to:** General, Under Honorable Conditions
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

9/10/2024



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