

1. Applicant's Name: [REDACTED]

a. **Application Date:** 27 July 2021

b. **Date Received:** 12 August 2021

c. **Counsel:** NA

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is an under other than honorable conditions. The applicant requests an upgrade of their character of service.

(2) The applicant seeks relief contending they believe their discharge was unjust for several reasons. Their Expiration Term of Service (ETS) was reached, and they were held past that date purposely so their discharge would be under other than honorable conditions for personal reasons by their leadership. Their unit discriminated against them for being injured and wrote false statements against them. Those members of their unit were forced to retire or were administratively separated themselves. Their mental health was also taken as a joke by their leadership as they spent more than a year in behavioral health.

b. Board Type and Decision: In a records review conducted on 11 April 2025, and by a 5-0 vote, the board voted to grant relief by upgrading the applicant's characterization of service to General (Under Honorable Conditions). This decision was made on the basis that the applicant's Panic Disorder condition partially mitigated the applicant's misconduct (AWOL and wrongful use of cocaine). Additionally, the board determined that the narrative reason for separation and the reentry code were proper and equitable and voted not to change them.

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 17 February 2017

c. Separation Facts: The applicant's case separation file is void from the Army Military Human Resource Record (AMHRR); however, their AMHRR did contain a DD Form 458 (Charge Sheet) and the Separation Authority Memorandum.

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 25 January 2017 the applicant was charged with four specifications of violation of Article 86 (Absence Without Leave (AWOL)), one specification of violation of Article 92 (Dereliction in Performance of Duties), one specification of violation of Article 107 (False Official Statement) and one specification of violation of Article 112a (Wrongful Use, Cocaine).

(2) Legal Consultation Date: NIF

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

(4) Recommended Characterization: NIF

(5) Separation Decision Date / Characterization: 10 February 2017 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 14 April 2015 / NIF
- b. Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 95
- c. Highest Grade Achieved / MOS / Total Service:** E-2 / 11B1O, Infantryman / 3 years, 4 months, 4 days
- d. Prior Service / Characterizations:** NA
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** AGCM, NDSM, ASR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) Six DA Forms 4187 (Personnel Action) dated 15 September 2016 through 9 January 2017, reflects the applicant's unit changed their status from Present for Duty to AWOL on 15 September 2016 and from AWOL to Present for Duty on 29 September 2016; from Present for Duty to AWOL on 21 December 2016 and from AWOL to Present for Duty on 22 December 2016; from Present for Duty to AWOL on 6 January 2017 and from AWOL to Present for Duty on 9 January 2017. The applicant was apprehended on these three occurrences of their absences without leave.

(2) A DD Form 458 (Charge Sheet) dated 25 January 2017, reflects charges were preferred against the applicant for –

- four specifications of violation of Article 86 (AWOL)
- one specification of violation of Article 92 (Dereliction in Performance of Duties)
- one specification of violation of Article 107 (False Official Statement)
- one specification of violation of Article 112a (Wrongful Use, Cocaine).

(3) A memorandum, Headquarters, 4th Infantry Division and Fort Carson, subject: Request for Discharge in Lieu of Trial by Court-Martial, Army Regulation 635-200, Chapter 10, dated 10 February 2017, reflects the separation authority's approval of the applicant's 6 February 2017 request for a discharge in lieu of trial by court-martial. The commanding general directed the applicant will receive an Under Other Than Honorable Conditions discharge.

(4) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 17 February 2017. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 23 September 2014
- item 24 (Character of Service) – Under Other Than Honorable Conditions

- item 26 (Separation Code) – KFS [In Lieu of Trial by Court-Martial]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial
- item 29 (Dates of Time Lost During This Period) – 20160915 – 20160929; 20161221 – 20161222; and 20170106 – 20170109

i. Lost Time / Mode of Return: 15 September 2016 – 29 September 2016, 21 December 2016 – 22 December 2016, and 6 January 2017 – 9 January 2017 / Apprehension

j. Behavioral Health Condition(s): None

(1) Applicant provided: Behavioral Health Discharge Summary reflecting a diagnosis of Adjustment Disorder with Depressed Mood.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Behavioral Health Discharge Summary
- DA Form 3982 (Medical and Dental Appointment)
- DA Form 3947 (Medical Evaluation Board Proceedings) – only page 1 is in evidence for review
- 3rd Party Character Statement

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

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

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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 (Active Duty Enlisted Administrative Separations), 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) 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.

(2) 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.

(3) 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.

(4) Paragraph 1-13 (Reduction in Grade) stated when a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

(5) Paragraph 3-9 (Uncharacterized Separations) stated an entry-level status 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.

(6) Chapter 10 (Discharge in Lieu of Trial by Court-Martial) stated a Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual of Courts-Martial, 2012, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The Soldier's written request will include an acknowledgment that he/she understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge.

(7) Paragraph 10-8 (Types of Discharge, Characterization of Service) stated 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.

e. 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.

f. 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 Department of Defense Instructions 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.

g. 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. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following, Article 86 (AWOL), Article 92 (Dereliction in Performance of Duties), Article 107 (False Official Statements), and Article 112a (Wrongful Use Cocaine).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR case files for approved separation is missing; however, their AMHRR contains their DD Form 458 (Charge Sheet) and the Separation Authority Memorandum. This evidence confirms the applicant was charged with the commission of offenses punishable under the UCMJ with a punitive charge. The applicant requested a discharge under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance. They completed 3 years, 4 months, and 4 days of net active service this period and completed their first full term of service; however, their reenlistment documents are not in evidence for review to determine their reenlistment service obligation.

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. The applicant's AMHRR does not reflect documentation of a behavioral health diagnosis; however, the applicant provided a Behavioral Health Discharge Summary reflecting a diagnosis of Adjustment Disorder with Depressed Mood.

e. 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/experiences: Panic Disorder. [Note-diagnosis of Adjustment DO with depressed mood is subsumed under diagnosis of Panic Disorder.].

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found diagnosis of Panic DO was made during active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a BH condition, Panic Disorder without Agoraphobia, (diagnosed on 5 FEB 2016) which mitigates some of his misconduct. As there is an association between Panic DO, avoidance behavior, and self-medication with illicit substances, there is a nexus between this condition, applicant's 15 Sep 2016 and 6 Jan 2017 periods of AWOL and his wrongful use of cocaine. Falling asleep on guard duty (29 July 2014), failing to go to his place of duty (16 Apr 2015, 27 Apr 2015), and making a false official statement (26 May 2015) are not mitigated as these offenses occurred before he developed Panic Disorder. Note-the diagnosis of Adjustment DO with depressed mood does not mitigate any of his misconduct as this is a temporary, mild BH condition which is not associated with the maladaptive behavioral changes commonly seen in long-term, serious BH conditions.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board's Medical Advisor opine, the board determined that, while the applicant's Panic Disorder mitigated the applicant's misconduct of periods of AWOL and the wrongful use of cocaine, the applicant's Panic Disorder does not outweigh the applicant's medically unmitigated misconduct (falling asleep on guard duty, failing to go to assigned place of duty, and making a false official statement) as considered by the Separation Authority IAW AR 635-200, paragraph 1-16(e)(2) and 3-5.

b. Response to Contention(s):

(1) The applicant contends they believe their discharge was unjust for several reasons. Their ETS date was reached, and they were held past this date purposely so their discharge would be under other than honorable conditions for personal reasons by their leadership. During the proceedings, the board reviewed this contention and granted an upgrade to General (Under Honorable Conditions). This decision was based on the applicant's Panic Disorder, which partially mitigated the misconduct of AWOL and the wrongful use of cocaine. However, the remaining offenses (falling asleep on guard duty, failing to report to the assigned place of duty, and providing a false official statement) were not mitigated, as they occurred prior to the onset of the applicant's Panic Disorder.

(2) The applicant contends their unit discriminated against them for being injured and wrote false statements against them. Those members of their unit were forced to retire or were administratively separated themselves. The board considered this contention along with the totality of the applicant's military records and found no evidence of the command acting in an arbitrary or capricious manner and the

applicant did not provide supporting documentation to overcome the presumption of regularity in the discharge process.

(3) The applicant contends their mental health was also taken as a joke by their leadership as they spent more than a year in behavioral health.

The board considered this contention and the applicant's assertion however the board determined that there is no evidence of said inequity in official records, and the applicant did not provide supporting documentation to support the contention.

c. The board decided to grant relief by upgrading the applicant's characterization of service to General (Under Honorable Conditions). This decision was made because the applicant's Panic Disorder served as partial mitigation for the applicant's misconduct - AWOL and the wrongful use of cocaine. However, the applicant's additional infractions (falling asleep on guard duty, failing to report to the assigned place of duty, and providing a false official statement) are not mitigated, as they occurred prior to the onset of the applicant's Panic Disorder. The applicant has the option to request a personal appearance hearing to address concerns directly with the board. It is the applicant's responsibility to meet the burden of proof and supply sufficient evidence or documentation to support claims that the discharge was either 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 medical and behavioral health conditions partially mitigated the applicant's misconduct (AWOL and the wrongful use of cocaine). Thus, the prior characterization is no longer appropriate. The remaining misconduct (falling asleep on guard duty, failing to go to assign place of duty, and making a false official statement) are not mitigated as these offenses occurred before the applicant developed Panic Disorder.

(2) The board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, 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.

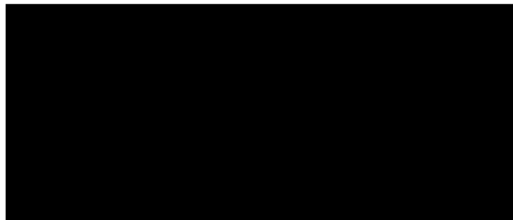
10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** General (Under Honorable Conditions)
- c. **Change Reason / SPD code to:** No Change
- d. **Change RE Code to:** No Change

Change Authority to: No Change

Authenticating Official:

4/24/2025



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