

1. Applicant's Name:

- a. **Application Date:** 20 October 2021
- b. **Date Received:** 14 January 2022
- 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 honorable. The applicant requests a reentry (RE) code change.

The applicant seeks relief contending, in effect, the RE code is incorrect. The applicant was never convicted or charged with driving under the influence. The applicant voluntarily left the military to care for kids during a divorce.

b. **Board Type and Decision:** In a records review conducted on 16 August 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 25 August 2020

c. Separation Facts:

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

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully used d-amphetamine and wrongfully operated a vehicle while having a blood alcohol concentration above the legal limit.

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** 15 May 2020

(5) **Administrative Separation Board:** On 17 July 2020, the board found the allegation the applicant wrongfully used d-amphetamine was supported by the preponderance of the evidence and warranted separation and the allegation the applicant wrongfully operated a vehicle while the applicant's blood alcohol concentrate was above the legal limit was supported by a preponderance of the evidence and did warrant separation. The board recommended the applicant be eliminated from the service with a general (under honorable conditions) discharge.

(6) **Separation Decision Date / Characterization:** 13 August 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 December 2016 / 3 years (The applicant extended for 1 months on 5 January 2017)

b. Age at Enlistment / Education / GT Score: 27 / 2 years college / 118

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B20, Infantryman / 9 years, 5 months, 18 days

d. Prior Service / Characterizations: RA, 8 March 2011 – 18 December 2016 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (19 June 2014 – 25 September 2014)

f. Awards and Decorations: AAM-2, NDSM, GWOTSM, ACM-CS, NCOPDR, ASR

g. Performance Ratings: 1 July 2016 – 30 June 2017 / Qualified
1 July 2017 – 10 November 2017 / Highly Qualified
11 November 2017 – 18 November 2018 / Qualified
19 November 2018 – 18 November 2019 / Not Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) FG Article 15, 6 November 2019, reflects the applicant wrongfully used d-amphetamine, a schedule II-controlled substance. The punishment consisted of reduction to specialist/E-4, suspended, to be automatically remitted if not vacated on or before 4 February 2020; forfeiture of \$1,332 pay per month for 2 months, suspended, to be automatically remitted if not vacated on or before 4 February 2020; extra duty for 45 days suspended, to be automatically remitted if not vacated on or before 4 February 2020; restriction for 45 days, suspended, to be automatically remitted if not vacated on or before 4 February 2020; and an oral reprimand.

(2) GOMOR, 21 May 2020, reflects the applicant was reprimanded for drunken operation of a vehicle. On 23 February 2020, while conducting force protection operations at Gate 3, Fort Carson Security Personnel detected an odor of an unknown alcoholic beverage emitting from the applicant and the applicant had bloodshot eyes. Upon arrival of the Fort Carson Military Police, the applicant failed to satisfactorily perform a series of voluntary roadside maneuvers. A breath alcohol test was administered, establishing the applicant's alcohol content at .095 grams of alcohol per 210 liters of breath.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: On-Line Application

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), 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) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Paragraph 3-7c states 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.

(5) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(6) Paragraph 14-12c (2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

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 "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c (2), misconduct (drug abuse).

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 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:

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.

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.

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.

The applicant requests a RE code change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant requests a RE code change. The applicant was separated under the provisions AR 635-200, Chapter 14-12c(2), due to Misconduct (Drug Abuse), with an honorable discharge and a RE code of "4." Army Regulation 601-210 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. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes. 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.

The applicant contends the RE code is incorrect and the applicant was never convicted or charged with driving under the influence and the applicant voluntarily left the military to care for kids during a divorce. On 17 July 2020, the board found the allegation the applicant wrongfully used d-amphetamine was supported by the preponderance of the evidence and warranted separation and the allegation the applicant wrongfully operated a vehicle while the applicant's blood alcohol concentrate was above the legal limit was supported by a preponderance of the evidence and did warrant separation. The board recommended the applicant be eliminated from the service with a general (under honorable conditions) discharge. On 13 August 2020, the separation authority approved the board's recommendations and directed the applicant be discharged with a general (under honorable conditions) characterization of service.

Based on the AMHRR, someone in the discharge process erroneously entered on the applicant's DD Form 214, block 24, Characterization of Service as "Honorable." The discharge packet confirms the separation authority approved the discharge with a General (Under Honorable Conditions) characterization of service.

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 diagnosis: Adjustment Disorder with Mixed Anxiety and Depressed Mood and Generalized Anxiety Disorder (GAD), PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** Adjustment Disorder with Mixed Anxiety and Depressed Mood and Generalized Anxiety Disorder (GAD).

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor determined that the service connected PTSD is mitigating. The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma and substance use, trauma event occurring prior to the misconduct, and possibility they were related irrespective of prior reports, the basis is mitigated. However, given the 100% disability for PTSD by the VA, recommend retaining the RE4 as the applicant is ineligible for enlistment.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD outweighed the Drug Abuse basis of separation. However, given the 100% disability for PTSD by the VA, recommend retaining the RE4 as the applicant is ineligible for enlistment.

b. Response to Contention(s): The applicant contends the RE code is incorrect and the applicant was never convicted or charged with driving under the influence and the applicant voluntarily left the military to care for kids during a divorce. The Board considered this contention and determined that the applicant received the appropriate Separation Program Designator (SPD) code for the discharge specified by AR 635-200. Therefore, no change is warranted. The Board determined the RE Code was proper and equitable and voted not to change it.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant's current characterization is Honorable. The Board voted not to change the reentry code based on the applicant's 100% disability for PTSD by the VA. 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 determined the discharge is proper and equitable as the applicant's current characterization is Honorable; therefore, no further relief is warranted.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20220000775

(3) The RE code will not change based on the applicant's medical diagnosis and 100% disability for Post Traumatic Stress Disorder by the VA.

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:

8/28/2024

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