

**1. Applicant's Name:**

- a. **Application Date:** 18 September 2023
- b. **Date Received:** 2 October 2023
- c. **Counsel:** None

**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 under than honorable conditions. The applicant requests, in effect, an upgrade in their characterization of service to honorable and change to their reentry code.

(2) The applicant seeks relief stating due to the unforeseen life events that occurred literally from the day they signed their enlistment contract for the Army National Guard (ARNG), until their discharge from the ARNG. These life events affected their mentality and caused them to be emotionally unstable.

(3) The day they enlisted, their aunt died, the day after they graduated from Basic Training their first cousin died, and they were not allowed to attend the funeral. That alone gave them Post-Traumatic Stress Disorder (PTSD), just hearing the word Army, let alone being reminded every time they had to put on the uniform. Trying their best to cope with the fact they fell into the habit of marijuana use. Lastly, the day they found out they failed their first drug test, they lost another first cousin. No matter how hard they tried to stop, at the time marijuana was the only thing that helped them cope. They are still traumatized still this day, but they have found better ways to deal with it and they no longer use marijuana.

**b. Board Type and Decision:** In a records review conducted on 24 April 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** AD Alcohol/Other Drug Abuse, National Guard Regulation 600-200 / NIF / Under Other Than Honorable Conditions

- b. **Date of Discharge:** 25 May 2022

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 April 2022

(2) **Basis for Separation:** urinalysis failure on 11 June 2020, 6 February 2021, and 8 August 2021. Although they completed rehabilitation in April 2021, based on the original Army Substance Abuse Program (ASAP) referral on 6 November 2020, they tested positive during treatment and after, thus resulting in their rehabilitation failure status.

(3) **Recommended Characterization:** General (Under Than Honorable Condition)

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

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

**(6) Separation Decision Date / Characterization:** NIF

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 30 January 2017 / 6 years

**b. Age at Enlistment / Education / GT Score:** 23 / Bachelor's Degree / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 15Q10, Air Traffic Control Operator / 5 years, 3 months, 26 days

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

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** ARCAM, NDSM, ASR

**g. Performance Ratings:** NA

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

**(1)** A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant attended their Initial Active Duty for Training from 16 May 2017 through 8 December 2017.

**(2)** A DA Form 4856 (Developmental Counseling Form) dated 6 November 2020, reflects the applicant received counseling from their company commander, stating results from a urinalysis administered on 11 June 2020 indicated the applicant tested positive for Tetrahydrocannabinol (THC). The Plan of Action states the applicant will contact the Substance Abuse Prevention Coordinator within 7 days to receive an assessment through an approved civilian provider and they will abide by any and all recommendations of that counselor. The applicant agreed with the information and signed the form.

**(3)** A memorandum, Army Substance Abuse Program [ASAP], Louisiana ARNG, subject: [Applicant] ASAP Program Status, dated 27 April 2021, reflects that applicant has successfully completed the Louisiana ARNG ASAP requirements as of 22 April 2021.

**(4)** A DA Form 4856 dated 19 June 2021 reflects the applicant received counseling from their company commander, stating on 19 June 2021, they were advised of their rights due to recent illicit Positive on a Drug Screening Test. The Plan of Action states the applicant will contact the ASAP team within 7 days of this counseling to discuss treatment requirements, options, locations, and services available. The applicant agreed with the information and signed the form.

**(5)** A DA Form 5248-R (Report of Unfavorable Information for Security Determination) dated 2 February 2022, reflects the basis of the report is the applicant tested positive for THC on the following dates: 11 June 2020, 6 February 2021, and 8 August 2021. Item 11b (Action Taken) states the commander is processing the applicant for separation.

(6) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice), dated 3 February 2022, reflects the applicant received nonjudicial punishment for, wrongfully use THC, on or about 8 July 2021 and on or about 8 August 2021. Their punishment consisted of a reduction in rank/grade from specialist/E-4 to private first class/E-3. The applicant elected not to appeal.

(7) A DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)), dated 3 February 2022, reflects a flag was initiated on the same day for Drug Abuse Adverse Action.

(8) A Louisiana ARNG Order 0001657357.00 dated 8 February 2022, reflects the applicant's demotion from specialist/E-4 to private first class/E-3, for misconduct.

(9) A Company Foxtrot (-), 1st Battalion, 171st Aviation Air Traffic Service, subject: Commander's Report for Separation under Army Regulation 135-178 (Enlisted Administrative Separations) , Chapter 10 (Substance Abuse Rehabilitation Failure), dated 13 March 2022, reflects the applicant's company commander's recommendation to separate them from the ARNG prior to the expiration of their term of military service and that their service be characterized as General (Under Other Than Honorable Conditions). The company commander states given the timeframe of rehabilitation completion to the third positive screening being 6 months apart, the applicant is considered a rehabilitation failure. They have demonstrated no desire to utilize the tools provided to rehabilitate or change their behavior.

(10) A Company Foxtrot (-), 1st Battalion, 171st Aviation Air Traffic Service, subject: Notification of Separation Proceedings under Army Regulation 135-178, Chapter 10, dated 10 April 2022, notified the applicant of the initiation of separation action against them for actions as describe above in paragraph 3c(2), with a characterization of service of General (Under Honorable Conditions). The applicant acknowledged receipt of Notification of Separation Proceedings that same day. Before completing their response, they understood they have a right to consult with counsel; however, they waived their right to counsel. They elected not to submit written statements.

(11) A memorandum, 204th Theater Airfield Operations Group, subject: Request for Discharge [Applicant], dated 24 April 2022, reflects the battalion commander's recurrence with the company commander's recommendation to discharge the applicant due to rehabilitation failure, in accordance with Army Regulation 135-178, Chapter 10. The commander states the applicant has received three positive test results for THC. Given the applicant has tested positive on three separate urinalysis tests within a 12 month period, they have been deemed a rehabilitation failure.

(12) A memorandum, Joint Forces Headquarters – Louisiana, subject: Review – ASAP Packet for [Applicant], dated 6 May 2022, the Judge Advocate states they have conducted a legal review of the packet for the applicant and is satisfied this action is legally sufficient.

(13) A DA Form 4856 dated 18 May 2022 reflects the applicant received counseling from their company commander for, on 18 May 2022 the applicant was advised on their rights due to recent illicit Positive on a Drug Screening Test. The Plan of Action states the applicant will contact the ASAP team within 7 days of this counseling to discuss treatment requirements, options, locations, and services available. The applicant agreed with the information and signed the form.

(14) Louisiana ARNG Orders 0001863376.00 dated 8 June 2022, reduced the applicant in grade from private first class/E-3 to private/E-1 with an effective date of 25 May 2022.

(15) Louisiana ARNG Orders 0001863451.00, dated 8 June 2022, discharged the applicant from the ARNG, effective 25 May 2022. Their type of discharge is shown as Under Other Than Honorable Conditions and a RE-4.

i. **Lost Time / Mode of Return:** NIF

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

(1) **Applicant provided:** On 25 November 2023 the Army Review Boards Agency requested the applicant provide their medical documents to support their mental health issues, as of this date there has been no response.

(2) **AMHRR Listed:** None

#### 5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Photographs

6. **POST SERVICE ACCOMPLISHMENTS:** none submitted with applicant.

#### 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) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 135-178 (Enlisted Administrative Separations), dated 7 November 2017, set policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of ARNG of the United States and U.S. Army Reserve enlisted Soldiers for a variety of reasons.

(1) Paragraph 10-1 (Basis) stated the initiation of discharge proceedings in the case of a Soldier who has been referred to a program of rehabilitation for alcohol or drug abuse under the provisions of Army Regulation 600-8, and who fails, through inability or refusal to participate in, cooperate in, or successfully complete the program in the following circumstances, there is a lack of potential for continued military service; long-term rehabilitation in a civilian medical facility is determined necessary; and rehabilitation failure includes Soldiers with a subsequent alcohol or drug-related incident of misconduct at any time during the 12-month period following successful completion of the Army Substance Abuse Program or during the 12-month period following removal from the program.

(2) Paragraph 12-1 (Basis) stated, a Soldier may be discharged for misconduct when it is determined under that they are unqualified for further military service by reason, to include abuse of illegal drugs. Abuse of illegal drugs is serious misconduct. Discharge action normally will be based upon commission of a serious offense. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more disciplinary infractions or incidents of other misconduct and processed for discharge.

e. Army Regulation 600-8-19 (Enlisted Promotions and Reductions), dated 16 June 2019, prescribed the enlisted promotions and reductions function of the military personnel system. Paragraph 10-1e stated when the separation authority determines that a Soldier is to be discharged from the Service under other than honorable conditions, he/she will be reduced to the lowest enlisted grade. Board action is not required for this reduction.

f. Army Regulation 600-200 (Enlisted Personnel Management), establishes standards, policies, and procedures for the management of the Army National Guard and the Army National Guard of the United States enlisted Soldiers in the functional areas of, to include enlisted separations.

(1) 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) A General discharge is if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

(3) A Under Other Than Honorable Conditions Discharge, service may be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, homosexual conduct, unsatisfactory participation, or security reasons. The Adjutant General will direct reduction in grade to private/E-1 when the Soldier is discharged under other than honorable conditions.

(4) Paragraph 6-34 (Reentry Eligibility Codes) state reentry eligibility codes are determined at separation. They provide information concerning the Soldier's service in the ARNG, which will be considered upon future enlistment. If a Soldier will receive a discharge under other than honorable conditions, and the reason for discharge is non-waivable for enlistment, the RE code will be RE 4 (Ineligible for Enlistment). If the reason for separation is waivable, the RE code will be RE 3 (Not fully qualified for reentry or continuous service at time of separation, but this disqualification is waivable).

(5) Paragraph 6-35 (Separation/Discharge from State ARNG and/or Reserve of the Army) states the following are reasons, applicability, and codes for administrative separation or discharge from the Reserves of the Army, the State ARNG only, or both.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) dated 23 August 2020, provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components. 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, the Warrior Ethos, and the standards of performance, discipline, and readiness necessary to the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected of being 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 Soldier 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.

#### **8. SUMMARY OF FACT(S):**

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

b. A review of the available evidence provides the applicant tested positive for abuse of illegal substance on three occurrences and was deemed a rehabilitation failure. As a result, separation proceedings were initiated, and they were separated from the service with an Other Than Honorable Conditions discharge. They completed 5 years, 3 months, 26 days of ARNG service this period; however, they did not complete their enlistment contractual obligation of 8 years.

c. Army Regulation 135-178, chapter 10 states the initiation of discharge proceedings in the case of a Soldier who has been referred to a program of rehabilitation for alcohol or drug abuse under the provisions of Army Regulation 600-8, and who fails, through inability or refusal to participate in, cooperate in, or successfully complete the program in the following circumstances, there is a lack of potential for continued military service; long-term rehabilitation in a civilian medical facility is determined necessary. Rehabilitation failure includes Soldiers with a subsequent alcohol or drug-related incident of misconduct at any time during the 12-month period following successful completion of the Army Substance Abuse Program or during the 12-month period following removal from the program.

d. Neither the applicant nor their Army Military Human Resource Record provide documentation of PTSD or other mental health diagnoses prior to the applicant's discharge from the ARNG.

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 and did not find a condition. However, the that the applicant assertion of Post-Traumatic Stress Disorder may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant asserts Post-Traumatic Stress Disorder in-service.

(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 asserted Post-Traumatic Stress Disorder is unsupported at this time preventing a mitigation determination.

(4) Does the condition or experience outweigh the discharge? **No.**

b. Response to Contention(s):

(1) The applicant contends due to the unforeseen life events that occurred literally from the day they signed their enlistment contract for the Army National Guard (ARNG), until their discharge from the ARNG. These life events affected their mentality and caused them to be emotionally unstable. The Board considered this contention and determined that the applicant's unforeseen life events do not mitigate the applicant's urinalysis failure as the Army affords many avenues to Soldiers including seeking separation for hardship.

(2) The applicant contends they tried their best to cope; however, they fell into the habit of marijuana use. No matter how hard they tried to stop, at that time marijuana was the only thing that helped them cope. The Board considered this contention but determined that the applicant's offense of urinalysis failure was an incident which can serve as the basis for separation and characterization in accordance with AR 635-200. Therefore, a discharge upgrade is not warranted.

(3) The applicant contends they are still traumatized still this day, but they have found better ways deal with it and they no longer use marijuana. The Board considered this contention and determined that although the applicant has found better ways deal with self-asserted Post-Traumatic Stress Disorder and the applicant no longer uses marijuana, it does not mitigate the applicant's urinalysis failure. Therefore, no change is warranted.

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 contentions 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, despite applying liberal consideration of all the evidence before the Board, the applicant's self-asserted Post-Traumatic Stress Disorder is unsupported at this time preventing a mitigation determination for the urinalysis failure offense.



**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20230013572**

(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:**

6/3/2024

**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