

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 5 October 2023
- b. **Date Received:** 10 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 Other Than Honorable Conditions. The applicant requests an upgrade of their characterization of service from the U.S. Army Reserve (USAR).

(2) The applicant seeks relief stating they served in the Army from 3 March 2010 to 16 May 2012, and during their time in the military, they gave their best effort to fulfill their duties and responsibilities to the best of their abilities. Unfortunately, their discharge was categorized as under other than honorable conditions, which does not reflect their dedication to their country. At the time of their discharge, they were facing personal challenges, including sick parents, having a child on their own, and living in a dangerous location.

(3) Since leaving the military they have demonstrated significant growth and discipline. They have secured stable employment and have contributed positively to their community. They are currently in college to successfully achieve their associate degree. They have actively engaged in community service and volunteer work, reflecting their dedication to making amends for past mistakes and giving back to society. They respectfully request consideration for the upgrade of their discharge. They believe their actions since discharge demonstrate a profound change in character and a commitment to a life guided by honor, integrity, and service.

b. Board Type and Decision: In a records review conducted on 5 June 2024, and by a 3-2 vote, the Board determined the discharge is inequitable and determined that clemency was warranted for the applicant's one-time drug use. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General, Under Honorable Conditions. The Board determined the current narrative reason, SPD and reentry code were appropriate and voted not to change them.

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: Abuse of Illegal Drugs / Army Regulation 135-178 / Under Other Than Honorable Conditions

b. Date of Discharge: 16 May 2012

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 22 March 2012

(2) **Basis for Separation:** Abuse of Illegal Drugs.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 27 April 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 11 March 2010 / 8 years

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 91

c. Highest Grade Achieved / MOS / Total Service: E-2 / 91C10, Utilities Equipment Repairer / 2 years, 2 months, 6 days

d. Prior Service / Characterizations: NA

e. Overseas Service / Combat Service: NA

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, Headquarters, 143rd Sustainment Command (Expeditionary), subject: Notification of Separation Proceedings under Army Regulation 135-178 (Enlisted Administrative Separations), Chapter 12-1d (Abuse of Illegal Drugs), dated 22 March 2012, reflects the applicant's notification of initiating action to separate them from the USAR for Misconduct, Abuse of Illegal Drugs, with the recommended characterization of service of Under Other Than Honorable Service. A Postal Service Form 3811 (Domestic Return Receipt) reflects the applicant's Notification of Separation was delivered to their residence on 31 March 2012.

(2) A memorandum, 282nd Quartermaster Company (General Support), subject: Administrative Separation of [Applicant], dated 30 March 2012, reflects the applicant acknowledged that they are being considered for administrative separation from the service.

(3) A memorandum, 282nd Quartermaster Company (General Support), subject: Commander's Report for Separation under Army Regulation 135-178, Chapter 12, [Applicant], undated, reflects the applicant's company commander's recommendation to separate the applicant from the Army Reserve prior to the expiration of their term of military service and that their service be characterized as Under Other Than Honorable Conditions. The company commander states –

(a) On 8 January 2012, the applicant was tested for illegal drugs. On 23 January 2012, the applicant tested positive for Tetrahydrocannabinol.

(b) Having the applicant remain in the unit would most likely have a negative impact upon the current Soldiers, sending the message it is okay to do drugs as nothing will happen to them.

(4) A memorandum, Headquarters, 143rd Sustainment Command (Expeditionary), subject: Administrative Separation Action [Applicant], dated 27 April 2012, the separation authority reviewed the evidence and concluded the applicant wrongfully used an illegal drug. The commanding general directed the applicant be separated from the USAR with an Under Other Than Honorable Conditions discharge and be reduced to the rank/grade of private/E-1.

(5) Headquarters, 81st Regional Support Command Orders 12-132-00030, dated 11 May 2012, reflects the applicant was reduced in rank/grade to private/E-1 and discharged from the USAR effective 16 May 2012. Their type of discharge is shown as Under Other Than Honorable Conditions.

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

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

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552), with letter.

6. **POST SERVICE ACCOMPLISHMENTS:** none submitted with 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, 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, DoD Directive 1332.41, and DoD Instruction 1332.28.

d. Army Regulation 135-178 (Enlisted Administrative Separations) dated 13 April 2007, 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 USAR enlisted Soldiers for a variety of reasons.

(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. When a Soldier is discharged before expiration of the service obligation for a reason for which an honorable characterization is discretionary, the following considerations apply, to include –

(a) An honorable characterization may be awarded when disqualifying entries in the Soldier's military record are outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service.

(b) It is a pattern of behavior and not an isolated instance which should be considered the governing factor in determining the character of service.

(c) Unless otherwise ineligible, a Soldier may receive an honorable characterization of service if he or she has, during his or her current enlistment, or any extension thereof, received a personal decoration.

(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, but is not required to 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 12 (Misconduct) stated a Soldier may be discharged for misconduct when it is determined under the Soldier is unqualified for further military service by reason of one or more of the following circumstances, 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 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before Expiration Term of Service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers. Chapter 15 (Secretarial Plenary Authority) provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

8. SUMMARY OF FACT(S):

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 an illegal drug involuntary separation from the USAR. The applicant completed 2 years, 2 months, 6 days of their 8 year USAR service obligation

c. Army Regulation 135-178, Chapter 12 (Misconduct) stated a Soldier may be discharged for misconduct when it is determined under the Soldier is unqualified for further military service by reason of one or more of the following circumstances, 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.

d. A review of the applicant's Army Military Human Resource Records reflects no documentation of a mental health diagnosis, nor did the applicant provide any documentation.

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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends they respectfully request consideration for the upgrade of their discharge. They believe their actions since discharge demonstrate a profound change in character and a commitment to a life guided by honor, integrity, and service. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

(2) The applicant contends at the time of their discharge, they were facing personal challenges, including sick parents, having a child on their own, and living in a dangerous location. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

(3) The applicant contends they served in the Army from 3 March 2010 to 16 May 2012, and during their time in the military, they gave their best effort to fulfill their duties and responsibilities to the best of their abilities. The Board considered this contention and voted to grant relief in the form of an upgrade to characterization.

c. The Board, after carefully examining the applicant's record of service during the period of enlistment under review and all other evidence presented, determined that clemency is warranted based on the applicant's one-time drug use. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to General, Under Honorable Conditions.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to General (Under Honorable Conditions) and determined clemency was warranted based on one-time drug use. The Board determined that the original discharge has served its purpose. Thus, the prior characterization is no longer appropriate.

(2) As there were no SPD Codes listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

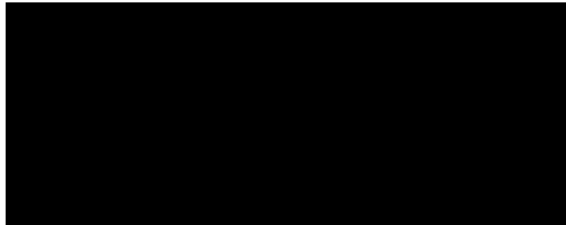
(3) As there were no RE-codes listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

10. BOARD ACTION DIRECTED:

- a. Issue a New Separation Order: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Authority to: AR 135-178

Authenticating Official:

7/5/2024



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