

1. Applicant's Name: [REDACTED]**a. Application Date:** 19 October 2023**b. Date Received:** 23 October 2023**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable and removal of their arrest record from the Federal Bureau of Investigations (FBI).

b. The applicant seeks relief contending, in effect, the applicant's arrest record has hindered their ability to obtain federal employment, specifically for an Executive of the President internship in August 2023. While on spring break in March 2022 in Fort Lauderdale, FL, the applicant ingested cocaine unknowingly laced with fentanyl, which was purchased by civilian friends while the applicant was intoxicated. Following this incident, the applicant submitted an unqualified resignation, followed by a qualified resignation from West Point, which led to a misconduct hearing.

c. Board Type and Decision: In a telephonic personal appearance hearing conducted on 15 July 2024, and by a 4-1 vote, the Board determined the discharge is inequitable and voted to grant relief in the form of an upgrade of the characterization of service to Honorable, separation authority to AR 150-1, the narrative reason for separation to Miscellaneous/general reasons with a corresponding separation code of JND.

Please see Section 10 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Qualified Resignation In Lieu Of Misconduct Hearing / AR 150-1 / 172-0005, 21 June 2022 / NA / General (Under Honorable Conditions)

b. Date of Discharge: 24 June 2022**c. Separation Facts:****(1) Date of Notification of Intent to Separate:** NIF**(2) Basis for Separation:** NIF**(3) Investigation Officer Recommended Characterization:** NIF**(4) Superintendent USMA Recommendation:** NIF**(5) Separation Decision Date / Characterization:** NIF**4. SERVICE DETAILS:**

a. Date / Oath of Allegiance: Date not specified / 8 years

b. Age at Allegiance / Education: Unable to determine without date of Oath of Allegiance / High School Graduate

c. Highest Grade Achieved / MOS / Total Service: E-2 / None / 3 years, 11 months, and 9 days

d. Prior Service / Characterizations: RA, 16 July 2018 - 30 June 2019 / HD

e. Overseas Service / Combat Service: None

f. Awards and Decorations: None

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) DA Form 2173 (Statement of Medical Examination and Duty), 7 April 2022, states the applicant was on leave at Wilton Manors, FL, however the applicant's authorized leave location was NY, NY. On 22 March 2022, the applicant allegedly ingested cocaine laced with fentanyl at a house party, resulting in hospitalization at Holy Cross Hospital. The applicant departed the hospital against medical advice and was recalled to West Point.

(2) A DA Form 4833 shows the applicant was referred on 14 July 2022 for wrongful use of cocaine - not detected by urinalysis and wrongful use of fentanyl - not detected by urinalysis on 10 March 2022.

(3) CID Report of Investigation - Final, 23 March 2023, shows an investigation established probable cause to believe the applicant committed the offenses of wrongful use of fentanyl - not detected by urinalysis, wrongful use of cocaine - not detected by urinalysis, and wrongful use of amphetamine/methamphetamine - not detected by urinalysis on 10 March 2022.

(4) DA Form 261 (Report of Investigation, Line of Duty, and Misconduct Status), 13 September 2022, shows on 10 March 2022 the applicant ingested cocaine laced with fentanyl leading to an incidental acute drug overdose.

(5) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), shows the applicant was discharged on 24 June 2022 under the authority of AR 150-1, with a narrative reason of Qualified Resignation In Lieu of Misconduct Hearing. The DD Form 214 was authenticated with the applicant's signature.

(6) Casualty and Mortuary Affairs Operations Division, Human Resource Command Memorandum, Line of Duty Determination, 30 March 2023, states the applicant suffered injuries as the result of an overdose accident on 10 March 2022. Casualty and Mortuary Affairs Operations Division supported the Approval Authority's finding of "Not in Line of Duty - Due to Own Misconduct." Evidence contained in the investigation indicated the applicant willingly ingested illegal illicit drugs.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; applicant case summary; three character letters; CompTIA Security Plus certificate; college transcript; and email.

6. POST SERVICE ACCOMPLISHMENTS: Currently works as a federal contractor in the IT industry for the Department of Defense. The applicant completed CompTIA Security Plus and is an undergraduate at George Washington University with a major in cybersecurity.

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), 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 150-1, provides policy and procedures for the command and control of the United States Military Academy (USMA), the United States Military Academy Preparatory School (USMAPS), and the West Point Military Reservation.

(1) Chapter 6, governs misconduct, honor, disciplinary and other grounds for separation and states cadets at the USMA are members of the Regular Army and subject to military law and the UCMJ.

(2) Paragraph 6-4, provides policy on sanctions that may be awarded to cadets. Following a hearing for conduct deficiency, misconduct, or honor resulting in a finding of a violation of paragraphs 6-6 through 6-13, 6-15, and 6-16, respectively, the Superintendent, USMA may impose the following sanctions in such amounts or in such combinations as the Superintendent, USMA deems appropriate: Admonition; Reprimand; Restriction to limits; Deprivation of privileges; Reduction in or withdrawal of cadet officer or noncommissioned officer rank; Demerits; Punishment tours; Fatigue tours; Loss of leave; Forfeiture of pay; Delayed graduation (by less than a full year); Turn-back to the next lower class; Suspension from USMA; Separation from USMA in accordance with table 8-2.

(3) Paragraph 6-6, Cadet disciplinary system.

(a) Subject to the approval of the Superintendent, USMA, the Commandant of Cadets will establish, publish, and administer a cadet disciplinary system. The system will include the means to monitor each cadet's conduct, sanctions for conduct deficiency, and instruction on the standards of conduct required. Copies of the approved system and subsequent amendments will be forwarded for information to Headquarters Department of the Army and will reference this paragraph.

(b) Conduct investigations will be convened by the Commandant of Cadets under the provisions of the Cadet Disciplinary System (see USMA Regulation 385-1). Before sanctioning a cadet for conduct deficiency, the cadet will be afforded a hearing to determine whether the cadet is deficient in conduct. If after such a hearing a cadet has been found deficient in conduct,

the Commandant of Cadets will review the report of proceedings. The Commandant of Cadets may retain the cadet (with or without probation), or recommend to the Superintendent, USMA that the cadet be separated or suspended from USMA.

(c) In cases of conduct deficiency where a report of proceedings and the recommendations of the Commandant of Cadets are forwarded for action, the Superintendent, USMA will take action under the procedures in paragraphs 6-4a and b.

(d) Upon completion of the record of the proceedings, including the findings and recommendations, the case file will be forwarded for recommendations by the Commandant of Cadets, provided to the cadet respondent for rebuttal and comment, reviewed by the Staff Judge Advocate, and finally sent to the Superintendent, USMA for action pursuant to paragraph 8-3. The file of the proceedings will be retained in accordance with AR 25-400-2 (The Army Records Information Management System).

(4) Chapter 6-8, provides for misconduct involving drugs and narcotics and stipulates a cadet who violates UCMJ, Article 112a may be awarded sanctions per paragraph 6-4.

(5) Paragraph 6-9, provides for misconduct involving alcoholic beverages. Except as specifically authorized in regulations prescribed by the Commandant of Cadets, a cadet who, while on West Point Military Reservation, drinks or possesses alcoholic beverages, or is found under the influence of alcoholic beverages, may be awarded sanctions under paragraph 6-4. Elsewhere, a cadet who drinks or possesses alcoholic beverages, and who, as a result, commits (an) act(s), in such a manner and under such circumstances as to bring discredit on the cadet or the Corps of Cadets, may be awarded sanctions under paragraph 6-4.

(6) Paragraph 6-11, provides for misconduct involving conduct unbecoming a cadet of the Regular Army. Cadets are required to act as leaders of character. They are not only to abstain from all immoral conduct, but they are also enjoined to conduct themselves upon every occasion with propriety and decorum. Cadets who commit acts un-becoming an officer may be awarded sanctions under paragraph 6-4.

(7) Paragraph 6-17, provides for misconduct involving procedures for processing misconduct offenses. Cadets subject to separation or other adverse action under the provisions of this section of this regulation may, at the discretion of the Superintendent, USMA, be tried by court-martial if the conduct constitutes a violation of the UCMJ, be referred to a hearing before an investigating officer under the provisions of this paragraph or be considered under procedures set forth in paragraph 6-4c. Should the Superintendent, USMA elect to proceed under the provisions of this paragraph, cadets concerned will be directed to appear as respondents before an investigating officer appointed by the Superintendent, USMA. The investigating officer will conduct an investigation of the matter in accordance with procedures approved by the Superintendent, USMA. Upon completion of the investigation, the investigating officer will submit the record of the proceedings, including their findings and recommendations, to the Superintendent, USMA for action pursuant to paragraph 8-3.

(8) Paragraph 8-2 (Delegation of separation and discharge authority), states the Superintendent, USMA, is delegated the authority to separate from USMA, prior to the commencement of term one of their second class year, cadets who have no prior service obligation remaining and to discharge such cadets from the Army with issuance of an honorable or general discharge certificate, unless such cadets entered USMA from a military Service other than the Army, in which case they will be transferred to their parent Service upon separation under this paragraph.

(9) Paragraph 8-7, Qualified resignation - resignation in lieu of court-martial or involuntary separation. If charges have been preferred against a cadet under the UCMJ or separation proceedings against a cadet have been initiated for conduct, honor, or misconduct under this regulation, the cadet concerned may resign in lieu thereof. Such resignations may be submitted at any time prior to final separation approval.

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

a. The applicant requests an upgrade to honorable and removal of their arrest record in the FBI. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR includes partial facts and circumstances concerning the events which led to the discharge from the USMA and the discharge from the Army. The applicant's AMHRR contains a properly constituted DD Form 214, which was authenticated with the applicant's signature. The applicant's DD Form 214 indicates the applicant was discharged on 24 June 2022 under the provisions of AR 150-1, by reason of Qualified Resignation In Lieu of Misconduct Hearing, with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, the applicant's arrest record has hindered their ability to obtain federal employment, specifically for an Executive of the President internship in August 2023.

(1) Analyst notes, a review of the applicant's records and evidence provided by the applicant indicates the applicant has not yet appealed to the U.S. Army Criminal Investigation Command for removal of records maintained by the U.S. Army Crime Records Center which as stated by the applicant, submitted their arrest record to the FBI. The applicant may submit a request to remove their arrest record to the Director, U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134, with supporting evidence showing their records are in error. If the applicant's request is not resolved to the applicant's satisfaction by the U.S. Army Crime Records Center, the applicant may submit a new application to the Army Board for Correction of Military Records, including evidence of denial of the request from the U.S. Army Crime Records Center by using DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552).

(2) The Military Review Boards representative emailed the applicant CID reports on 10 July 2024 requesting comments, pending a response from the applicant. The applicant has a personal appearance hearing on 15 July 2024.

d. The third party statements provided with the application reflect the applicant as an exemplary professional and a person of outstanding character. One of the most impressive aspects of applicant's character is a willingness to support and uplift others. The applicant is not only a highly skilled and dedicated professional but also a person of utmost integrity, resilience, and generosity. The applicant's journey from personal adversity to professional excellence is a testament to their remarkable character and unwavering determination. In addition to going to school and working full-time, the applicant volunteers to help the youth in the community who are less fortunate and need direction by serving as a counselor in a program called "Grass Roots Health."

e. The applicant currently works as a federal contractor in the IT industry for the Department of Defense. The applicant completed CompTIA Security Plus and is an undergraduate at George Washington University with a major in cybersecurity. The Army

Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

f. 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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. The applicant submitted the following additional document(s): None

b. The applicant presented the following additional contention(s): None

c. Counsel / Witness(es) / Observer(s): None

10. 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 no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a 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. Prior Decisions Cited:

c. Response to Contention: The applicant contends, in effect, the applicant's arrest record has hindered their ability to obtain federal employment, specifically for an Executive of the President internship in August 2023. The Board acknowledged this contention.

d. The Board determined the discharge is inequitable and voted to grant relief in the form of an upgrade of the characterization of service to Honorable, separation authority to AR 635-200, the narrative reason for separation to Miscellaneous/general reasons with a corresponding separation code of JND.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length, post service accomplishments) and concurred that the applicant's one time drug use is mitigated. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and warranted an upgrade.

(2) The Board voted not to change the applicant's the narrative reason for separation to Miscellaneous/general reasons with a corresponding separation code of JND.

(3) As the applicant was an officer, there is no reentry code supplied upon discharge, honorable or otherwise.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Miscellaneous/General reasons/JND
- d. Change RE Code to: N/A
- e. Change Authority to: AR 150-1

Authenticating Official:

3/7/2025

