

1. Applicant's Name: [REDACTED]**a. Application Date:** 19 March 2024**b. Date Received:** 21 March 2024**c. Counsel:** [REDACTED]**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 general (under honorable conditions). The applicant requests an upgrade to honorable, a change of the separation code, and a personal appearance before the Board.

(2) The applicant, through counsel, seeks relief stating they unknowingly entered the military with a pre-existing condition of Post Traumatic Stress Disorder (PTSD). It wasn't until after they were in the military that a physician would formally diagnose them with PTSD and Major Depressive Disorder. Their PTSD stemmed from their mother's suicide when they were 13 years old. They were the first to discover their mother's body and they attempted futile Cardiopulmonary Resuscitation (CPR) on her. This traumatic incident left a permanent scar on their psyche from which they would not recover.

(3) Their PTSD, while manifesting prior to service, was greatly aggravated and exacerbated by their military service. During their assignment at Fort Wainwright, their unit conducted a Combat Lifesaver Course (CLS), during the CPR portion of this course, they had suffered a panic attack. They were subjected to ridicule and harassment from their unit. They confided their mother's suicide only to a few close friends. One of these friends later committed suicide which drove them into an even deeper depression. It was at this time they began to abuse substances to numb their PTSD symptoms. They do not deny the positive urinalysis for cocaine but want the board members to know it was part of self-medication due to their worsening mental health and PTSD.

(4) They rely upon the guidance in the Hagel and Kurta memorandums which grant liberal consideration due to pre-existing PTSD "aggravated by military service" as is clearly the case here. Their reliance upon drugs and alcohol did not begin until a year into their military service when the CLS course, suicide of a friend, and bullying and harassment by fellow Soldiers greatly exacerbated their behavior health symptoms.

(5) They ask the board members to consider their otherwise excellent duty performance, admission of their misconduct, remorse for their actions, lack of any other misconduct in their file; and upgrade their discharge to Honorable. Fortunately, they have sought treatment for their addiction, been formally diagnosed with PTSD and Major Depressive Disorder, obtained full-time employment, and has turned their life around for the better.

(6) The record shows the government introduced into the discharge packet information that they had a self-referred to Substance Use Disorder Clinical Care (SUDCC). The documentation and inclusion of this is Limited Use Information as defined in Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) is protected evidence. The only options that should have been available to the separation authority according to Army

Regulation 635-200 (Active Duty Enlisted Administrative Separations) were to separate with an honorable characterization of service, suspend the separation, or retain the Applicant.

b. Board Type and Decision: In a telephonic personal appearance conducted on 4 November 2024, and by a 5-0 vote, the board determined the discharge is inequitable based on circumstances surrounding the discharge; violation of the Limited Use policy. The board also cited the applicant's one-time drug use, severe family matters, contention of discrimination, and the applicant's post-service accomplishments which further mitigate the applicant's basis for separation (wrongful use of cocaine). Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The board voted and determined the reentry eligibility (RE) code was proper and equitable and voted not to change it.

Please see Section 10 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) / Army Regulations 635-200, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 3 May 2022

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 3 March 2022

(2) Basis for Separation: between on or about 19 July 2021 and on or about 22 July 2021, wrongfully used cocaine.

(3) Recommended Characterization: General (Under Honorable Conditions)

(4) Legal Consultation Date: 8 March 2022

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 11 April 2022

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 5 October 2020 / 5 years, 26 weeks

b. Age at Enlistment / Education / GT Score: 24 / bachelor's degree / 129

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1O, Infantryman / 1 year, 6 months, 29 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Alaska / None

f. Awards and Decorations: NDSM, GWTSM, ASR [Note: no personal decorations]

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Two DA Form 4856 (Developmental Counseling Form) signed on 30 September 2021 reflects the applicant received event-oriented counseling with the recommendation for separation and the initiation of suspension of favorable personnel actions (Flag) for involuntary separation. The Key Points of Discussion states, on 22 July 2021, the applicant was selected for a random 10-percent Company urinalysis. The result showed they tested positive for cocaine level consisting of 6668 nanograms. The applicant was already Command-referred to Substance Use Clinical Care after a self-referral determined they may have had a substance use issue. The applicant agreed with the information and signed the forms on 30 September 2021.

(2) A DA Form 3822 (Report of Mental Status Evaluation) dated 22 February 2022, reflects the applicant has no duty limitations due to behavioral health reasons and currently meets behavioral health medical retention standards. The behavioral health provider noted the applicant has no behavioral health diagnosis and no follow-up is needed. The applicant was screened for PTSD, depression, Traumatic Brain Injury (TBI), sexual assault, substance abuse, and other significant behavioral health conditions. These conditions were either not present or were not of sufficient severity to cause the behaviors leading to administrative separation. The applicant is psychiatrically cleared for any disciplinary or administrative action deemed appropriate by their command.

(3) A memorandum, Bravo Company, 1st Battalion, 5th Infantry Regiment, 1st Stryker Brigade Combat Team, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c (2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 2 March 2022, reflects the applicant's company commander's recommendation to separate them from the Army prior to the expiration of their current term of service. The company commander states the applicant received a Field Grade Article 15 on 23 February 2022 for drug use. Their punishment consisted of a reduction in rank/grade from specialist/E-4 to private first class/E-3, extra duty, and restriction for 45 days, and an oral reprimand. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as further rehabilitation efforts would not produce a quality, Soldier.

(4) A memorandum, Bravo Company, 1st Battalion, 5th Infantry Regiment, 1st Stryker Brigade Combat Team, subject: Separation under Army Regulation 635-200, Paragraph 14-12c (2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 2 March 2022, reflects the applicant was notified by their company commander of initiating action to separate them for Misconduct-Abuse of Illegal Drugs. The reason for their proposed actions is between on or about 19 January [July] 2021 and on or about 22 January [July] 2021, the applicant wrongfully used cocaine. The company commander recommended the applicant receive a General (Under Honorable Conditions) characterization of service. On the same day, the applicant acknowledged receipt of the notification and of the rights available to them.

(5) On 8 March 2022, the applicant completed their Election of Rights regarding separation under Army Regulation 635-200, paragraph 14-12c (2), stating they have been advised by their consulting counsel of the basis of the contemplated action to separate them for Misconduct-Abuse of Illegal Drugs, and its effects; of the rights available to them; and of the effect of any action taken by them in waiving their rights. They understand they may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions

is issued to them and further understand that as the result of issuance of a discharge that is less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected not to submit statements in their own behalf and waived counsel.

(6) A memorandum, Headquarters, 1st Stryker Brigade Combat Team, 25th Infantry Division, subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct – Abuse of Illegal Drugs, dated 11 April 2022, reflects the separation authority review the separation packet of the applicant and after careful consideration of all matters, directed the applicant be separated from the U.S. Army prior to the expiration of current term of service and their service be characterized as General (Under Honorable Conditions). The separation authority determined the rehabilitative transfer requirements do not apply to this separation action.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 3 May 2022, with 1 year, 6 months, and 29 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private First Class
- item 4b (Pay Grade) – E-3
- item 12i (Effective Date of Pay Grade) – 23 February 2022
- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKK
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

(8) The applicant's Black Bear Discharge Summary, with a date of service of 27 July 2023, reflects the applicant was admitted on 7 July 2023 and discharged on 6 August 2023. Presenting issues state the applicant has significant concerns for their job, relationships, life while using the way that they are using. Their use has increased and has started to include cocaine in the last couple years. They report using the cocaine to keep them awake while they drink copious amounts of alcohol. The Substance Use Disorder/Psychiatric diagnoses include, Alcohol Use Disorder, Alcohol Withdrawal, Cocaine Use Disorder, Cocaine Withdrawal, Mood Disorder-rule out bipolar, and PTSD.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):** None

(1) **Applicant provided:** Black Bear Discharge Summary, with diagnoses of Alcohol Use Disorder, Alcohol Withdrawal, Cocaine Use Disorder, Cocaine Withdrawal, Mood Disorder-rule out bipolar, and PTSD.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

- two DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with letter
- Counsel's Brief in Support of Application, with Discharge Summary and a 3rd Parth Character Statement
- Counsel's Supplemental Brief in Support of Application

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

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

a. Title 10, U.S. Code, Section 1553, (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, Title 10, U.S. Code, Section 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense (DoD) Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to 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 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, 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.

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

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Paragraph 3-8 (Limitations on Characterization) states characterization will be determined solely by the Soldier's military record which includes the Soldier's behavior and performance of duty during the current enlistment. The following information cannot be used against a Soldier on the issue of characterization: the results of mandatory urinalysis or alcohol-breath tests when use is prohibited by Army Regulation 600-85; and a Soldier's voluntary submission to a Department of Defense treatment and rehabilitation program (self-referral). The limitations in this paragraph do not preclude the following actions: taking action based on independently derived evidence, including evidence of drug or alcohol abuse after initial entry into the treatment and rehabilitation program; and discharging a Soldier with a characterization or general (under honorable conditions) or under other than honorable per paragraph 10-10.

(5) Paragraph 10-10 (Limited Use Evidence) states due diligence should be exercised to avoid including limited use evidence in a separation action under chapter 10 (Discharge in Lieu of Trial by Court-Martial), but the inclusion of such evidence will not form the basis for a Soldier to challenge the separation or the characterization of service. If limited use evidence is included in the separation action, the requirement that an honorable discharge be given due to the introduction of limited use evidence does not apply to separation under this chapter

(5) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to

succeed. Paragraph 14-12c (2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; 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. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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.

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 DoD Instructions 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

g. Army Regulation 635-8 (Separation Processing and Documents) dated 10 March 2014, prescribed policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

h. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. 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 and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as 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.

(1) Paragraph 10-11 (Limited Use Policy) states the objectives of the Limited Use Policy are to facilitate early identification and care of Soldiers with substance use disorders and to maximize successful SUD treatment. When applied properly, the Limited Use Policy does not conflict with the Army's mission or standards of discipline. It is not intended to protect a Soldier who is attempting to avoid disciplinary or adverse administrative action.

(2) Paragraph 10-12 (Definition of the Limited Use Policy) states Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy is limited, to include results of command-directed drug or alcohol testing that are inadmissible under the Military Rules of Evidence. Commanders are encouraged to use drug or alcohol testing when there is a reasonable suspicion that a Soldier is using a controlled substance or has a blood alcohol concentration of 0.05-percent or above while on duty; and a Soldier's self-referral to behavioral health for Substance Use Disorder treatment. The Limited Use Policy does not preclude the initiation of disciplinary or other action based on independently derived evidence, including evidence of continued problematic substance use after initial entry into Substance Use Disorder care. If the command is made aware of a Soldier's illegal drug use through the Soldier's self-referral and admissions, the requirement to initiate separation proceedings pursuant to the appropriate enlisted or officer separation will not apply. The unit commander may initiate a separation action; however, the information is protected by the Limited Use Policy.

(3) Paragraph 10-13 (Implementation of the Limited Use Policy) states unit commander will explain the Limited Use Policy to Soldiers during the commander's interview. Commander will not make any agreement, or comprise, or expand the Limited Use Policy in any way. Soldiers will receive an honorable discharge regardless of their overall performance of duty if discharge is based on a proceeding where the Government initially introduces Limited Use evidence.

i. Manual for Courts-Martial, United States (2019 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

8. SUMMARY OF FACT(S):

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

b. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant tested positive for Cocaine, received nonjudicial punishment for wrongful use of Cocaine, and was involuntary separation from the Army. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c (2), by reason of Misconduct (Drug Abuse), with a characterization of service of general (under honorable conditions). The applicant completed 1 year, 6 months, and 29 days of net active service this period and did not complete their 5-year, 26-week contractual enlistment obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense; to include abuse of illegal drugs; and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. The applicant's AMHRR does not reflect documentation of a diagnosis of PTSD during the applicant's military service. The applicant provided evidence, a Black Bear Discharge Summary, with diagnoses of Alcohol Use Disorder, Alcohol Withdrawal, Cocaine Use Disorder, Cocaine Withdrawal, Mood Disorder-rule out bipolar, and PTSD.

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. 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):**

b. **The applicant presented the following additional contention(s):**

c. **Counsel / Witness(es) / Observer(s):**

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? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses: the applicant was diagnosed in-service with Adjustment Disorder with Mixed Emotional Features. He reported EPTS depression and sporadic nightmares with treatment. He submitted post-service records listing a variety of diagnoses including Alcohol Use Disorder, Cocaine Use Disorder, Mood Disorder, Major Depressive Disorder (MDD), and PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant was diagnosed in-service with Adjustment Disorder with Mixed Emotional Features. He reported EPTS depression and sporadic nightmares with treatment.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that an Adjustment Disorder is not mitigating as it involves minor/mild symptoms that do not rise to a level of impairment or distress rendering an individual unable to make conscious choices, know right from wrong, and be aware of consequences. While the post-service PTSD diagnosis is acknowledged, the applicant was evaluated at several points in-service with regular SUDCC appointments without a trauma or anxiety based diagnosis. Moreover, the applicant has not been to the VA to assert PTSD in-service and is not service connected for a psychiatric condition. Accordingly, there is no support the applicant had PTSD in-service for mitigation. However, the board could consider his contention as records do reflect some symptoms in-service that could have contributed to his choice to use drugs.

d. Does the condition or experience outweigh the discharge? **No.** Despite the Board's application of liberal consideration, the board considered the opinion of the Board's Medical Advisor, a voting member, that the available evidence did not support a conclusion that the applicant's Adjustment Disorder outweighed the basis for applicant's separation - wrongfully used cocaine. However, the board decided to grant an upgrade based on circumstances surrounding the discharge; one-time drug use, severe family matters, contention of discrimination, and the applicant's post-service accomplishments which mitigate the applicant's basis for separation (wrongful use of cocaine).

b. Response to Contention(s):

(1) The applicant contends they unknowingly entered the military with a pre-existing condition of PTSD. Their PTSD, while manifesting prior to service, was greatly aggravated and exacerbated by their military service.

The board considered this contention during proceedings and found that the applicant was diagnosed with Adjustment Disorder with Mixed Emotional Features.

(2) The applicant contends they do not deny the positive urinalysis for cocaine but want the board members to know it was part of self-medication due to their worsening mental health and PTSD.

The board considered this contention during proceedings.

(3) The applicant contends they are relying upon the guidance in the Hagel and Kurta memorandums which grant liberal consideration due to pre-existing PTSD "aggravated by military service" as is clearly the case here. Their reliance upon drugs and alcohol did not begin until a year into their military service when the CLS course, suicide of a friend, and bullying and harassment by fellow Soldiers greatly exacerbated their behavior health symptoms.

The board considered this contention during proceedings.

(4) The applicant contends they ask the board members to consider their otherwise excellent duty performance, admission of their misconduct, remorse for their actions, lack of any other misconduct in their file; and upgrade their discharge to Honorable.

The board considered this contention during proceedings and voted to upgrade the discharge to Honorable.

(5) The applicant contends their record shows the government introduced into their discharge packet information that they had a self-referred to SUDCC. The documentation and

inclusion of this is Limited Use Information as defined in Army Regulation 600-85 is protected evidence. The only options that should have been available to the separation authority according to Army Regulation 635-200 were to separate with an honorable characterization of service, suspend the separation, or retain the Applicant.

The board considered this contention during proceedings and found the contention to be valid.

d. The board determined the discharge is inequitable based on circumstances surrounding the discharge; violation of the Limited Use policy. The board also cited the applicant's one-time drug use, severe family matters, contention of discrimination, and the applicant's post-service accomplishments which further mitigate the applicant's basis for separation (wrongful use of cocaine). Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The board voted and determined the reentry eligibility (RE) code was proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to Honorable based on a violation of the Limited Use policy, rendering the discharge inequitable. The board also cited the applicant's one-time drug use, severe family matters, contention of discrimination, and the applicant's post-service accomplishments which further outweighed the applicant's basis for separation (wrongful use of cocaine). Thus, the prior characterization is no longer appropriate.

(2) The board voted to change the reason for discharge to Secretarial Authority under the same reasons, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

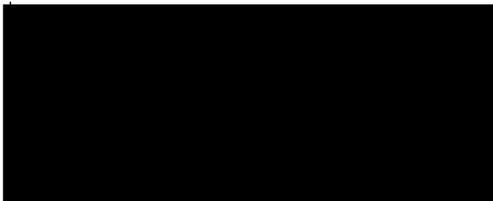
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Secretarial Authority / JFF
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:

4/8/2025



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