

1. Applicant's Name:

a. Application Date: 27 May 2020

b. Date Received: 2 June 2020

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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, an upgrade to honorable would allow the applicant to seek medical care. Because of the inability to sleep at night, the applicant should be evaluated for PTSD. During the 10-year tenure with the military, the applicant served honorably. The applicant served at West Point, Fort Leonard Wood, Fort Benning, Fort Sill, and Fort Sam Houston, including in Korea, Cuba (Guantanamo Bay), and Afghanistan. The applicant desires to continue serving the country. The applicant's child is currently serving in the Army with the field artillery branch. According to the BAH regulations, the applicant did nothing wrong and had no intention of defrauding the government.

b. Board Type and Decision: In a records review conducted on 19 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / AR 600-8-24, Chapter 3-13 / DFS / Under Other Than Honorable Conditions

b. Date of Discharge: 4 January 2013

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 22 August 2012, the following charges were preferred against the applicant:

Charge I: nine specifications of violations of the UCMJ, Article 107, reflect the applicant did at or near Guantanamo Bay, Cuba, with intent to deceive, signed official records, then known by the applicant to be so false:

Specification 1: on 11 July 2011, signed DD Form 2560 (Advance Pay Authorization), which record was false in claiming payment to relocate dependents to a New York address, where the dependents did not relocate;

Specification 2: on 10 May 2010, signed DA Form 4187 (Personnel Action), which record was false in claiming an address in New York where the dependents did not reside;

Specification 3: on 5 May 2010, signed DD Form 1351-2 (Travel Voucher), which record was false in claiming travel for the applicant to New York, where the applicant did not travel;

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Specification 4: on 5 May 2010, signed DD Form 1351-2 (Travel Voucher), which record was false in claiming travel for dependents to a New York address, where the dependents did not travel;

Specification 5: on 3 May 2010, signed an affidavit, which record was false in claiming the applicant had an agreement to rent a property in New York;

Specification 6: on 3 May 2010, signed DA Form 5960 (Authorization to Start, Stop, or Change Basic Allowance for Quarters), which record was false in claiming an address in New York, where the dependents did not reside;

Specification 7: on 3 May 2010, signed DD Form 1561 (Statement to Substantiate Payment of Family Separation Allowance), which record was false in claiming an address in New York, where the dependents did not reside;

Specification 8: on 29 April 2010, signed a DITY Checklist and Certification of Expenses, which record was false in claiming an advance payment to relocate dependents to an address in New York, where the dependents did not relocate; and

Specification 9: on 1 March 2010, signed a DD Form 2278 (Application for Do it Yourself Move and Counseling Checklist), which record was false in claiming an advance payment to relocate dependents to an address in New York, where the dependents did not relocate.

Charge II: three specifications of violations of the UCMJ, Article 121, reflect the applicant did at or near Guantanamo Bay, Cuba:

Specification 1: on 11 July 2011, wrongfully appropriated military funds, approximately \$5,256, property of the United States;

Specification 2: between 1 May 2010 and 31 December 2011, steal Cost of Living Allowance, approximately \$10,242, property of the United States; and

Specification 3: between 1 May 2010 and 31 December 2011, steal Basic Housing Allowance, approximately \$64,854, property of the United States.

Charge III: The Specification of violation of the UCMJ, Article 132, reflects the applicant did at or near Guantanamo Bay, Cuba, on 3 May 2010, present for approval and payment claim of \$13,833.43, which was false and fraudulent, and based on a location the dependents did not reside, and the applicant knew it to be false and fraudulent.

Charge IV: The Specification of violation of the UCMJ, Article 133, reflects the applicant did at or near Guantanamo Bay, Cuba, between 1 March 2010 and 31 December 2011, present for approval and payment claims against the United States to allow the applicant to collect payment not entitled to and produced and made false statements to government officials about family residency, which under the circumstances constituted conduct unbecoming of an officer and gentleman.

(2) Legal Consultation Date: 20 September 2012

(3) Basis for Separation: Pursuant to applicant's request for Resignation, In Lieu of Trial by Court-Martial under the provisions of Chapter 3, AR 600-8-24, September 2012.

(4) Separation Decision Date / Characterization: 18 December 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Appointment: 25 May 2006 / Indefinite (OCS Appointment)

b. Age at Appointment: / Education: 33 / Master of Arts Degree

c. Highest Grade Achieved / MOS / Total Service: O-3 / 31A, 6Y Military Police Officer / 9 years, 11 months, 14 days

d. Prior Service / Characterizations: DEP, 27 September 2002 – 20 January 2003 / NA
RA, 21 January 2003 – 26 January 2006 / HD
RA, 27 January 2006 - 24 May 2006 / HD

e. Overseas Service / Combat Service: Korea, Cuba, SWA / Cuba (5 November 2006 – 4 December 2007), (30 April 2010 – 30 July 2011), (8 March 2012 – 30 June 2012); and Afghanistan (2 September 2011 – 7 March 2012)

f. Awards and Decorations: ACM-CS, JSCM, MSM, ARCOM-3, JSAM, AAM-3, JMUA-2, AGCM, NDSM, GWOTEM, GWOTSM, KDSM, ASR, OSR-3, NATOMDL

g. Performance Ratings: 8 November 2006 – 1 April 2007 / Best Qualified
2 April 2007 – 6 November 2007 / Best Qualified
7 November 2007 – 23 May 2008 / Best Qualified
24 May 2008 – 19 February 2009 / Best Qualified
20 February 2009 – 31 July 2009 / Best Qualified
1 August 2009 – 8 April 2011 / Best Qualified
9 April 2011 – 22 July 2011 / Best Qualified
23 July 2011 – 10 March 2012 / Best Qualified

h. Disciplinary Action(s) / Evidentiary Record: Charge sheet as described in previous paragraph 3c.

Comprehensive Report (For Law Enforcement Purposes) provides subject information on applicant: Address Summary and Details; Cities and Counties History; applicant's and spouse's driver's license; Current and Past Vehicle Information and Owner/Registrant/Lien Information, and Florida Accidents; applicant's and spouse's voter registrations; Possible Relatives; Likely and Possible Associates; and Neighbor Phones, including Current and Past Property Deeds and Assessments.

US Naval Criminal Investigative Service, four separate Investigative Actions, 26 July 2012, 7 June 2012, 2 April 2012, and 4 January 2012, provide the applicant's background information, and the commander of the 525 Military Police Battalion in Guantanamo Bay reporting the applicant had been receiving monthly BAH for New York at the rate of \$3,326.70, since May 2010, but the DoD Employment Interactive Database System indicated the applicant's spouse and children had been residing at a Universal City, Texas address; and the applicant had provided a NY non-existent address on numerous documents and an affidavit stating the family were residing at the NY address.

US Naval Criminal Investigative Service, two separate Reports of Investigation (Interim), 27 July 2012 and 2 June 2012, add to the investigative action, the estimated loss to the government was \$59,880; suspected violations of Article 132 (fraud against the United States), Article 121 (larceny), and Article 107 (false official statement) of the UCMJ; and pending interview with the spouse.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Progress Notes, 14 April 2023, reflects the applicant being evaluated and treated for anxiety with medications.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293.

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

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be

considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) 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 600-8-24, Officer Transfers and Discharges, sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23 provides the authorized types of characterization of service or description of separation.

(2) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(3) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Paragraph 1-23c, states a discharge under other than honorable conditions is an administrative separation from the service. A discharge certificate will not be issued. An officer will normally receive an under other than honorable conditions when he or she: Resigns for the good of the Service; is dropped from the rolls (DFR) of the Army in accordance with paragraph 5-9; is involuntarily separated due to misconduct, moral or professional dereliction, or for the final revocation of a security clearance under DODI 5200.02 and AR 380-67 as a result of an act or acts of misconduct, including misconduct for which punishment was imposed; and, is discharged following conviction by civilian authorities.

(5) Chapter 3 prescribes the rules for processing voluntary resignations. Except as provided in paragraph 3-1b, any officer of the RA or USAR may tender a resignation under the provisions of this chapter. SECARMY (or designee) may accept resignations and orders will be issued by direction of the CG, HRC. An officer whose resignation has been accepted will be separated on the date specified in DA's orders or as otherwise directed by the DA. An appropriate discharge certificate as specified by the CG, HRC, will be furnished by the appropriate commander at the time the officer is separated. The date of separation, as specified or directed, will not be changed without prior approval of HQDA nor can valid separation orders be revoked subsequent to the specified or directed date of separation.

(6) Paragraph 3-9 (previously 3-13), outlines the rules for processing requests for resignation for the good of the Service in lieu of trial by a general court-martial.

(7) Paragraph 3-9i, states an officer separated under this paragraph normally receives characterization of service of under other than honorable conditions.

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 "DFS" as the appropriate code to assign Officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 3-9 or 3-13, in lieu of trial by court-martial.

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

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends an upgrade would allow the applicant to seek medical assistance for being sick and to be evaluated for PTSD because the applicant is unable to sleep at night. The applicant's AMHRR contains no documentation of PTSD diagnosis. The applicant provided progress notes as same day behavioral health provider notes, which indicate the applicant being treated for anxiety with medications. The ARBA sent a letter to the applicant at the address in the application on 29 July 2021 requesting medical documentation to support a PTSD diagnosis but received no response from the applicant.

The applicant contends having served honorably, including overseas assignments to Korea, Cuba, and Afghanistan. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant desires to continue serving the country. At the time of discharge, the applicant received an under other than honorable conditions characterization of service. Army Regulation 601-210, chapter 4, stipulates an under other than honorable conditions discharge constitutes a non-waivable disqualification; thus, the applicant is no longer eligible for reenlistment.

The applicant contends having done nothing wrong according to the BAH regulations and had no intention of defrauding the Government. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnosis: Post-service, diagnosed with Unspecified Anxiety; however, is not service connected and VA has not notated symptoms existed in-service. While the applicant's assertion of PTSD is acknowledged, there is no substantiation.

(2) Did the condition exist or experience occur during military service? **Yes.** Purely based on applicant's assertion of PTSD.

(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 diagnosis is not substantiated and not applicable at this time. Regarding anxiety, any potential symptoms arising during service did not result in a visit or diagnosis irrespective of anxiety post-service. Moreover, anxiety symptoms would not have impacted cognitive processes to the extent the applicant wouldn't have known right from wrong. Lastly, the applicant's actions were repeated, over time which is not indicative of cognitive or behavioral health impaired decision making.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the Post-service, diagnosis with Unspecified Anxiety did not outweigh the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends an upgrade would allow the applicant to seek medical assistance for being sick and to be evaluated for PTSD because the applicant is unable to sleep at night. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare, or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(2) The applicant contends having served honorably, including overseas assignments to Korea, Cuba, and Afghanistan. The Board also considered the totality of the applicant's record, including the applicant's length, awards, and combat tours, and determined that a discharge upgrade is not warranted based on the seriousness of the applicant's misconduct; charges were preferred against applicant for fraud against the US, larceny, and false official statement.

(3) The applicant desires to continue serving the country. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record. However, the Board determined that a discharge upgrade is not warranted based on the seriousness of the applicant's misconduct, fraud against the US, larceny, and false official statement.

(4) The applicant contends having done nothing wrong according to the BAH regulations and had no intention of defrauding the government. The Board considered this contention non-persuasive during its deliberations.

d. 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.

e. Rationale for Decision:

(1) 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 insufficient evidence of an in-service mitigating factors and concurred with the conclusion of the medical advising official that the applicant does not have a BH condition that mitigates the applicant's misconduct (fraud against the United States, larceny, and false official statement). Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable.

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

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

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: N/A**
- e. Change Authority to: No Change**

Authenticating Official:

1/23/2024

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