

**1. Applicant's Name:**

- a. **Application Date:** 24 September 2020
- b. **Date Received:** 24 September 2020
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is Under Than Honorable Conditions. The applicant requests an upgrade to honorable and a change of the narrative reason for separation.

(2) The applicant seeks relief stating they were diagnosed with Post Traumatic Stress Disorder (PTSD) by mental health professionals at both the Department of Veterans Affairs (VA) and at their home of record. In an Improvised Explosive Device strike in Iraq 2005, over pressure injuries had altered the shape of their left eye and perforated their left eardrum. Their service-related VA disability rating of 80-percent is largely attributed to PTSD and mild Traumatic Brain Injury (TBI), which went undiagnosed in the 12 years after initially seeking mental health treatment upon returning from a 14-month tour in Iraq. Their resignation in 2016 can be directly attributed to their exacerbating conditions. They sought help for PTSD while in uniform but did not receive necessary treatment. They are currently unable to work and they depend on an 80-percent disability rating for subsistence, but they are unable to apply for additional benefits due to conditions of their discharge.

(3) They knowingly allowed erroneous entries on their Officer Record Brief, namely that they had attended the Sapper Leader Course in 1992. They knew it was there but did nothing to correct it. They did not benefit in position or boarding from their misconduct and none of their positions were considered competitive or career-making. They accepted a resignation in lieu of court-martial to avoid publicity which would have directly affected their spouse's employment. They also have no recourse to employment that would leverage their experience and skills. This is an extrajudicial, unjust and unnecessary punishment.

(4) Their psychological condition was exacerbated by experiences both in combat, and due to long periods of separation from family, 6 years in total in combat, peace enforcement and temporary duty tours. Their condition was documented initially during their service but has been traced to an earlier event (rape) which occurred while an Army dependent in Germany in 1984. This was not revealed until after their separation, to a civilian mental health professional. As a dependent they were encouraged not to reveal their rape so as not to jeopardize their possibility to enter the U.S. Military Academy and/or risk commissioning. The decisions that led to the Soldier's resignation are directly attributable to their resultant PTSD. They have a decorated combat service record. After over 18 years of Active Federal Service, they are deprived of benefits and treatment. The offense was not court-martial worthy. They ask that their Under Other Than Honorable Conditions discharge and derogatory comments be considered unnecessarily punitive in light of the underlying psychological issues that directly attributed to their discharge, and the lack of legal precedent for said offense.

**b. Board Type and Decision:** In a records review conducted on 13 September 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / Army Regulation 600-8-24, Paragraph 3-13 / DFS [Good of the Service, Conduct Trial by Court-Martial] / NA / Under Other Than Honorable Conditions

**b. Date of Discharge:** 8 August 2016

**c. Separation Facts:**

**(1) Dates and Charges Preferred (DD Form 458, Charge Sheet):** 30 March 2016 and 7 April 2016, the applicant was charged with –

**(a)** Charge I – Violation of Article 134 (Wearing Unauthorized Insignia, Decoration, Badge, Ribbon, Devise, or Lapel Button), Uniform Code of Military Justice (UCMJ), with Specification 1 – between on or about 6 July 2015 and on or about 5 November 2015, wrongfully and without authority wore upon their uniform the Sapper Tab; and Specification 2 – on or about 23 April 2015 and on or about 6 July 2015, wrongfully and without authority wore upon their uniform the Parachutist Badge. Such conduct being to the prejudice of good order and discipline in the Armed Forces and of a nature to bring discredit upon.

**(b)** Charge II – Violation of Article 133 (Conduct Unbecoming Officer), UCMJ, with two Specifications of wrongfully failed to correct their Army personnel records by allowing them to erroneously reflect that they earned the Sapper Tab and the Parachutist Badge, conduct unbecoming an officer and a gentleman.

**(c)** Additional Charge – Violation of Article 107 (False Official Statements), UCMJ, did, on or about 27 June 2014, with intent to deceive, signed an official record, to wit: a Personnel Records Review, which record was false in that it stated that a "Letter of Course Completion Verification," dated 11 February 1993 and a "Course Completion Certificate," dated 23 September 1992, were true records in their interactive Personnel Electronic Records Management System file, and was then known by the applicant to be so false.

**(2) Legal Consultation Date:** 1 April 2016

**(3) Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 600-8-24, paragraph 3-13, in lieu of trial by court-martial.

**(4) Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** 18 July 2016 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Appointment:** 10 December 1994 / Indefinite

**b. Age at Appointment / Education:** 22 / Master's Degree (conferred in 2008)

**c. Highest Grade Achieved / MOS / Total Service:** O-4 / 59A, Strategist / 24 years, 11 months, 3 days

**d. Prior Service / Characterizations:** ARNG, 6 September 1991 – 8 December 1994 / Honorable

**e. Overseas Service / Combat Service:** Germany, SWA / Bosnia (23 August 1996 – 11 December 1996, Iraq (15 May 2005 – 4 May 2006), Afghanistan (15 May 2010 – 1 December 2010)

**f. Awards and Decorations:** BSM-2, MSM-4, ARCOM-4, AAM-3, PUC, ASUA, ACM, NDSM-2, AFEM, GWTSM, AFSM, ICM-CS, ASR, OSR-4, AFRM, AFRM-M, NATOMDL

**g. Performance Ratings:** 1 April 1995 – 31 March 1996 / Center of Mass  
 1 April 1996 – 31 March 1997 / Center of Mass  
 1 April 1997 – 30 September 1997 / Above Center Mass  
 1 October 1997 – 2 March 1998 / Center of Mass  
 1 February 2001 – 26 July 2001 / Below Center of Mass Do Not Retain  
 27 July 2001 – 26 July 2002 / Center of Mass  
 25 November 2002 – 15 August 2003 / Center of Mass  
 16 August 2003 – 5 July 2004 / Center of Mass  
 6 July 2004 – 24 March 2005 / Not Evaluated  
 24 March 2005 – 31 December 2005 / No Box Checked  
 1 January 2006 – 2 June 2006 / No Box Checked  
 29 January 2007 – 8 July 2008 / No Box Checked  
 9 July 2009 – 30 June 2008 / No Box Checked  
 1 July 2009 – 14 April 2010 / Above Center of Mass  
 15 April 2010 – 31 March 2013 / Center of Mass  
 1 April 2013 – 16 August 2014 / Highly Qualified  
 17 August 2014 – 13 July 2015 / Highly Qualified  
 14 July 2015 – 15 December 2015 / Qualified

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

**(1)** A Sapper Leader Course Certificate dated 23 September 1992, and a DA Form 1059 (Service School Academic Evaluation Report) dated 25 September 1992, reflects the applicant completed the Sapper Leader Course during the period 2 August 1992 through 23 September 1992. The documents were posted to the applicant's Army Military Human Resource Record (AMHRR) on 25 May 2007.

**(2)** A memorandum, Headquarters, 1st Infantry Division, subject: Memorandum of Reprimand, dated 30 May 1996, reflects the applicant was reprimanded in writing for, on 2 May 1996, they were found to have been in physical control of a motor vehicle, with a breath alcohol content of 0.122 grams of alcohol per 210 liters of breath.

**(3)** A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 14 June 1996, reflects the applicant received nonjudicial punishment for on or about 2 May 1996, physically controlled a vehicle, with a breath alcohol content of 0.122 grams of alcohol per 210 liters of breath, in violation of Article 111 (Drunken Driving), UCMJ. Their punishment consisted of a forfeiture of \$837.00 pay for 2 months. The applicant elected not to appeal.

**(4)** A State of Vermont Orders 038-10, dated 7 February 2001, reflects the applicant was ordered to full-time National Guard Duty in an Active Guard/Reserve (AGR) status, with a reporting date of 1 February 2001, for a period of 3 years.

**(5)** A DA Form 67-9 (Officer Evaluation Report) covering the period 1 February 2001 through 26 July 2001, reflects in –

**(a)** Part IV (Performance Evaluation – Professionalism) the applicant's rater marked "NO" for the Army Values of "Integrity," "Selfless-Service," and "Duty." For "Leader Attributes / Skills / Actions" the applicant's rater marked "No" for "Conceptual," "Decision-Making," and "Executing."

**(b)** Part V (Performance and Potential Evaluation) the applicant's rater marked "Unsatisfactory Performance, Do Not Promote" and commented [Applicant] performed poorly during this rating period. [Applicant] had many personal issues that prohibited [applicant] from maximizing [applicant's] potential. [Applicant] was counseled on [applicant's] poor performance and agreed to an acceptable plan of action; [applicant] never attempted to follow through with this action plan which subsequently furthered [applicant's] substandard performance.

**(c)** Part VII (Senior Rater) the applicant's senior rater rated their potential to the next higher grade as "Do Not Promote" and rated their performance and potential as "Below Center of Mass / Do Not Retain" and provided derogatory comments.

**(6)** A Department of Military and Veterans Affairs, Colorado Orders 033-004, dated 2 February 2004, reflects the applicant was ordered to full-time National Guard Duty in an AGR status.

**(7)** A DA Form 67-9 (Officer Evaluation Report) covering the period 6 July 2004 through 24 March 2005, reflects in –

**(a)** Part IV (Performance Evaluation – Professionalism) the applicant's rater marked "NO" for the Army Values of "Integrity" and "Duty." For "Leader Attributes / Skills / Actions" the applicant's rater marked "No" for "Conceptual" and "Decision-Making."

**(b)** Part V (Performance and Potential Evaluation) the applicant's rater marked "Unsatisfactory Performance, Do Not Promote" and commented "[Applicant] struggled immensely during the rating period to uphold the Army values and to display the personal characteristics of an Army Officer. [Applicant] missed unit recall during the team's national alert cycle (for the second time since joining the team), casting serious doubt on [applicant's] sense of duty as part of a rapidly deployable unit. [Applicant] misused [applicant's] government travel card, again for the second time, casting serious doubt on [applicant's] integrity and judgement. [Applicant's] lack of decision making prowess led to the destruction of a government computer duty [Temporary Duty] TDY travel in September 2004. Finally, when confronted about [applicant's] travel card issues, [Applicant] lied about the misuse, claiming the card had been stolen." "Not only has [Applicant] failed to learn and improve [applicant's] behavior after a series of lapses of judgement, but [applicant] has not demonstrated the required integrity to perform in positions of authority. In light of these weaknesses, [applicant] possesses little potential for promotion."

**(c)** Part VII (Senior Rater) the applicant's senior rater rated their potential to the next higher grade as "Do Not Promote," rated their performance and potential as "Not Evaluated," and provided derogatory comments to include, [Applicant] has surrendered the respect of [applicant's] chain of command and subordinates. In view of these issues [Applicant] has limited potential for higher positions of responsibilities.

**(8)** A National Guard Bureau (NGB) Orders 155-31, dated 3 June 2008, reflects the applicant was ordered to active duty in an AGR status with a reporting date of 1 July 2008.

**(9)** A memorandum, Sapper Leader Course, 169th Engineer Battalion, 1st Engineer Brigade, subject: Request for Information Regarding Attendance to Sapper Leader Course, dated 27 October 2015, the Chief of Training, states –

**(a)** The Sapper Leader Course Operations maintains all records pursuant to the graduation and attendance, these records are maintained in both digital and hardcopy formats, covering every class from 1985 to present.

**(b)** After a review of class rosters, graduation orders, digital, hard copy and Army Training Requirements and Resources System records for the applicant and found the applicant never in-processed, attended or graduated the Sapper Leader Course. The Certificate found in the applicant AMHRR has never been distributed by the Sapper Leader Course, the official Sapper Leader Course Certificate is on Fort Leonard Wood Form 1088. Moreover, Class-0992 graduated 16 Sappers on 30 June 1992. The Sapper Leader Course did not have a class or near 23 September 1992.

**(c)** Given the findings of the investigation, it is declared that the applicant is hereby reported as a non-attendee of the U.S. Army Sapper Leader Course, and is therefore not authorized to wear the Sapper Tab.

**(10)** A memorandum, NGB, subject: Appointment as Investigating Officer, dated 30 October 2015, reflects an Investigating Officer was appointed to inquire into the facts and circumstances surrounding the alleged improper wear of a Sapper Leader Course tab by the applicant. Specifically, to determine whether the applicant attended and successfully completed the U.S. Army Sapper Leader Course, improperly held themselves out as an authorized wearer of the Army Sapper tab, and improperly submitted forged or inaccurate paperwork for purposes of bolstering their military record.

**(11)** A memorandum, NGB, subject: Findings and Recommendations (Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers)/Applicant), dated 24 November 2015, the investigating officer states –

**(a)** Findings, a Sapper Tab check determined the applicant never enrolled in the Sapper Leaders Course. The applicant's most recent Department of the Army Photograph shows them wearing the Sapper Tab and Parachutist Badge. The applicant falsified documents and entered them into their official file.

**(b)** Recommend the applicant receive a general officer letter of reprimand, removal from the AGR program, and a complete records scrub of all documents in their official military record.

**(12)** A memorandum, NGB, subject: Legal Review Army Regulation 15-6 Investigation [Applicant], dated 2 December 2015, the Administrative Law Attorney conducted a legal review of the investigation and find it legally sufficient. The attorney states the findings are supported by the evidence, specifically –

**(a)** The statement and memorandum provided by the Chief of Training and the Operations Noncommissioned Officer In-Charge from the Sapper Leader Course provide sufficient evidence that the applicant did not attend or complete the Sapper Leader Course.

**(b)** The exhibits retrieved from the applicant's AMHRR shows they improperly held themselves out as an authorized wearer of the Army Sapper Tab.

(c) Additionally, the fact that DA Forms 1059 (Academic Evaluation Reports) were not issued for the Sapper Leader Course attendees prior to 2012 and the similarities between the DA Forms 1059 from the applicant's Officer Basic Course graduation and the one attempting to show graduation from the Sapper Leader Course create a presumption of forgery. The school confirmed that there was not even a graduation on the date listed on the applicant's certificate. As these items were located in the applicant's AMHRR, the investigating officer properly concluded they improperly submitted forged or inaccurate paperwork for purposes of bolstering their military record.

(13) A memorandum, NGB, subject: Alleged Improper Wear of Army Parachutist Wings – [Applicant], dated 7 December 2015, the investigating officer states –

(a) On 4 December 2015, there were directed by the Chief of Staff, Army National Guard (ARNG), to conduct an informal inquiry into the applicant's alleged improper wear of Army parachutist wings.

(b) Their informal inquiry determined the parachutist badge is annotated on the applicant's Officer Record Brief. The applicant is not wearing the Army Parachutist Wings in their current DA Photograph, dated 5 November 2015. However, the applicant worn the Army Parachutist Wings in their two prior DA Photographs dated 23 April 2015 and 6 July 2015. The only Airborne related document found in the applicant's AMHRR is a faxed memorandum dated 6 May 2007, subject: Statement of Completion of Basic Airborne Course (BAC) for [Applicant]. However, the Infantry/Armor School could not find the applicant on any graduation roster for the class prior, during or immediately after the time period annotated on the aforementioned BAC Statement of Completion and also confirmed the applicant is listed as a "No Show" in ATTRS for the class listed on the aforementioned BAC Statement of Completion.

(c) After careful review of all related matters, they conclude the applicant improperly held themselves out as an authorized wearer of Army parachutist wings. The applicant improperly submitted forged or inaccurate paperwork to their AMHRR for purposes of bolstering their military record. The applicant did not attend or successfully complete the U.S. Army Basic Airborne Course.

(14) A memorandum, NGB, subject: Approving Authority Action Memorandum Army Regulation 15-6 Investigation [Applicant], dated 9 December 2015, reflects the Chief of Staff, ARNG, reviewed the investigation and all supporting documents including the legal review. They approved the findings of the investigating officer and recommend the applicant receive a general officer memorandum of reprimand, be removed from the AGR program, and complete a records scrub of all documents in the applicant's official military record. They also have directed the applicant be removed from their current position within the Director's Action Group.

(15) A DD Form 458 (Charge Sheet), dated 30 March 2016, reflects charges were preferred against the applicant consist of –

(a) Charge I – Violation of Article 134 (Wearing Unauthorized Insignia, Decoration, Badge, Ribbon, Devise, or Lapel Button), UCMJ, with Specification 1 – between on or about 6 July 2015 and on or about 5 November 2015, wrongfully and without authority wore upon their uniform the Sapper Tab; and Specification 2 – on or about 23 April 2015 and on or about 6 July 2015, wrongfully and without authority wore upon their uniform the Parachutist Badge. Such conduct being to the prejudice of good order and discipline in the Armed Forces and of a nature to bring discredit upon.

**(b)** Charge II – Violation of Article 133 (Conduct Unbecoming Officer), UCMJ, with two Specifications of wrongfully failed to correct their Army personnel records by allowing them to erroneously reflect that they earned the Sapper Tab and the Parachutist Badge, conduct unbecoming an officer and a gentleman.

**(16)** In the applicant's memorandum, subject: Resignation for the Good of the Service, [Applicant], dated 1 April 2016, the applicant voluntarily tendered their resignation from the Army for the Good of the Service under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharge), paragraph 3-13 (Rules for Processing Resignation for the Good of the Service In Lieu of General Court-Martial). They do not desire to appear before a court-martial or board of officer. They have not been subject to coercion with respect to this resignation, have been advised of, and fully understand the implications of this action. They have been advised that prior to submitting this resignation they may, at their option consult with and be represented by legally qualified counsel and they have been fully advised and counseled on 1 April 2016. They understand that this resignation, if accepted, may be considered as being Under Other Than Honorable Conditions.

**(17)** A DD Form 458 (Charge Sheet), dated 7 April 2016, reflects charges were preferred against the applicant consist of an additional charge – Violation of Article 107 (False Official Statements), UCMJ, in that, the applicant did, on or about 27 June 2014, with intent to deceive, signed an official record, to wit: a Personnel Records Review, which record was false in that it stated that a "Letter of Course Completion Verification," dated 11 February 1993 and a "Course Completion Certificate," dated 23 September 1992, were true records in their interactive Personnel Electronic Records Management System file, and was then known by the applicant to be so false.

**(18)** A memorandum, U.S. Army Military District of Washington, subject: Request for Resignation for the Good of the Service in Lieu of General Court-Martial, [Applicant], dated 3 May 2016, the commanding general, having reviewed the applicant's Request for Resignation for the Good of the Service in Lieu of General Court-Martial and the chain of command recommendations, recommend the resignation be approved. They also recommend the applicant receive a characterization of service of Under Other Than Honorable Conditions.

**(19)** A DA Form 3822 (Report of Mental Status Evaluation) dated 18 May 2016 reflects the applicant is fit for full duty, including deployment.

**(a)** Section IV (Impressions) reflects the applicant can understand and participate in administrative proceedings, can appreciate the difference between right and wrong, and meets medical retention requirements (i.e., does not qualify for a Medical Evaluation Board).

**(b)** Section IV (Diagnoses) reflects "Adjustment Disorder with mixed Anxiety and Depressed Mood.

**(c)** Section VIII (Additional Comments) reflects the behavioral health provider states the applicant was screened for PTSD, Traumatic Brain Injury, and substance use. While the applicant endorsed symptoms of PTSD on screening questionnaires, they do not appear to meet criteria for diagnosis of PTSD and they have consistently denied symptoms of PTSD. Instead, they appear to meet criteria for adjustment disorder related to their present circumstances. There are no mitigating psychological factors that diminish their ability to make deliberate choices, know right from wrong, or adhere to the former. They should be subject to the normal channels for counseling and discipline, including UCMJ action if warranted, for any misconduct.

**(20)** A memorandum, Department of the Army, Office of the Assistant Secretary, Manpower and Reserve Affairs, subject: Resignation for the Good of the Service in Lieu of General Court-Martial Case, [Applicant], dated 18 July 2026, reflects the Department of the Ad Hoc Review Board has reviewed the Resignation for the Good of the Service in Lieu of General Court-Martial tendered by the applicant. The Deputy Assistant Secretary of the Army accepted the applicant's resignation and stated they will be discharged from the U.S. Army with a Under Other Than Honorable Conditions characterization of service. They directed the entire court-martial proceedings, both finding and sentence, if any, be vacated. In light of their eligibility for future receipt non-regular retired pay, directed their case be referred to the Army Grade Determination Review Board.

**(21)** On 8 August 2016, the applicant was released from active duty and transferred to the Colorado ARNG. Their DD Form 214 (Certificate of Release or Discharge from Active Duty) provides they completed 8 years, 1 month, and 8 days of net active service this period. Their DD Form 214 reflects in –

- item 12d (Total Prior Active Service) – 10 years, 5 months, 7 days
- item 12e (Total Prior Inactive Service) – 6 years, 4 months, 18 days
- item 21a (Member Signature) – the applicant's signature, indicates they have reviewed and accepts the information as being correct to the best of their knowledge
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 600-8-24, paragraph 3-13
- item 26 (Separation Code) – BFS
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

**(22)** A NGB Form 22 (National Guard Report of Separation and Record of Service) reflects the applicant was separated from the ARNG of Colorado and transferred to The Retired Reserve on 8 August 2016. The NGB Form 22 reflects in –

- item 4 (Date of Enlistment) – 25 November 2002
- item 6 (Date of Rank) – 25 August 2008
- item 10a (Net Service This Period) – 13 years, 8 months, 14 days
- item 10b (Prior Reserve Component Service) – 5 years, 8 months, 28 days
- item 10c (Prior Active Federal Service) – 5 years, 5 months, 21 days
- item 10e (Total Service for Retired Pay) – 22 years, 10 months, 1 day
- item 23 (Authority and Reason) – Army Regulation 600-8-24, Completed 20 Years Service Active or Inactive
- item 24 (Character of Service) – Under Other Than Honorable Conditions

**(23)** A, memorandum, U.S. Army Criminal Investigation Division, subject: Request for Redacted Military Sexual Trauma Criminal Investigation Division/Military Police Report for [Applicant], dated 6 June 2024, reflects a search of the Army criminal file indexes revealed no Military Sexual Trauma records pertaining to the applicant.

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

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

**(1) Applicant provided:** The applicant provided unofficial VA evidence of a Rated Disabilities printout [no Rating Decision] consisting of PTSD with Bipolar I Disorder with psychotic features, unspecified anxiety disorder, insomnia with non-sleep disorder mental comorbidity also claimed as depression.



**(2) AMHRR Listed:** Report of Mental Status Evaluation as described in previous paragraph 4h(19).

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with a letter to the Board
- excerpts from their Medical Record
- Officer Record Brief
- Psychiatric Information Request
- VA printout of Rated Disabilities [Note: the unofficial document does not contains the applicant's name.]

**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 Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the

time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

**(2)** Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

**c.** Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Title 10 U.S. Code; Section 1553 and DoD Directive 1332.41 and DoD Instruction 1332.28.

**d.** Army Regulation 600-8-24 (Officer Transfers and Discharge), 12 May 2006, prescribed the officer transfers from active duty to the Reserve Component and discharge function for all officers on active duty for 30 days or more. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support officer transfers and discharges.

**(1)** Honorable characterization of service, 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 for reasons that do not involve acts of misconduct, for an officer.

**(2)** General Under Honorable Conditions characterization of service, 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. A separation under honorable conditions will normally be appropriate when an officer, to include; submits an unqualified resignation or a request for release from active duty under circumstances involving misconduct.

**(3)** Under Other Than Honorable Conditions characterization of service is an administrative separation from the service under conditions other than honorable. An officer will normally receive an "Under Other Than Honorable Conditions" when they resign for the good of the service; are dropped from the rolls of the Army; are voluntarily separated due to misconduct, moral or professional dereliction, or the final revocation of a security clearance as a result of an act or acts of misconduct, including misconduct for which punishment was imposed; or are discharged following conviction by civilian authorities.

**(4)** Chapter 3 (Resignations) prescribed the tasks, rules, and steps for processing voluntary resignation. Any officer of the Active Army or U.S. Army Reserve may tender a

resignation under provisions of this chapter. The Secretary of the Army or their designee may accept resignations and orders will be issued by direction of HRC.

**(5)** Paragraph 3-13 (Rules for Processing Resignation for the Good of the Service In Lieu of General Court-Martial) stated an officer may submit a resignation for the good of the Service in lieu of general court-martial under the following circumstances; court-martial charges have been preferred against the officer with a view toward trial by general court-martial; or the officer is under a suspended sentence of dismissal. An officer under court-martial charges will be retained on active duty until final disposition of the charges or until the officer's request for resignation is approved. The commander will ensure that the officer's request for resignation is voluntary and that the applicants are provided the opportunity to consult with legal qualified counsel. The request for resignation along with the officer's Official Military Personnel File and Officer Record Brief without recommendation will be forwarded by HRC to the Deputy Assistant Secretary of the Army – Review Boards. An officer separated under this paragraph normally receives characterization of service of Under Other Than Honorable Conditions. An officer who resigns for the good of the Service (regardless of the character of service received) is barred from rights under laws administered by the Department of Veterans Affairs based on the period of service from which the officer resigned.

**(6)** Chapter 4 (Eliminations) stated an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have place in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated. Paragraph 4-2 (Reason for Elimination) stated while not all inclusive, when one of the following or similar conditions exist, elimination action may be or will be initiated as indicated, to include; failure to conform to prescribed standards of dress, personal appearance, or military deportment; acts of personal misconduct; conduct unbecoming an officer; and derogatory information, such as a relief for cause Officer Evaluation Report or adverse information filed in the AMHRR.

**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 enlisted Soldiers who are discharged under the provisions of Army Regulation 600-8-24, paragraph 3-13, In Lieu of Trial by Court-Martial.

**f.** Manual for Courts-Martial, United States (2016 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, Violation of Article 107 (False Official Statements), Article 133 (Conduct Unbecoming Officer), and Article 134 (Wearing Unauthorized Insignia, Decoration, Badge, Ribbon, Devise, or Lapel Button).

**g.** Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the

basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

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

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

b. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of offenses punishable under the UCMJ with a punitive charge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of Army Regulation 600-8-24, paragraph 3-13, in lieu of trial by court-martial. In this request, an understanding a under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The Under Other Than Honorable Conditions discharge received by the applicant was normal and appropriate under the regulatory guidance. They completed 8 years, 1 month, and 8 days of net active service this period and completed their first full term of service.

c. Army Regulation 600-8-24, paragraph 3-13 states a voluntary discharge request in-lieu of trial by court-martial, a discharge Under Other Than Honorable Conditions normally is appropriate.

d. The applicant's Report of Mental Status Evaluation reflects a mental health diagnosis of Adjustment Disorder with mixed anxiety and depressed mood during their military service. The applicant provided VA evidence of Rated Disabilities consisting of PTSD with Bipolar I Disorder with psychotic features, unspecified anxiety disorder, insomnia with non-sleep disorder mental comorbidity also claimed as depression.

e. Published DoD guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

#### **9. BOARD DISCUSSION AND DETERMINATION:**

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, 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 and Anxiety Disorder Not Otherwise Specified (NOS). Post-service, the applicant is service connected for combat related Post Traumatic Stress Disorder (PTSD).

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant was diagnosed in-service with Adjustment Disorder and Anxiety Disorder NOS. The trauma serving as the basis for the service connection occurred in-service, combat.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that trauma does not result in making deliberate choices to misrepresent yourself. Additionally, the acts required conscious, purposeful planning over time negating cognitive impairment. Moreover, while the applicant references PTSD and Traumatic Brain Injury (TBI), the applicant admits to awareness of the error and choosing not to correct it. Accordingly, there were no cognitive or psychiatric factors contributing to the misconduct.

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

**c. Response to Contention(s):**

(1) The applicant contends they were diagnosed with PTSD by mental health professionals at both the VA and at their home of record. In an Improvised Explosive Device strike in Iraq 2005, over pressure injuries had altered the shape of their left eye and perforated their left eardrum. Their service-related VA disability rating of 80-percent is largely attributed to PTSD and mild Traumatic Brain Injury (TBI). The Board considered this contention and the applicant's Adjustment Disorder, Anxiety Disorder NOS, and trauma serving as the basis for the service connection occurred in-service, combat does not outweigh the misconduct based on the seriousness of the applicant's offense of Wearing Unauthorized Insignia, Decoration, Badge, Ribbon, Devise, or Lapel Button.

(2) The applicant contends they knowingly allowed erroneous entries on their Officer Record Brief, namely that they had attended the Sapper Leader Course in 1992. They knew it was there but did nothing to correct it. They did not benefit in position or boarding from their misconduct and none of their positions were considered competitive or career-making. The Board considered this contention and the applicant did not benefit in position or boarding from their misconduct but determined that these factors did not outweigh the applicant's misconduct of Wearing Unauthorized Insignia, Decoration, Badge, Ribbon, Devise, or Lapel Button.

(3) The applicant contends they accepted a resignation in lieu of court-martial to avoid publicity which would have directly affected their spouse's employment. The Board considered this contention and noted that this action is a procedural step which is part of a normal process, when an alternative forum is chosen. The applicant requested the discharge under the provisions of AR 600-8-24, paragraph 3-13, in lieu of trial by court-martial. There was no evidence presented to the Board to convince the Board of any mitigating circumstances.

(4) The applicant contends their psychological condition was exacerbated by experiences both in combat, and due to long periods of separation from family, 6 years in total in combat, peace enforcement and temporary duty tours. The Board considered this contention and determined that a change to the applicant's characterization of service, narrative reason, and RE code is not warranted because the board determined that trauma does not result in making deliberate choices to misrepresent yourself. Additionally, the acts required conscious, purposeful planning over time negating cognitive impairment. Moreover, while the applicant references PTSD and TBI, the applicant admits to awareness of the error and choosing not to correct it.

(5) The applicant contends their condition was documented initially during their service but has been traced to an earlier event (rape) which occurred while an Army dependent in Germany in 1984. The Board considered this contention and determined that there is insufficient evidence in the applicant's official record or provided by the applicant that the applicant was not

provided sufficient access to medical and behavioral health resources. Therefore, no change is warranted.

(6) The applicant contends they have a decorated combat service record and after over 18 years of Active Federal Service, they are deprived of benefits and treatment. The Board considered this contention and the applicant's 24 years of service, including two combat tours in Iraq and Afghanistan, and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's Wearing Unauthorized Insignia, Decoration, Badge, Ribbon, Devise, or Lapel Button.

(7) The applicant contends their offense was not court-martial worthy. They ask that their Under Other Than Honorable Conditions discharge and derogatory comments be considered unnecessarily punitive in light of the underlying psychological issues that directly attributed to their discharge, and the lack of legal precedent for said offense. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner. Therefore, a discharge upgrade is not warranted.

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 contention(s) that the discharge was improper or inequitable.

**e. Rationale for Decision:**

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the Adjustment Disorder, Anxiety Disorder NOS, and trauma serving as the basis for the service connection occurred in-service, combat did not excuse or mitigate the offenses of Wearing Unauthorized Insignia, Decoration, Badge, Ribbon, Devise, or Lapel Button. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

(2) As there were no Reasons/SPD Codes listed on the applicant's discharge paperwork because the applicant was a commissioned officer, no upgrade actions are required for this item.

(3) As there was no RE-code listed on the applicant's discharge paperwork because the applicant was a commissioned officer, no upgrade actions are required for this item.

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20200008910

## Authenticating Official:

12/14/2024

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