

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues: The current characterization of service for period under review is under other than honorable conditions. The applicant requests an upgrade honorable.

The applicant seeks relief contending, in effect, repeat deployments contributed to their post-traumatic stress disorder (PTSD), and affected their behavior. The applicant states they were a model Soldier and had little trouble until they returned from their deployment to Afghanistan. The applicant experienced heavy combat and very traumatic events while in the combat zone. The applicant contends they smoked marijuana after trying to recover from their Afghanistan experience. The applicant received an Article 15 and served their punishment. However, the applicant believes they were suffering from PTSD when they were deployed to Iraq. The applicant had a dispute with their platoon sergeant, who then threw a bucket of water on them. This dispute escalated, and the applicant had to be restrained by another Soldier. The applicant was given the choice of an under other than honorable conditions discharge or a court martial and face additional penalties. The applicant chose the easiest way out because they did not want to stay in Iraq with people who would disrespect them. The applicant claims they were not in control of their emotions because of their PTSD diagnosis.

b. Board Type and Decision: In a records review conducted on 5 November 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 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 29 October 2003

c. Separation Facts:

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** NIF

(2) **Legal Consultation Date:** NIF

(3) **Basis for Separation:** NIF

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

(5) Separation Decision Date / Characterization: 13 September 2003 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 11 March 1999 / 5 years

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 103

c. Highest Grade Achieved / MOS / Total Service: E-3 / 12B10, Combat Engineer / 4 years, 7 months, 19 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Kosovo, SWA / Afghanistan (19 November 2001 – 3 June 2002); Iraq/Kuwait (28 February 2003 – 8 October 2003)

f. Awards and Decorations: AAM, AGCM, NDSM, KCM, NATOMDL, ASR, OSR-2

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Orders 295-0023, 22 October 2003, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 29 October 2003, from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 10 with a narrative reason of In Lieu of Trial by Court Martial. The DD Form 214 was authenticated with the applicant's signature.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Clinical record, 5 November 2013, reflects a diagnosis of Axis I - PTSD, chronic. The applicant continued to suffer the symptoms of PTSD to a severe degree. The applicant states being suicidal in the past but no longer had suicidal thoughts or ideation, no homicidal intentions. The applicant jumped off the Carquinez Bridge in 2007, was rescued and physically healed without any psychological support. The applicant has served three combat tours.

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; clinical record standard form 544.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for their mental health from the VA.

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 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(4) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(7) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(8) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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 DODI 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: 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.

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's Army Military Human Resources Record (AMHRR) includes partial facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions.

The evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, would have voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant would have admitted guilt to the offense, or a lesser included offense, and indicated an understanding an 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.

The applicant contends repeated deployments contributed to their post-traumatic stress disorder (PTSD) and affected their behavior. The applicant provided a clinical record, 5 November 2013, reflecting a diagnosis of Axis I-PTSD, chronic. The applicant continues to suffer symptoms of PTSD to a severe degree. The applicant states being suicidal in the past but no longer has suicidal thoughts or ideation, no homicidal intentions. The applicant jumped off the Carquinez Bridge in 2007, was rescued and physically healed without any psychological support. The applicant had served three combat tours. The AMHRR is void of a mental status evaluation.

The applicant contends they smoked marijuana after trying to recover from their Afghanistan experience. The applicant received an Article 15 and served their punishment. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends seeking treatment for their mental health from the VA. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization

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

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 reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with PTSD from military service by a civilian provider.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** After applying liberal consideration, the Board determined that the applicant's PTSD could mitigate the applicant's discharge. However, the Board Medical Advisor was unable to provide a medical opinion on whether the applicant's PTSD mitigates the discharge because the applicant's official records do not contain the facts and circumstances surrounding the discharge. The applicant did not provide additional evidence regarding the basis of the separation. Without knowing the facts and circumstances relating to the discharge, the Board Medical Advisor is unable to determine if the applicant's PTSD mitigates the basis of the separation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, the Board was unable to determine whether the applicant's PTSD outweighed the discharge. Specifically, the basis of the separation could not be determined.

b. Response to Contention(s):

(1) The applicant contends repeated deployments contributed to their PTSD and affected their behavior. The Board liberally considered this contention and determined that while the applicant's PTSD could outweigh the discharge, the Board was unable to determine medical mitigation without knowing the basis of the separation.

(2) The applicant contends they smoked marijuana after trying to recover from their Afghanistan experience. The applicant received an Article 15 and served their punishment. The Board considered this contention and found that it did not bear on the applicant's voluntary separation in lieu of trial by court-martial.

(3) The applicant contends seeking treatment for their mental health from the VA. The Board considered this contention and found that the applicant seeking treatment did not warrant a discharge upgrade.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the basis of the separation is unknown. Therefore, medical mitigation cannot be determined. The Board also considered the applicant's contention that the applicant served out the punishment imposed at an Article 15 but found that the totality of the applicant's record does not warrant a discharge upgrade and the basis of the discharge is unknown. The applicant did not present any issues of impropriety for the Board's consideration. 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. Therefore, the applicant's Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory/meritorious service warranting a General/Honorable discharge characterization.

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

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000598

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

Authenticating Official:

11/13/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs