

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge should be upgraded based on the overall character of service. The applicant was coping with the death of three family members and was not allowed to attend the spouse's funeral. The applicant was diagnosed with an anxiety condition and made a bad decision because of the condition. The applicant understands the choice they made was wrong. The applicant has been diagnosed with PTSD and has gained more insight into the way the condition manifests. The applicant has been granted 100 percent service-connected disability for PTSD and diagnosed with TBI. The applicant now understands the symptoms of the condition better and knows the decision was made based on the symptoms of the condition and not a rational course of action choice.

b. **Board Type and Decision:** In a records review conducted on 8 October 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 details 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 / General (Under Honorable Conditions)

b. **Date of Discharge:** 12 March 2008

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 29 January 2008, the applicant was charged with: The Charge: Violating Article 125, UCMJ. The Specification: On or about 13 October 2007, commit sodomy with Private M. V. M., by force and without the consent of the said Private.

(2) **Legal Consultation Date:** 28 February 2008

(3) **Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

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

(5) Separation Decision Date / Characterization: 6 March 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 18 January 2006 / 5 years
- b. Age at Enlistment / Education / GT Score:** 25 / High School Graduate / 88
- c. Highest Grade Achieved / MOS / Total Service:** E-5 / 92M20, Mortuary Affairs Specialist / 8 years, 5 months, 23 days
- d. Prior Service / Characterizations:** RA, 29 September 1999 – 1 April 2003 / HD
RA, 2 April 2003 – 17 January 2006 / HD
- e. Overseas Service / Combat Service:** Hawaii, SWA / Iraq (31 August 2006 – 22 July 2007)
- f. Awards and Decorations:** ARCOM, AAM-4, AGCM-2, NDSM, GWOTEM, GWOTSM, ASR
- g. Performance Ratings:** 1 September 2005 – 31 August 2006 / Marginal
1 September 2006 – 31 May 2007 / Among the Best
- h. Disciplinary Action(s) / Evidentiary Record:** United States Army Criminal Investigation Command Memorandum, Polygraph Examination Report, 30 October 2007, reflects the applicant was interviewed and admitted they engaged in oral and digital anal sodomy with M., however; stated the sexual activity was consensual and they never forced M. to do anything. The applicant agreed to undergo a polygraph examination to verify the truthfulness of the statement. An analysis of the polygrams collected determined the applicant was being deceptive when answering the relevant questions.

Charge Sheet as described in previous paragraph 3c(1).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs letter, 15 April 2014, reflects the applicant is currently rated 100 percent service-connected for PTSD. The diagnosis was initially made on 12 May 2008, when the applicant was seen. It was documented the applicant had mental health treatment even while in the service and from another VA hospital.

Department of Veterans Affairs letter, 15 April 2014, reflects the applicant was granted 100 percent service-connected disability. The letter contains a diagnosis.

(2) AMHRR Listed: Health Record, Chronological Record of Medical Care, 15 October 2007, the record reflects a diagnosis.

Report of Medical History, 29 January 2008, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Behavioral Health Evaluation (BHE), 10 March 2008, reflects the applicant was mentally responsible with a clear thinking process and had the mental capacity to understand and participate in the proceedings. The findings of the evaluation were deferred.

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: Application for Correction of Military Record; self-authored statement; two VA letters; Certificate of Release or Discharge from Active Duty.

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 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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(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 10-8a 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.)

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 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, 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 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 general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends family issues affected behavior and ultimately caused the discharge. 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 the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends being diagnosed with an anxiety condition resulting in making a bad decision. The applicant has been granted 100 percent service-connected disability for PTSD and diagnosed with a TBI by the VA. The applicant provided Department of Veterans Affairs letter, 15 April 2014, which reflects the applicant is currently rated 100 percent service-connected for PTSD. The diagnosis was initially made on 12 May 2008, when the applicant was seen. It was documented the applicant had mental health treatment even while in the service

and from another VA hospital. A Department of Veterans Affairs letter, 15 April 2014, reflects the applicant was granted 100 percent service-connected disability. The letter contains a diagnosis. The AMHRR contains Health Record, Chronological Record of Medical Care, 15 October 2007, the record reflects a diagnosis. A Report of Medical History, 29 January 2008, the examining medical physician noted the applicant's medical conditions in the comments section. A Report of Behavioral Health Evaluation (BHE), 10 March 2008, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The findings of the evaluation were deferred. All the medical documents in the AMHRR were considered by the separation authority.

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/experiences: PTSD, MDD, Adjustment Disorder with Depressed Mood, Panic Disorder w/o Agoraphobia, and mTBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent service-connected for PTSD and 10 percent service-connected for mTBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. The applicant's offense of forceful sodomy is not mitigated as it is not natural sequela of any of the applicant's diagnosed conditions, as none of them rendered the applicant unable to differentiate between right and wrong and adhere to the right. Additionally, records indicate the applicant's mTBI was not of a severity to impact cognition, judgement, or behavior.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, Adjustment Disorder with Depressed Mood, Panic Disorder w/o Agoraphobia, and mild Traumatic Brain Injury outweighed the medically unmitigated sodomy offense.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with an anxiety condition resulting in making a bad decision. The applicant has been granted 100 percent service-connected disability for PTSD and diagnosed with a TBI by the VA. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the behavioral health conditions outweighed the medically unmitigated sodomy offense.

(2) The applicant contends good service, including a combat tour. The Board considered the applicant's years of service, combat service, and awards, but determined that the totality of the service record does not outweigh the severity of the medically unmitigated sodomy offense.

(3) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered the deaths of the applicant's parents and spouse occurring in a short period of time and determined that these tragic events do not mitigate the severity of the separating misconduct.

(4) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention and determined the severity of the misconduct warranted separation with the awarded characterization, even as an isolated incident.

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 applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, Adjustment Disorder with Depressed Mood, Panic Disorder w/o Agoraphobia, and mild Traumatic Brain Injury did not outweigh the medically unmitigated Sodomy offense. The Board also considered the applicant's contentions regarding the death of family members and good service and found that the totality of the record and personal circumstances do not warrant a discharge upgrade. 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 or meritorious service warranting a General or 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 behavioral health conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000742

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:

10/16/2024

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