

1. Applicant's Name: [REDACTED]**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 the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, experiencing many family and health issues and was in the care of a physician. The applicant never missed a drill, never was late to a formation, and served with distinction. The applicant had to attend to family circumstances, was stressed, and prescribed medication by the applicant's doctors. The applicant provided the proper documentation from both doctors. The applicant was told by their unit administrator and commander it would be taken care of, and the applicant did not need to come back.

b. Board Type and Decision: In a records review conducted on 3 September 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's Major Depressive Disorder outweighing the applicant's Unsatisfactory Performance. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable.

Please see Board Discussion and Determination 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: NIF / AR 135-178, NIF / NIF / NIF / Under Other Than Honorable Conditions

b. Date of Discharge: 21 September 2010**c. Separation Facts:****(1) Date of Notification of Intent to Separate:** NIF**(2) Basis for Separation:** NIF**(3) Recommended Characterization:** NIF**(4) Legal Consultation Date:** NIF**(5) Administrative Separation Board:** NIF**(6) Separation Decision Date / Characterization:** NIF**4. SERVICE DETAILS:**

- a. Date / Period of Enlistment:** 14 February 2007 / 8 years
- b. Age at Enlistment / Education / GT Score:** 27 / Master's Degree / NIF
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 21E10, Heavy Construction Equipment Operator / 3 years, 7 months, 8 days
- d. Prior Service / Characterizations:** IADT, 30 May 2007 – 14 September 2007 / HD (Concurrent Service)
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** NDSM, ASR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** The applicant provided electronic mail messages reflecting the applicant notified the commander the applicant was under a physician's care, was prescribed medication, and was unfit for duty. The applicant requested advice on what the applicant needed to do regarding medical issues and military duties. The applicant courtesy copied the unit administrator. The commander responded by informing the applicant if the applicant was unable to deploy based on medical issues, the Army would not deploy the applicant. The commander further instructed the applicant to send a copy of the medical documents to J., the unit administrator, but informed the applicant the doctor may need to complete an Army form.

Orders 10-259-00016, 16 September 2010, reflect the applicant was reduced to E-1; to be discharged from the U.S. Army Reserve on 21 September 2010, under the authority of AR 135-178, with an under other than honorable conditions.

i. Lost Time / Mode of Return: NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: Family Medicine Ocoee Premiere Park letter, 11 January 2010, reflects the applicant was not a good candidate for military service. The applicant had been suffering from insomnia and sleep walking since 2008, was diagnosed with anxiety and depression, and was prescribed medication. The physician indicated it would not be in the best interests of the applicant or the armed services if the applicant served in the Army.

Cleveland Behavioral Health letter, 15 February 2010, reflects the applicant was under treatment for major depression since January 2010. The applicant's mental condition was not stable and was unable to engage in stressful situations.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; self-authored statement; reduction and discharge orders; third party character reference; Family Medicine Ocoee Premiere Park letter; Cleveland Behavioral Health letter; U. S. Army Recruiting Command, Fort Knox, letter; Certificate of Achievement; Defense Finance and Accounting Service letter; electronic mail messages; Certificate of Recognition; and Teacher of the Year certificate.

6. POST SERVICE ACCOMPLISHMENTS: The applicant was employed as a teacher for 18 years and received accolades for their service as a teacher, including being awarded teacher of the year.

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 135-178 (Enlisted Administrative Separations), sets forth the policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons. The separation policies throughout the different Chapters in this regulation promote the readiness of the Army by providing an orderly means to judge the suitability of persons to serve on the basis of their conduct and their ability to meet required standards of duty performance and discipline. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, and convictions by civil authorities.

(1) Paragraph 2-7, prescribes possible characterizations of service include an honorable, general (under honorable conditions), under other than honorable conditions, or uncharacterized if the Soldier is in entry-level status. However, the permissible range of characterization varies based on the reason for separation.

(2) Paragraph 2-8, prescribes the characterization is based upon the quality of the Soldier's service, including the reason for separation, and determined in accordance with standards of acceptable personal conduct and performance of duty as found in the UCMJ, Army regulations, and the time-honored customs and traditions of the Army. The reasons for separation, including the specific circumstances that form the basis for the discharge are considered on the issue of characterization.

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) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army Reserve. The applicant's AMHRR does contain a properly constituted discharge order: Orders 10-259-00016, 16 September 2010. The orders indicate the applicant was discharged under the provisions of AR 135-178, with a characterization of service of under other than honorable conditions.

The applicant contends suffering from depression and family issues, which led to the discharge. The applicant submitted several medical documents reflecting the applicant had been suffering with insomnia and was sleepwalking since 2008. The applicant was diagnosed with anxiety and depression. The physician indicated it was not in the best interests of the applicant or the armed services if the applicant served in the Army. The applicant's mental condition was not stable, and the applicant was unable to engage in stressful situations. The applicant provided third

party letters from friends explaining the multiple family issues the applicant was experiencing and the changes in the applicant's behavior at the time of service. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends notifying the command of the mental health conditions and was informed not to return to duty. The applicant provided email messages reflecting the applicant and the applicant's commander corresponded regarding the applicant being under a physician's care for a condition which required medication. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being informed the applicant would receive an honorable discharge. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The applicant contends good service.

The applicant identifies issues with a previous ADRB decision. The applicant received a 'de novo' review as part of the Kennedy v. McCarthy Stipulation and Agreement of Settlement, certified on 26 April 2021, wherein the board applied the Department of Defense guidance regarding liberal consideration of possible mitigating factors, such as PTSD, TBI, and other related mental health conditions.

The applicant contends being a teacher for 18 years and receiving accolades for their service as a teacher, including teacher of the year. 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.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicants good conduct after leaving the Army Reserve.

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: MDD, Anxiety Disorder, Insomnia, Sleep-Walking.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is diagnosed with multiple potentially mitigating BH conditions.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the discharge. It is not uncommon for some who suffer from MDD to experiences debilitating depression for months on end, resulting in withdrawal, social isolation, and amotivation to engage in social, interpersonal, and occupational activities. Given this nexus

with MDD, the applicant's Unsatisfactory Performance is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Major Depressive Disorder outweighed the applicant's Unsatisfactory Performance.

b. Response to Contention(s):

(1) The applicant contends suffering from depression and family issues, which led to the discharge. The Board liberally considered this contention and determined that the applicant's Major Depressive Disorder outweighed the applicant's Unsatisfactory Performance.

(2) The applicant contends notifying the command of the mental health conditions and was informed not to return to duty. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant was informed not to report to Battle Assembly.

(3) The applicant contends being informed the applicant would receive an honorable discharge. The Board considered this contention but found it irrelevant after determining that an upgrade was warranted based on medical mitigation of the applicant's misconduct.

(4) The applicant contends good service. The Board considered the applicant's three years of service but ultimately did not address the applicant's service record after determining that an upgrade was warranted based on medical mitigation of the applicant's misconduct.

(5) The applicant contends being a teacher for 18 years and receiving accolades for their service as a teacher, including teacher of the year. The Board considered the applicant's post-service accomplishments but found that they do not warrant further upgrade beyond what is being granted due to medical mitigation.

c. The Board determined that the characterization of service was inequitable based on the applicant's Major Depressive Disorder outweighing the applicant's Unsatisfactory Performance. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable.

d. Rationale for Decision: The Board voted to change the applicant's characterization of service to Honorable because the applicant's Major Depressive Disorder outweighed the applicant's Unsatisfactory Performance.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000827

10. BOARD ACTION DIRECTED:

- a. Issue a New Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Authority to: AR 135-178

Authenticating Official:

10/16/2024



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