

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 honorable. The applicant requests a narrative reason change, a separation code change, and a reentry eligibility (RE) code change.

The applicant seeks relief contending, in effect, the discharge was inequitable because it was based on one incident, which occurred two years before the request for resignation. There was no other adverse action, and there were no administrative or disciplinary matters introduced in the applicant's record that warranted the separation code of BNC in lieu of FND. The applicant requests DD Form 214 (Certificate of Release or Discharge from Active Duty), block 25, be changed to Miscellaneous/General Reasons under AR 600-8-24, paragraph 3-5. The applicant did not receive any counseling for the discharge to be characterized as bad conduct. A separation code change would allow the applicant the opportunity to enlist in the Colorado Army National Guard. The applicant was employed as a targeting analyst with Lockheed Martin in Afghanistan where the applicant held a position of trust, advising North Atlantic Treaty Organization (NATO) forces. The applicant is currently employed for Lockheed Martin at the Waterton, Colorado, facility and has a Top Secret / Sensitive Compartmented Information (TS/SCI) clearance, sponsored by the National Reconnaissance Office. The applicant further details the contentions in self-authored statements submitted with the application.

b. **Board Type and Decision:** In a records review conducted on 19 September 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:** Unacceptable Conduct / AR 600-8-24, Paragraph 4-2b and 4-24a (1) / BNC / Honorable

b. **Date of Discharge:** 24 September 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 25 March 2013

(2) **Basis for Separation:** The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraphs 4-2b for misconduct, moral or professional dereliction because of the following reasons:

Substantiated derogatory activity resulting in a General Officer Memorandum of Reprimand, 10 October 2011, which was filed in the applicant's Official Military Personnel File (OMPF).

Conduct unbecoming an officer as indicated by the above referenced item.

(3) Legal Consultation Date: 2 May 2013

(4) Board of Inquiry (BOI): On 2 May 2013, the applicant conditionally waived consideration of the case before a board of inquiry, contingent upon receiving a characterization of service no less favorable than an honorable discharge.

(5) GOSCA Recommendation Date / Characterization: The GOSCA recommended approval of the applicant's request for resignation in lieu of elimination. / Honorable

(6) DA Ad Hoc Review Board: The AD Hoc review board considered the applicant's request for resignation in lieu of elimination in accordance with AR 600-8-24, Chapter 4.

On 3 September 2013, the separation authority accepted the request for resignation in lieu of elimination.

(7) Separation Decision Date / Characterization: 3 September 2013 / Honorable

4. SERVICE DETAILS:

a. Date / Period of Appointment: 15 April 2002 / 3 years

b. Age at Appointment: / Education: 32 / Master's Degree

c. Highest Grade Achieved / MOS / Total Service: O-4 / 35G, Signals Intelligence / Electronic Warfare Officer / 19 years, 1 month, 1 day

d. Prior Service / Characterizations: ARNG, 21 May 1998 – 18 August 2000 / HD
IADT, 21 May 1998 – 25 February 1999 / UNC /
Orders reflect report date 23 September 1998
(Concurrent Service)
ARNG, 19 August 2000 – 9 January 2002 / HD
USARCG, 10 January 2002 – 14 April 2002 / NA

e. Overseas Service / Combat Service: Hawaii, SWA / Afghanistan (30 April 2010 – 19 March 2011); Iraq (19 January 2004 – 19 February 2005)

f. Awards and Decorations: ACM-CS, JSCM, ARCOM-4, JSAM, JMUA, MUC, NDSM, GWOTEM, GWOTSM, ASR, OSR-3, NATOMDL

g. Performance Ratings: 2 February 2002 – 5 January 2004 / Best Qualified
6 January 2004 – 31 May 2005 / Best Qualified
(Course, 18 June 2005 – 15 February 2006)
16 February 2006 – 13 November 2008 / Best Qualified
14 November 2008 – 1 April 2011 / Best Qualified
2 April 2011– 24 September 2013 / Best Qualified

h. Disciplinary Action(s) / Evidentiary Record: General Officer Memorandum of Reprimand (GOMOR), 10 August 2011, reflects during the deployment to Afghanistan in 2010, the applicant engaged in an inappropriate relationship and fraternized on terms of military

equality with an enlisted Soldier, in violation of Army Regulation 600-20. The applicant responded with a rebuttal, requesting the GOMOR either be withdrawn or filed locally.

Memorandum, 11 September 2012, reflects the battalion commander requested the applicant's GOMOR be moved to the restricted fiche, stating the GOMOR had served its purpose and citing the applicant's various accomplishments.

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

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

(8) Applicant provided: None

(9) AMHRR Listed: Report of Medical History, 9 May 2013, the examining medical physician noted in the comments section: Post-traumatic stress disorder (PTSD), takes medication and sees a psychologist; and concussion while deployed.

5. APPLICANT-PROVIDED EVIDENCE: Application for Correction of Military Record; Certificate of Release or Discharge from Active Duty; Two Applications for the Review of Discharge; three self-authored statements; separation orders; four Officer Evaluation Reports; Resignation in Lieu of Elimination Proceedings; Automobile Insurance Card; memorandum awarding Area of Concentration 35G; Colorado ARNG letter; three character references.

6. POST SERVICE ACCOMPLISHMENTS: The applicant was employed by Lockheed Martin in Afghanistan, holding a position of trust while advising NATO forces; is currently employed by the company in the U.S.; and has a Top Secret / Sensitive Compartmented Information (TS/SCI) clearance.

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

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

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

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

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

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

d. Army Regulation 600-8-24 (Officer Transfers and Discharges) sets forth the basic authority for the separation of commissioned and warrant officers.

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

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

(3) Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.

(4) Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.

(5) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.

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 "BNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct; and 4-24a (1), resignation in lieu of elimination.

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 a narrative reason change, a separation code change, and a reentry eligibility code change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 4, paragraph 4-2b, and 4-24a (1), AR 600-8-24 with a honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Unacceptable Conduct," and the separation code is "BNC." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28; the separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes); and the reentry eligibility code, entered in block 27, AR 601-210 (Regular Army and Reserve Components Enlistment Program) determines reentry eligibility and provides regulatory guidance on reentry codes. Reentry eligibility codes are not applicable to officers. Each block must have an entry; when data is not applicable, enter "NA," "NONE," or hyphens, as appropriate. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the SPD code should be changed. SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 4, paragraph 4-2b and 4-24a (1), is "BNC."

The applicant contends the event which led to the resignation from the Army was an isolated incident. Army Regulation 600-8-24, paragraph 1-23, 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 resigning two years after the incident, which led to the resignation. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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

The applicant requests an RE code change to join the Army National Guard. Army Regulation 635-8, states reentry eligibility codes are not applicable to officers. Each block must have an entry; when data is not applicable, enter "NA," "NONE," or hyphens, as appropriate. There is no basis for changing the DD Form 214.

The applicant contends being employed by Lockheed Martin in Afghanistan, holding a position of trust while advising NATO forces; is currently employed by the company in Colorado; and has a TS/ SCI clearance. 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 applicant's good military service and/or conduct after leaving the Army.

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: Adjustment Disorder, PTSD, and a concussion.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, PTSD, and a concussion, and the VA has service connected the PTSD.

(3) Does the condition or experience 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. There is no natural sequela between an Adjustment Disorder, PTSD, or a concussion and engaging in an inappropriate relationship or fraternizing since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(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 Adjustment Disorder, PTSD, or concussion outweighed the applicant's medically unmitigated offenses of engaging in an inappropriate relationship or fraternizing.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and determined that the applicant's Unacceptable Conduct narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of engaging in an inappropriate relationship and fraternizing.

(2) The applicant contends the event which led to the resignation from the Army was an isolated incident. The Board considered this contention and determined that the applicant's misconduct, especially as an officer, was of a severity to warrant separation with an Unacceptable Conduct narrative reason.

(3) The applicant contends resigning two years after the incident, which led to the resignation. The Board considered this contention but found it unpersuasive on the matter of the applicant's Unacceptable Conduct narrative reason for separation.

(4) The applicant contends good service, including two combat tours. The Board considered the entirety of the applicant's length of service and determined that the current evidentiary record does not outweigh the unmitigated offenses of engaging in an inappropriate relationship and fraternizing.

(5) The applicant contends being employed by Lockheed Martin in Afghanistan, holding a position of trust while advising NATO forces, being employed by the company in the U.S., and having a TS/SCI clearance. The Board considered the applicant's post-service accomplishments and did not find that they warranted a change to the applicant's narrative reason for separation.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a 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.

d. Rationale for Decision:

(1) The Board voted not to change the characterization of service as the applicant already holds an honorable characterization and further upgrade is not available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code due to insufficient mitigating factors. The reason the applicant was discharged was both proper and equitable for the misconduct that occurred.

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 Authority to: No Change

Authenticating Official:

9/25/2024

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