

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 general discharge.

The applicant seeks relief contending, in effect, proudly serving in the Army, but endeavors were derailed. The applicant was on a tour in Korea, was married, and had a child at the age of 22. After the tour in Korea, the applicant was assigned to Fort Campbell. The applicant reenlisted, and a year later, the applicant and spouse went on leave during the Christmas holidays but did not leave the state of Kentucky. They were invited and attended a Christmas party off-post at the applicant's first lieutenant's home. Everyone at the unit attended the function, except the company commander. The party involved alcohol and illicit drugs, in which others as well as the applicant were involved. The next day, the applicant received a call at home to report to formation, and they were administered a urinalysis test. The applicant was on leave for 45 days before the test was conducted. The applicant was exempt from participating in the urinalysis but was not told until the applicant submitted to the urinalysis. It was no surprise the applicant tested positive, but the applicant became apprehensive because the applicant's squad leader did not inform the platoon leader the applicant was on leave. There was a labeling mishap with the handling of the applicant's urine and the applicant believed the applicant was targeted. The applicant was ill advised regarding all the applicant's options by the judge advocate. The applicant's case was the judge advocate's first case. The applicant was very young, with a family, and this was the first incident of any trouble in the applicant's entire life. The applicant's decision to join the Army was not in vain, and there are no regrets. The applicant suffers from depression from a chemical imbalance, which is hereditary in their family and the condition affects the applicant's behavior. The applicant is active in school and would like to take advantage of the open career fields of computers, truck driving, and medical.

b. **Board Type and Decision:** In a records review conducted on 8 August 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

However, notwithstanding the propriety of the applicant's discharge, the Board found that the applicant's DD Form 214, block 27, reflects that the applicant's reentry eligibility (RE) code was previously downgraded from RE-3 to RE-4. This downgrade was contrary to Department of Defense Instruction 1332.28, which directs that an applicant should not receive a less favorable discharge than that granted at the time of separation. In view of the error, the Board directed an administrative correction to block 27 to read RE-3.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000926

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: 12 April 2000

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 14 January 1999, the applicant was charged with The Charge, Violating Article 86, UCMJ, for being AWOL from 24 October 1997 to 11 January 1999.

(2) Legal Consultation Date: 14 January 1999

(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: 20 August 1999 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 August 1996 / 4 years

b. Age at Enlistment / Education / GT Score: 23 / HS Graduate / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 77W10, Water Treatment Specialist / 4 years, 8 months, 19 days

d. Prior Service / Characterizations: RA, 13 April 1994 – 27 August 1996 / HD

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: AAM, NDSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Two Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 24 October 1997; and

From AWOL to Dropped From Rolls (DFR), effective 23 November 1997.

Report of Return of Absentee, 5 January 1999, reflects the applicant's absence began on 24 October 1997, and the applicant was apprehended by civil on 5 January 1999.

i. Lost Time / Mode of Return: 1 year, 3 months, 5 days:

AWOL, 3 October 1997 – 19 October 1997 / NIF

AWOL, 24 October 1997 – 10 January 1999 / Apprehended by Civil Authorities

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(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; self-authored statement; Certificate of Completion Intensive Outpatient Treatment Program.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is actively pursuing education.

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) 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.

(6) 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.

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

(8) 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.)

(9) Paragraph 10-8b 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 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 under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends suffering from depression and a chemical imbalance, which is hereditary, and the condition affected the applicant's behavior. The applicant did not submit any

evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

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 invited to a supervisor's party, where there were alcohol and drugs; testing positive on a urinalysis and the urine bottle being mislabeled; being targeted; and being ill-advised by a judge advocate. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant was discharged for being AWOL. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends actively pursuing education. 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'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: No diagnosed conditions, however, the applicant asserts Depression, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant self-asserted Depression during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine that there is insufficient evidence of any potentially mitigating BH conditions. There is no evidence of any in service BH conditions and

the VA has not service connected any BH conditions. The applicant self-asserts Depression but submitted no medical evidence to support the asserted Depression. Due to the lack of medical evidence to support the applicant's asserted Depression, there is no mitigation for the AWOL that led to the separation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that while the applicant's asserted Depression could outweigh the applicant's AWOL offense, the Board could not determine whether the applicant's asserted Depression actually outweighs the applicant's AWOL without the Board Medical Advisor determination on medical mitigation. Without additional medical evidence, the Board is unable to determine if the applicant's asserted Depression outweighs the applicant's discharge.

b. Response to Contention(s):

(1) The applicant contends suffering from depression and a chemical imbalance, which is hereditary, and the condition affected the applicant's behavior. The Board liberally considered this contention but determined that while the applicant's asserted Depression could outweigh the applicant's AWOL offense, the Board could not determine whether the applicant's asserted Depression actually outweighs the applicant's AWOL without the Board Medical Advisor determination on medical mitigation. Without additional medical evidence, the Board is unable to determine if the applicant's asserted Depression outweighs the applicant's discharge.

(2) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention but determined that the applicant's youth and immaturity did not outweigh the seriousness of the applicant's medically unmitigated AWOL offense.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but determined that the seriousness of the applicant's AWOL offense is a single event which may properly serve as the basis of separation and the characterization of service.

(4) The applicant contends being invited to a supervisors party, where there were alcohol and drugs; testing positive on a urinalysis and the urine bottle being mislabeled; being targeted; and being ill-advised by a judge advocate. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the assertions.

(5) The applicant contends good service. The Board considered the applicant's four years of service but did not find that the applicant's service record outweighed the applicant's AWOL offense.

(6) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(7) The applicant contends actively pursuing education. The Board considered the applicant's post-service accomplishments but did not find that they outweighed the applicant's AWOL offense.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of 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 self-asserted Depression did not outweigh the applicant's medically unmitigated AWOL offense. The Board also considered the applicant's contentions regarding youth and immaturity, good service, and the misconduct being an isolated incident but found that the totality of the applicant's record does 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 service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge.

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

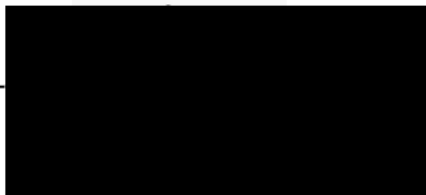
(3) The RE code will change to RE-3. The Board found that the applicant's DD Form 214, block 27, reflects that the applicant's reentry eligibility (RE) code was previously downgraded from RE-3 to RE-4. This downgrade was contrary to Department of Defense Instruction 1332.28, which directs that an applicant should not receive a less favorable discharge than that granted at the time of separation. In view of the error, the Board directed an administrative correction to block 27 to read RE-3.

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:** RE-3
- e. **Change Authority to:** No Change

Authenticating Official:

8/31/2024



Legend:
AWOL – Absent Without Leave

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

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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