

1. Applicant's Name:

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

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is under other than honorable conditions. The applicant requests an upgrade to honorable and a change to the reentry eligibility code.

The applicant seeks relief contending, in effect, being discharged for their youthful transgressions. The applicant is a homeless veteran and would like the opportunity to reenlist.

b. **Board Type and Decision:** In a records review conducted on 23 July 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 20 March 2012

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 6 December 2011, the applicant was charged with:

Charge I: Violating Article 86, UCMJ, for:

Specification 1: on or about 1 August 2011, without authority, fail to go at the time prescribed to their appointed place of duty.

Specification 2: on or about 20 October 2011, without authority, fail to go at the time prescribed to their appointed place of duty, to wit: 0630 accountability formation.

Specification 3: on or about 20 October 2011, without authority, fail to go at the time prescribed to their appointed place of duty, to wit: 0830 ACAP appointment.

Specification 4: on or about 21 October 2011, without authority, fail to go at the time prescribed to their appointed place of duty, to wit: 0830 ACAP appointment.

Specification 5: on or about 15 November 2011, without authority, fail to go at the time prescribed to their appointed places of duty, to wit: 0930 and 1300 accountability formations.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000937

Specification 6: on or about 18 November 2011, without authority, fail to go at the time prescribed to their appointed place of duty, to wit: 0630 accountability formation.

Specification 7: on or about 28 November 2011, without authority, fail to go at the time prescribed to their appointed place of duty, to wit: 0630 accountability formation.

Specification 8: on or about 1 December 2011, without authority, fail to go at the time prescribed to their appointed places of duty, to wit: 0930 and 1300 accountability formations.

Charge II: Violating Article 91, UCMJ, for:

Specification 1: on or about 18 November 2011, was disrespectful in language toward Sergeant First Class C. V., a noncommissioned officer, then known by the said, the applicant to be a noncommissioned officer, who was then in the execution of their office, by saying to them, "I don't give a fuck anymore. I'm done with this. Fuck the Army. These NCOS won't listen to anyone anymore. I don't care if it's the CSM of this post. I'm fucking done with the military," or words to that effect.

Specification 2: on or about having received a lawful order from Sergeant First Class C. V., a noncommissioned officer, then known by the applicant, to be a noncommissioned officer, to "move everything out of your room into the common area," or words to that effect, an order which it was their duty to obey, did, at or near Joint Base Lewis-McChord, Washington, on or about 18 November 2011, willfully disobey the same.

Specification 3: on or about having received a lawful order from Sergeant W.H., a noncommissioned officer, then known by the applicant, to be a noncommissioned officer, to "sit in a chair and wait for their reading," or words to that effect, an order which it was their duty to obey, did, at or near Joint Base Lewis-McChord, Washington, on or about 5 December 2011, willfully disobey the same.

Specification 4: on or about 5 December 2011, was disrespectful in language toward Sergeant W.E., a noncommissioned officer, then known by the applicant, to be a noncommissioned officer, who was then in the execution of their office, by saying to them, "I'm not doing this dumb shit anymore," or words to that effect.

Specification 5: on or about 5 December 2011, assault Sergeant W.E., a noncommissioned officer, then known by the applicant, to be a noncommissioned officer who was then in the execution of their office, by striking them in the face with their elbow.

Charge III: Specification: on or about 30 November 2011, with intent to deceive, make to Staff Sergeant L.D., an official statement, to wit: "I do not have my PTs. They are packed in their rucksack," or words to that effect, which statement was totally false, and was then known by the applicant, to be so false.

(2) Legal Consultation Date: 26 January 2012

(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: 8 March 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 6 July 2010 / 6 years, 16 weeks
- b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 113
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11B10, Infantryman / 1 year, 8 months, 15 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** GWOTSM, ASR / The applicant's AMHRR reflects award of the NDSM, however, the award is not reflected on the DD Form 214.
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Charge sheet as described in previous paragraph 3c.

FG Article 15, 18 January 2011, for on or about 1 and 10 December fail to maintain accountability of a military identification card; on or about 13 December 2010, violate a lawful general regulation, by wrongfully consuming alcohol under the age of 21 and on or about 13 December 2010, found drunk while on duty. The punishment consisted of a forfeiture of \$342 (suspended); and extra duty and restriction for 14 days.

Informal AR 15-6 Investigation Findings and Recommendations, 15 February 2012, reflects the investigation officer found all allegations of abuse by the applicant were unfounded and recommended the applicant remain in Delta /2-1, until completion of their pending UCMJ action. The applicant did not feel threatened by their Delta /2-1 chain of command and had remained compliant while assigned to Delta /2-1. The applicant had continued to be supervised during and after their pending UCMJ actions. The stress of not knowing if they would remain in the Army or be separated, combined with their mood disorder and medication, could result in future depressed, self-destructive, or self-harming behavior. The investigator did not find the applicant was a threat to oneself and the chain of command continued with the pending UCMJ action against the applicant, and not add additional charges to their Summary Court Martial based on this investigation.

Numerous Developmental Counseling Forms, for various acts of misconduct.

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

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 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

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

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

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

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty,

and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

RE-4 Applies to: Person separated from last period of service with a nonwaivable 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 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 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 current homelessness and the need for help. Eligibility for housing support program benefits for Veterans does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance. Moreover, all veterans at risk for homelessness or attempting to exit homelessness can request immediate assistance by calling the National Call Center for Homeless Veterans hotline at 1-877-424-3838 for free and confidential assistance.

The applicant desires to rejoin the military service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on

Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment matter.

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: Depressive Disorder NOS, Adjustment Disorder with Mixed Emotional Features, and Bereavement w/o Complication.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant was diagnosed with BH conditions during his period of service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined the applicant's BH condition partially mitigates the discharge. Given the nexus between Depressive Disorder and decreased motivation, fatigue, and isolative behavior, the FTRs are mitigated. However, assault, disrespect toward an NCO, making a false statement, and disobeying a lawful order offenses are not mitigated as these offenses are not natural sequela of any of the applicant's BH conditions, and the applicant did not have a condition that impaired ability to differentiate between right and wrong and adhere to the right.

(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 the available evidence did not support a conclusion that the applicant's Depressive Disorder, Adjustment Disorder, and Bereavement outweighed the applicant's medically unmitigated offenses of assault, disrespect toward an NCO, making a false statement, and disobeying a lawful order.

b. Response to Contention(s):

(1) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention and determined that the applicant's youth and immaturity did not outweigh the seriousness of the applicant's assault, disrespect toward an NCO, making a false statement, and disobeying a lawful order offenses. The Board also determined that there is insufficient evidence in the applicant's official record or provided by the applicant that the applicant was not provided sufficient access to behavioral health resources. Therefore, no change is warranted.

(2) The applicant contends current homelessness and the need for help. The Board considered this contention but determined that the applicant's current circumstance does not outweigh the applicant's medically unmitigated offenses of assault, disrespect toward an NCO, making a false statement, and disobeying a lawful order.

(3) The applicant desires to rejoin the military service. The Board considered this contention but found that the applicant's RE-4 is proper and equitable given the applicant's

medically unmitigated offenses of assault, disrespect toward an NCO, making a false statement, and disobeying a lawful order.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the 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 applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's Depressive Disorder, Adjustment Disorder with Mixed Emotional Features, and Bereavement did not outweigh the applicant's medically unmitigated assault, disrespect toward an NCO, making a false statement, and disobeying a lawful order offenses. The Board also considered the applicant's contention of homelessness 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 under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

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

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:

8/12/2024

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