

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.

The applicant seeks relief contending, in effect, going on leave after returning from Afghanistan in January 2012. The applicant went to Colorado and met with a person they had been corresponding with while in Afghanistan, and who attended the same high school as the applicant. While visiting, they decided to get married. The applicant moved the spouse and child to Kentucky in May 2012 and thought married life was normal. On 4 July 2012, the spouse noticed a burn on the child's arm, which was not healing and decided to take the child to the emergency room. After the examination, the doctor determined the child was abused and called CPS. The applicant's spouse, of only three months, was taken into custody and the applicant had to go to the Army base after speaking with their superior. The applicant was shocked. Previously, any bruises the applicant saw, were explained away as a clumsy child while running and playing. The applicant's spouse went to jail and the applicant's life turned upside down. The spouse spoke to the applicant's superior and received spousal support payments while being incarcerated. The applicant could not pay bills because they lost two checks to the spouse and were under eviction. The applicant's Army-provided attorney said the Army was filing charges against the applicant for child abuse. The choices were either a discharge from the Army or a court-martial and losing Purple Heart benefits. During this time, the applicant had not fully recovered from injuries both physical and mental, which they sustained in Afghanistan. Not believing there was much hope for an Army future, the applicant signed the discharge papers under duress. Three days later, the applicant decided to fight for their self and requested the attorney make null and void the papers the applicant signed.

The applicant was told superiors already signed the papers officially discharging the applicant. The applicant is now divorced and has focused on reacclimating to civilian life. The applicant is disappointed in the Army for giving the applicant a less-than-honorable discharge. The applicant served this country in Afghanistan for 12 months, was blown up, and did their job daily of searching for IUDs. The applicant received the Purple Heart and merit badge for their duty and is lucky to be living to receive these commendations as most are not. The Army attorney told the applicant they risked losing benefits if they did not sign the discharge papers. The applicant is currently without any benefits. The applicant needs medical attention for PTSD, TBI, knees, and back problems suffered during service in Afghanistan. The applicant would like their name to be cleared and rightful status.

b. Board Type and Decision: In a records review conducted on 30 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: 13 February 2013

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file.

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): NIF

(2) Legal Consultation Date: NIF

(3) Basis for Separation: NIF

(4) Recommended Characterization: NIF

(5) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 9 December 2011 / 5 years

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

c. Highest Grade Achieved / MOS / Total Service: E-4 / 12B10, Combat Engineer / 3 years, 1 month, 15 days

d. Prior Service / Characterizations: RA, 29 December 2009 – 8 December 2011 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (6 January 2011 – 6 January 2012)

f. Awards and Decorations: PH, NATOMDL, MUC, ACM-2CS, OSR, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Orders 030-0163, 30 January 2013, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 13 February 2013 from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had completed the first full term of service. The applicant was discharged under the authority of AR 635-200, chapter 10, with a narrative reason of In Lieu of Trial by Court-Martial. The DD Form 214 was authenticated with the applicant's electronic signature.

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: Application for Correction of Military Record; self-authored statement; two ARBA letters; Purple Heart Certificate; Army Commendation Medal Certificate; Certificate of Release or Discharge from Active Duty.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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

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

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

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

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge.

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

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

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

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

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

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

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

The applicant's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions.

The applicant contends good service, including a combat tour, receiving of the Purple Heart and merit badge and other awards.

The applicant contends family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends needing medical attention for PTSD, TBI, knees, and back problems sustained during service in Afghanistan. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The AMHRR does not contain a Mental Status Evaluation or any documentation to support the discharge resulted from any medical condition. The ARBA sent a letter to the applicant at the address in the application on 24 March 2016, requesting documentation to support a PTSD diagnosis but received no response from the applicant.

The applicant contends an Army-provided attorney said the Army was filing charges against the applicant for child abuse. The choices were either a discharge from the Army or a court-martial and losing Purple Heart benefits. During this time, the applicant had not fully recovered from injuries, both physical and mental, which they sustained in Afghanistan. Not believing there was much hope for an Army future, they applicant signed the discharge papers under duress. Three days later, the applicant decided to fight for themselves and requested the attorney make null and void the papers the applicant signed. The applicant was told superiors already signed the papers, officially discharging the applicant. The Army attorney told the applicant they risked losing benefits if they did not sign the discharge papers. The applicant is currently without any

benefits. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command. Eligibility for veteran's benefits 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.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, Adjustment Disorder, Adjustment Disorder with Anxiety, and Adjustment Disorder with Disturbance of Emotion and Conduct.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate the discharge. The applicant's child abuse and neglect offense is not mitigated because the behavior is not natural sequela of any diagnosed BH condition. The applicant did not have a condition that rendered the applicant unable 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 Post Traumatic Stress Disorder, Adjustment Disorder, Adjustment Disorder with Anxiety, and Adjustment Disorder with Disturbance of Emotion and Conduct outweighed the applicant's medically unmitigated offense of child abuse and neglect.

b. Response to Contention(s):

(1) The applicant contends needing medical attention for PTSD, TBI, knees and back problems suffered during service in Afghanistan. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Adjustment Disorder, Adjustment Disorder with Anxiety, and Adjustment Disorder with Disturbance of Emotion and Conduct outweighed the applicant's medically unmitigated offense of child abuse and neglect.

(2) The applicant contends good service, including a combat tour, receiving of the purple heart and merit badge and other awards. The Board considered the applicant's three years of service, including being wounded during a combat tour in Afghanistan and numerous awards received, but determined that the applicant's service record does not outweigh the applicant's medically unmitigated offense of child abuse and neglect.

(3) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered the applicant's circumstance of having a spouse in jail but found that this did not excuse or mitigate the applicant's misconduct.

(4) The applicant contends an Army attorney which was provided for the applicant said the Army was filing charges against the applicant for child abuse. The applicant's choice was to be discharged from the Army or face court-martial and loss of purple heart benefits. During this time, the applicant was not fully recovered from injuries both physical and mental which they sustained in Afghanistan. Not believing there was much hope for an Army future, the applicant signed the discharge papers under duress. Three days later, the applicant decided to fight for their self and requested the attorney make null and void the papers the applicant signed. The applicant was told the papers were already signed by the superiors and the applicant was officially discharged. The Army attorney told the applicant they risked losing benefits if they did not sign the discharge papers. The applicant is currently without any benefits. The Board considered this contention but found that the applicant, under advisement from counsel, voluntarily requested to be discharged under the provisions of Chapter 10, AR 635-200, in lieu of trial by court-martial and the convening authority approved that request. Therefore, a discharge upgrade is not warranted.

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 Post Traumatic Stress Disorder, Adjustment Disorder, Adjustment Disorder with Anxiety, and Adjustment Disorder with Disturbance of Emotion and Conduct did not outweigh the applicant's medically unmitigated offense of child abuse and neglect. The Board also considered the applicant's contentions regarding good service, spousal difficulties, and desiring to change the plea after submitting documents 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000971

- 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