

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

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

a. Applicant's Requests and Issues: The current characterization of service for the period under review is Honorable. The applicant requests an upgrade to honorable and a narrative reason change to "Secretarial Authority."

The applicant seeks relief contending, in effect, their medical condition, family, and the lack of assistance from their chain of command all contributed to the applicant's discharge. In the same request the applicant intended to utilize for a hardship discharge, the applicant claims they were forced to request an administrative reduction to E-4 after being offered an honorable discharge in exchange for the reduction. The applicant further details their contentions in an allied brief provided with the application.

b. Board Type and Decision: In a records review conducted on 18 June 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: Dependency or Hardship / NGR 600-200, Paragraph 8-35c(1) / RE-3 / Honorable (upgraded from General by a previous ADRB).

b. Date of Discharge: 26 July 2008

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

- (1) **Date of Notification of Intent to Separate:** Not in File (NIF)
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NIF
- (6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

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- a. **Date / Period of Enlistment:** 20 May 2003 / 8 years
- b. **Age at Enlistment / Education / GT Score:** 22 / High School Graduate / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 25C20, Radio Operator Maintainer / 5 years, 1 month, 7 days
- d. **Prior Service / Characterizations:** ARNG, 20 May 2003 – 20 July 2003 / NA
IADT, 21 July 2003 – 6 December 2003 / UNC
ARNG, 7 December 2003 – 25 November 2004 / NA
IADT, 26 November 2004 – 11 March 2005 / HD
AD, 12 March 2005 – 26 March 2006 / HD
(Concurrent Service)
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (6 March 2005 – 4 March 2006)
- f. **Awards and Decorations:** ARCOM, AGCM, NDSM, GWOTSM, ASR, OSR, AFRMMD, CAB, ACM, JMUA-2, TCSM, TFSM
- g. **Performance Ratings:** 1 December 2005 – 30 November 2006 / Among the Best
1 December 2006 – 30 November 2007 / Fully Capable
- h. **Disciplinary Action(s) / Evidentiary Record:** Orders 240-026, 14 March 2012, reflect the applicant was discharged from the ARNG, effective 26 July 2008.
- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Department of Veterans Affairs Rating Decision, 20 October 2011, reflects a rating of 90 percent.

Progress notes printed on 25 June 2014, reflect a medical diagnosis.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 with enclosures 1 through 18.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for their mental and physical health from the VA.

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

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

psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

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

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

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

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

d. Army Regulation 135-178 (Enlisted Administrative Separations) sets forth the policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard and U.S. Army

Reserve (USAR) enlisted Soldiers for a variety of reasons. The separation policies throughout the different Chapters in this regulation promote the readiness of the Army by providing an orderly means to judge the suitability of persons to serve on the basis of their conduct and their ability to meet required standards of duty performance and discipline. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, and convictions by civil authorities.

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

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

e. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), and Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions), govern procedures covering enlisted personnel management of the Army National Guard. Chapter 6 (previously Chapter 8) of NGR 600-200 covers, in pertinent part, reasons for discharge and separation of enlisted personnel from the State Army National Guard.

(1) Chapter 6 of NGR 600-200 covers, in pertinent part, reasons for discharge and separation of enlisted personnel from the State Army National Guard.

(2) Paragraph 6-35c (1) Dependency or hardship (includes parenthood and sole parents) affecting the Soldier's immediate family: RE 3.

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 National Guard. The applicant's AMHRR does contain a properly constituted NGB Form 22 (National Guard Report of Separation and Record of Service), which was not authenticated with the applicant's electronic signature. The applicant's NGB Form 22, indicates the applicant was discharged under the provisions of NGR 600-200, Paragraph 8-35c(1), by reason of NGR 600-200 8-35c(1) PER ABCMR case number 20100029366, with a characterization of service of honorable.

The applicant contends suffering from PTSD. The applicant provided a Department of Veterans Affairs Rating Decision, 20 October 2011, reflecting a rating of 90 percent and Progress notes printed on 25 June 2014, reflecting a medical diagnosis. The AMHRR is void of a metal status evaluation.

The applicant contends the lack of assistance from their chain of command all contributed to the applicant's discharge. In the same request the applicant intended to utilize for a hardship

discharge, the applicant claims they were forced to request an administrative reduction to E-4 after being offered an honorable discharge in exchange for the reduction. The third-party statement provided with the application reflects, over the past seven years it has come to light the Colorado National Guard did not provide appropriate medical care, apparently withheld information from the Department of Veterans Affairs during the VA adjudicating claims for service connection and discredited their child's service record. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends family issues affected behavior and ultimately caused the discharge to include a legal brief with exhibits including spouse infidelity, financial issues, and PTSD symptoms.

The applicant contends an upgrade of the discharge would allow veterans benefits and educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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.

The applicant contends good service, including a combat tour.

The applicant contends seeking treatment for their mental and physical health from the VA. 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? **No.** 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 there was no conditions which mitigated the applicant's discharge determination.

(2) Did the condition exist or experience occur during military service? **No.**

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor could not opine, even with liberal consideration of all the evidence, whether or not the applicant's service-related PTSD, or other medical condition is a mitigating factor for the applicant's basis for separation without knowing the actual basis of separation.

(4) Does the condition or experience outweigh the discharge? **No.**

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD. The Board considered this contention and determined the applicant is service connected with the VA for PTSD. However, a change to SA is not warranted given the lack of evidence within the file (with the exception of the applicant's statements). The Board determined the applicant's PTSD does not outweigh or mitigate the accepted basis for separation, hardship and family support (nonpunitive). Thus, the discharge is proper and equitable.

(2) The applicant contends the lack of assistance from their chain of command all contributed to the applicant's discharge. The Board considered this contention and determined the applicant's file does not contain any indication or evidence of arbitrary or capricious actions by the command, the discharge was appropriate, an upgrade is not warranted.

(3) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention and determined the applicant's family issues did cause the discharge as the Board determined the applicant was discharged for hardship and family support. Therefore, the discharge is appropriate and does not warrant a change given that circumstances of the discharge (nonpunitive).

(4) The applicant contends an upgrade of the discharge would allow veterans benefits and educational benefits through the GI Bill. The applicant contends seeking treatment for their mental and physical health from the VA. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do 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.

(5) The applicant contends good service, including a combat tour. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record. However, given the applicant's service record, there is no reason to change the discharge to SA given that it is the highest possible characterization (HD), and carries with it no negative connotations.

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 their 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 determined the discharge is proper and equitable as the applicant has a Characterization of Honorable; therefore no further relief is available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as 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.

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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:

12/27/2024

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