

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 the under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, an upgrade is requested because of a medical condition. The applicant has been unable to acquire the necessary services for the post-traumatic stress disorder, and for behavioral and emotional conditions.

b. **Board Type and Decision:** In a records review conducted on 18 April 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:** 3 June 2011

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

(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:** 4 October 2007 / 6 years

b. **Age at Enlistment / Education / GT Score:** 31 / High School Graduate / NIF

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 25U20, Signal Support System Specialist / 9 years, 8 months, 17 days

- d. Prior Service / Characterizations:** RA, 17 September 2001 – 1 February 2005 / HD
RA, 2 February 2005 – 16 May 2007 / HD
RA, 17 May 2007 – 3 October 2007 / HD
- e. Overseas Service / Combat Service:** Korea, SWA / Iraq (23 January 2006 – 23 July 2006; 25 January 2009 – 9 January 2010)
- f. Awards and Decorations:** ICM-2CS, ARCOM-4, AAM-2, MUC, AGCM-3, NDSM, GWOTSM, KDSM, NCOPDR-2, ASR, OSR-2
- g. Performance Ratings:** 18 April 2008 – 17 April 2009 / Among the Best
18 April 2009 – 16 February 2010 / Fully Capable
17 February 2010 – 16 February 2011 / Among the Best
- h. Disciplinary Action(s) / Evidentiary Record:** 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. The applicant had no lost time.

Orders 152-0023, 1 June 2011, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 3 June 2011 from the Regular Army.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Records of Medical Care, 14 and 28 January and 7 May 2010, reflect the applicant was diagnosed with depression, adjustment disorder with anxiety and depressed mood in November 2009 and adjustment disorder with depressed mood in September 2009.

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; third-party memorandum; and Health Records (Chronological Record of Medical Care).

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 3-5c, 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 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 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 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 the discharge resulted from medical condition. The applicant provided several medical documents indicating diagnoses of in-service depression, and adjustment disorder with anxiety. The applicant's AMHRR contains no documentation of any behavioral health diagnosis.

The applicant contends not being able to obtain services for PTSD and the behavioral health medical conditions, perhaps referring to VA benefits. Eligibility for veterans' 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.

The third-party statement provided with the application reflects the applicant proved to be an outstanding Soldier, provided superb leadership and mentorship to subordinate Soldiers, and an excellent asset to any organization.

9. BOARD DISCUSSION AND DETERMINATION:

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

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

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Depression. The applicant is diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(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 Adjustment Disorder, Depression, or PTSD are mitigating factors for the applicant's basis for separation without knowing the actual basis of separation.

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends the discharge resulted from medical condition. While Board acknowledges the applicant's Adjustment Disorder, Depression and PTSD diagnoses, from the records and available evidence the Board was unable to determine whether the applicant's Adjustment Disorder, Depression and PTSD diagnoses actually outweighed the applicant's discharge without the Board Medical Advisor determination on medical mitigation. Without knowing the facts and circumstances relating to the applicant's discharge, the Board is unable to determine if the applicant's Adjustment Disorder, Depression and PTSD diagnoses outweighs the applicant's discharge.

(2) The applicant contends not being able to obtain services for PTSD and the behavioral health medical conditions, perhaps referring to VA benefits. 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.

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 without knowing the facts and circumstances relating to the applicant's discharge, the Board is unable to determine if the applicant's Adjustment Disorder, Depression and PTSD diagnoses outweighs the applicant's discharge. Therefore, the applicant's Under Other Than Honorable Conditions discharge was proper and equitable.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001133

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:

6/27/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs