

**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, in the Department of Veterans Affairs (VA) Statement in Support of Claim for Service-Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault: One weekend, while the applicant was off, the applicant was assaulted by three to six individuals. The individuals took the applicant's expensive watch and gold chain with the Jesus Christ emblem. It was the worst event of the applicant's life, as the applicant suffered from a broken nose, which extremely affected the applicant's breathing, but the pain was worse. The applicant's jaw was also shifted. The applicant was kicked all over the body and the applicant's head hit the ground, which was an attempted murder or aggravated assault. The applicant never recovered from the injuries physically, emotionally, or mentally. The applicant suffered from depression and has never been the same after this incident. No one was caught or convicted for the assault. The applicant did not see the assault coming and was unable to identify the individuals. A Soldier from the platoon bravely stopped the men who ran off. The applicant was almost unconscious as the applicant lay on the ground, bleeding profusely. The applicant never received any psychological treatment for the assault, which caused the applicant to form a distrust of people because no one was punished. The incident took place at night in a hotel parking lot on Washington Road in Augusta, Georgia. The applicant does not recall the name of the hotel.

b. **Board Type and Decision:** In a records review conducted on 21 May 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:** 25 March 2005

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 14 February 2005, the applicant was charged with The Charge: Violating Article 86, UCMJ, for being AWOL from 3 January to 10 February 2005.

(2) **Legal Consultation Date:** 14 February 2005

**(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:** 15 March 2005 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 16 June 2004 / 4 years

b. **Age at Enlistment / Education / GT Score:** 29 / GED / 110

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / None / 8 months, 2 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** None

g. **Performance Ratings:** NA

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

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 3 January 2005;  
From AWOL to PDY, date not in file;  
From PDY to AWOL, effective 21 January 2005;  
From AWOL to PDY, effective 25 January 2005;  
From AWOL to Dropped From Rolls (DFR), effective 2 February 2005;  
From DFR to PDY, date not in file;  
From PDY to AWOL, effective 5 February 2005;  
From AWOL to DFR, date not in file; and  
From DFR to PDY, effective 10 February 2005.

Field Grade Article 15, 27 January 2005, for without authority being absent from the unit (from 21 to 25 January 2005). The punishment consisted of a reduction to E-1; forfeiture of \$617 pay per month for two months (\$308.50 suspended); and extra duty and restriction for 45 days.

Deserter/Absentee Wanted by the Armed Forces, 7 February 2005, reflects the applicant's absence began on 5 February 2005.

Report of Return of Absentee, 10 February 2005, reflects the applicant's absence began on 5 February 2002[sic], and surrendered to military authorities on 10 February 2005.

**i. Lost Time / Mode of Return:** 38 days (AWOL, 3 January 2005 – 9 February 2005) / Surrendered to Military Authorities / The applicant's AMHRR reflects discrepancies between the DD Form 214, the Charge Sheet, and other documents in the record.

**j. Behavioral Health Condition(s):**

**(1) Applicant provided:** Chronological Record of Medical Care, between 29 September 2004 and 4 February 2005, reflecting the applicant's problems, among other medical conditions, listed: Occupational problem; personality disorder; marital problem; insomnia; deviated nasal septum (acquired); sinusitis; lumbago; contusion with intact skin surface, hand; closed fracture of nasal bones. The applicant was pending a Chapter 5-13. The applicant reported a feeling of depression and not being able to trust anyone in the company. The applicant attributes paranoid symptoms to an incident in October 2004, when the applicant was jumped while attending an off-post party. Nose fracture from an assault in October 2004 and had trouble breathing through the nose since the fracture. The applicant suffered chronic lower back pain from falling 10 feet onto back during training exercise at Fort Benning, basic combat training in August 2004. On 20 January 2005, the applicant sought behavioral health assistance because of multiple traumatic experiences, including experiences before enlistment, and began treatment at the psychology clinic.

**(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:** DD Form 149; DD Form 214; military and civilian medical records; VA Statement of Support for PTSD; three third party character reference; Business Information Group Due Diligence Profile; Notices of Appointment, insurance agent; college transcripts; Alpharetta Department of Public Safety letter; Georgia Crime Victims Compensation Program letter; marriage license; marriage certificate; marriage certificate (translated); various identification cards; U.S. Passport; child's birth certificate; Baldwin County S. O. Incident Report, child custody; civilian training certificates; military service record, including separation packet; two letters to G., regarding college; letter of employment start date; satellite view of Guatemala City; Certificate of Naturalization; National Personnel Records Center letter; Consular Report of Birth Abroad; personal letter to A, regarding college withdrawal and child's kidnapping; and résumé.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has maintained employment with various certifications; attained two bachelor's degrees and maintained a 4.0 grade point average (GPA); and assisted the police in apprehending a violent suspect in a mall.

**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 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 PTSD from an assault while in the service led to the discharge. The applicant provided medical documents reflecting the applicant was diagnosed with an occupational problem; personality disorder; marital problem; insomnia; deviated nasal septum (acquired) sinusitis; lumbago; contusion with intact skin surface, hand; closed fracture of nasal bones. The medical documents reflect the applicant reported being attacked in October 2004, and being paranoid because of the attack. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends not receiving any psychological treatment for the assault. The medial documents presented by the applicant reflect the applicant sought treatment for traumatic experiences and marital issues after the misconduct began. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends maintaining employment with various certifications; attaining two bachelor degrees and maintaining a 4.0 GPA; and assisting the police in apprehending a violent suspect in a mall. 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.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good conduct after leaving the Army.

#### **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.

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

**(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 contends applicant's misconduct was related to PTSD, however a review of the records was void of a PTSD diagnosis during or after service, and while there is evidence the applicant was involved in a physical altercation during service, there is no indication the event was sufficient to meet criteria A for PTSD or any other trauma-related disorder. Additionally, there is no evidence in the record the applicant had a condition that impaired applicant's ability to differentiate between right and wrong and adhere to the right. In absence of evidence supporting the applicant assertion of PTSD, the applicant does not have a condition that would mitigate applicant's AWOL misconduct.

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

**b.** Response to Contention(s):

**(1)** The applicant contends PTSD from an assault while in the service led to the discharge. The Board considered this contention and the applicant's assertion of PTSD, however the Board could not determine whether the applicant's asserted PTSD actually outweighed the applicant's AWOL without the Board Medical Advisor determination on medical mitigation. Without additional medical evidence, the Board was unable to determine if the applicant's asserted PTSD outweighed the applicant's discharge.

**(2)** The applicant contends not receiving any psychological treatment for the assault. The Board considered this contention and determined the applicant experienced an assault but it did not meet criteria A for PTSD or any other trauma-related disorder based on medical records. The applicant's discharge is appropriate.

**(3)** The applicant contends maintaining employment with various certifications; attaining two bachelor's degrees and maintaining a 4.0 GPA; and assisting the police in apprehending a violent suspect in a mall. The Board considered this contention and determined that the applicant's employment, certifications, bachelors degrees, maintaining a 4.0, and assisting the police do not outweigh the misconduct based on the seriousness of the applicant's offense of AWOL.

**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 voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's PTSD did not excuse or mitigate the AWOL offense. 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.

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

**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:**

8/20/2024

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