

**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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being a wounded Soldier who was recommended for OCS and has been dismissed by the Army. There is no doubt the minor infraction which led to their release was the consequence of combat injuries the Army failed to identify or treat. The applicant's sibling documents the broken promise made to them and their parents by the applicant's company commander promising mental health treatment, which was never provided to the applicant. In accordance with Chapter 5-17 (Convenience of the Government), the applicant humbly requests the Board grant them the same treatment currently required by current Army policy. This will enable the applicant to receive treatment at the VA for their service-connected injuries and upgrade their discharge to honorable.

b. **Board Type and Decision:** In a records review conducted on 4 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 8 February 2007

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) includes partial separation proceedings.

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

(2) **Legal Consultation Date:** NIF

(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:** NIF

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 8 January 2004 / 6 years

**b. Age at Enlistment / Education / GT Score:** 23 / some college / 116

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 6 years, 2 month, 28 days / The applicant's DD Form 214, block 12 e, Total Prior Inactive Service, should reflect 3 years, 7 months, 25 days

**d. Prior Service / Characterizations:** CDT, 2 October 1998 – 23 March 2000 / NA  
ARNG, 24 March 2000 – 25 April 2001 / HD

**e. Overseas Service / Combat Service:** Korea, SWA / Iraq (8 August 2004 – 30 July 2005)

**f. Awards and Decorations:** ARCOM, NDSM, GWOTSM, KDSM, ICM, ASR, CIB

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** The Pretrial Confinement Memorandum, 11 December 2006, reflects the applicant was charged with AWOL two specifications and failing to report to ASAP appointments with two specifications, in violation of the UCMJ, Article 86; wrongful use of a controlled substance two specifications in violation of the UCMJ, Article 112a.

The Inmate's Release Order, 1 February 2007, reflects the applicant's Chapter 10 was approved.

DD Form 2624, 22 May 2006, reflects the applicant tested positive for THC, during a Probable Cause (PO) urinalysis testing, conducted on 10 May 2006.

Army Substance Abuse Program (ASAP) Enrollment form, 6 November 2006, reflects the applicant was command referred.

Electronic Copy of DD Form 2624, 26 December 2006, reflects the applicant tested positive for THC LOL (marijuana), during a Probable Cause (PO) urinalysis testing, conducted on 14 December 2006.

From PDY to AWOL, effective 24 May 2006;  
From AWOL to DFR, effective 22 June 2006;  
From DFR to PDY, effective 30 October 2006;  
From PDY to AWOL, effective 21 November 2006;  
From AWOL to DFR, effective 21 November 2006;  
From DFR to PDY, effective 11 December 2006;  
From PDY to CCA, effective 11 December 2006;  
From PDY to CMA, effective 11 December 2006;

**i. Lost Time / Mode of Return:** 5 months, 26 days:

AWOL, 24 May 2006 – 30 October 2006 / NIF

CMA, 21 November 2006 – 11 December 2006 / Released from Confinement

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

**(1) Applicant provided:** Chronological Record of Health Care, 11 December 2006, reflects the evaluation included a diagnosis.

Viewpoint Health, 18 December 2012, reflects the evaluation included a diagnosis.

Covenant Family Medicine letter, 18 May 2015, reflects the evaluation included a diagnosis.

**(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 214, DD Form 293; lawyers brief and Enclosures one through ten.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant sought treatment for their mental health.

**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) 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.

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

(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.)

(7) 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 applicant's Army Military Human Resources Record (AMHRR) includes partial 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 not 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 general (under honorable conditions. The applicant's AMHRR does not include a charge sheet. However, The Pretrial Confinement Memorandum, 11 December 2006, reflects the applicant was charged with AWOL, two specifications; and failing to report to ASAP appointments with two specifications, in violation of the UCMJ, Article 86; wrongful use of a controlled substance two specifications in violation of the UCMJ, Article 112a. The Inmate's Release Order, 1 February 2007, reflects the applicant's Chapter 10 was approved. The applicant's actual request for discharge in lieu of trial by court-martial is void from the record. In this request, the applicant would have 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 general (under honorable conditions) discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends suffering from PTSD. The applicant provided a Chronological Record of Health Care, 11 December 2006, reflecting a diagnosis. Also, two letters, 18 December 2012 and 18 May 2015, reflect a medical diagnosis. The AMHRR is void of a mental status report.

The applicant contends the command broke promises made to their family. 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.

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 an upgrade of the discharge would allow veterans benefits. 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.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The third-party statements provided with the application reflect the applicant's chain of command did not take care of the applicant.

The applicant contends seeking treatment for their mental health. 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? **Yes.** The Board found that, base on the Board's Medical Advisor opine, a review of the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, the applicant has the following potentially-mitigating diagnoses/experiences: Anxiety Disorder, Post Traumatic Stress Disorder, Bipolar Disorder, and Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board applied liberal consideration and found that, based on the Board's Medical Advisor's opine, which included a review of a civilian providers diagnosis of the applicant with PTSD related to service, the applicant had a qualifying condition during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board applied liberal consideration, to include consideration of the Board's Medical Advisor's opine which included a review of the records which showed the applicant has an in-service diagnosis of Antisocial Personality Disorder and Adjustment Disorder with Anxiety.

Post-service records show the applicant was diagnosed by VA providers with Anxiety Disorder NOS, Unspecified Mood Disorder, and Unspecified Personality Disorder, however neither of the disorders were considered SC. While this section will include discussion related to the applicant's diagnosis of Antisocial Personality Disorder, it should be clear that Personality Disorders are not considered for mitigation, under the liberal consideration guidance. The applicant provided records from Viewpoint Health that reflects diagnoses of PTSD and Bipolar Disorder, and a letter from Covenant Family Medicine that reflected he was treated there for symptoms consistent with PTSD. The civilian documentation provided by the applicant, which predates the Initial PTSD DBQ, does not clearly detail traumatic exposure or what symptoms were endorsed by the applicant. Results of the VA Initial PTSD DBQ found that the applicant did not meet criteria for PTSD and his VA decision letter dated 23 March 2016 reflects the applicant was denied service-connection "because the medical evidence for record fails to show that this disability has been clinically diagnosed". It should be noted that the VA considered all available medical evidence in making its rating determination, to include civilian documentation provided by the applicant. Additionally, there is evidence in the records that the applicant fabricated traumatic exposures on at least two occasions (i.e., 8 February 2007, 7 March 2016), whereby he claimed recovering dead bodies and picking up body parts, situations/stressors that his company commander disputed ever happened. Given the VA Examiner's findings that the applicant did not meet criteria for PTSD, the VA decision letter noting no medical evidence of the disorder being clinically diagnosed, and the applicant's documented history of fabrication regarding traumatic exposure, the Board concluded that there was insufficient evidence to support a finding that the application met the criteria for PTSD, and therefore the applicant's misconduct is not mitigated by PTSD. The records were void of any information related to the Bipolar Disorder diagnosis, and there is no evidence that it was associated with military service. The applicant's diagnosis of Adjustment Disorder with Anxiety was shown to be secondary to adjusting to pre-trial confinement and was not of a severity to impact behavior, judgement, or cognition, and therefore does not mitigate the applicant's misconduct. Although records reflect the applicant was initially diagnosed with the disorder in December 2006, given that the disorder is characterological in nature, the condition more likely than not existed prior to service, but did not come to the attention of his command and the medical community until negative behaviors escalated. Individuals with Personality Disorders are typically administratively separated under provisions of AR 635-200, Chapter 5-14 (previously 5-17), however, the condition does not preclude other administrative separations secondary to misconduct (e.g., Chapter 14, Chapter 10). Given the applicant's misconduct is secondary to Anti-Social Personality Disorder, and Personality Disorders are not mitigating disorders under liberal consideration guidance, no BH medical mitigation is available. The applicant previously petitioned the Board, and relief was granted in the form of an upgrade to GD.

(4) Does the condition or experience outweigh the discharge? **N/A**. 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 Antisocial Personality Disorder and Adjustment Disorder with Anxiety outweighed the applicant's medically unmitigated offenses of AWOL and illegal substance abuse. While the applicant did display Antisocial behavior, he was able to perform within Army standards for two years prior to the misconduct, therefore it is clear the individual was capable of complying with regulations.

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

(1) The applicant contends suffering from PTSD. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant suffered from PTSD, based on the VA's finding that the applicant did not meet criteria

for PTSD. Additionally, there is evidence in the records that the applicant fabricated traumatic exposures on at least two occasions (i.e., 8 February 2007, 7 March 2016), whereby he endorsed recovering dead bodies and picking up body parts, situations/stressors that his company commander disputed ever happened. Therefore, there is no PTSD mitigation of the applicant's offenses of AWOL and illegal substance abuse. While there is contradictory evidence based on a subsequent civilian medical examination regarding PTSD, the board deferred to the VA finding due to the agency's processes and systems and the fabrications by the applicant.

(2) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered the applicant's marital stress but determined that the situation does not mitigate the applicant's AWOL and illegal substance abuse offenses as the Army affords many avenues to Soldiers including seeking separation for hardship.

(3) The applicant contends that the narrative reason should be changed to Convenience of the Government. The Board considered this contention but determined that the applicant's In Lieu of Trial by Court-Martial narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of AWOL and illegal substance abuse and the absence of sufficient mitigating factors to warrant a change.

(4) The applicant contends an upgrade of the discharge would allow veterans 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.

(5) The applicant contends good service, including a combat tour. The Board considered the applicant's six years of service, including a combat tour in Iraq, but determined that the applicant's record does not outweigh the medically unmitigated offenses of AWOL and illegal substance abuse.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available 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 Anxiety Disorder, Post Traumatic Stress Disorder, Bipolar Disorder, and Adjustment Disorder did not outweigh the medically unmitigated offenses of AWOL and illegal substance abuse. The Board also considered the applicant's contentions regarding family issues, good service, and found that the totality of the applicant's record does not warrant a discharge upgrade. VA screening determined that the applicant did not meet criteria for PTSD. 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 General discharge was proper and equitable as the applicant's misconduct fell below that level of 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:**

8/26/2024

**X**

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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