

1. Applicant's Name: [REDACTED]

- 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 period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, after being honorably discharged from active military service, the applicant enlisted in the USAR for a 24-month contract. When the applicant returned from a deployment, it became clear, the applicant had incurred injuries during the deployment in Afghanistan, making it difficult to adjust back to civilian life. The disabilities are PTSD with anxiety and despair, TBI with migraines and headaches, and tinnitus, a total combined disability rating of 90 percent. The applicant could not function adequately enough to drive the 62 miles to the duty station, let alone execute the requirements of a weekend drill. The applicant explained the situation to the command staff, yet the applicant was still discharged under other than honorable conditions.

b. **Board Type and Decision:** In a records review conducted on 9 January 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's PTSD, MDD, Anxiety Disorder, and TBI diagnoses mitigating applicant's unsatisfactory participation basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable.

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:** NIF / AR 135-178 / NIF / NIF / NIF / General (Under Honorable Conditions)

b. **Date of Discharge:** 18 April 2012

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

(1) **Date of Notification of Intent to Separate:** 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:**

- a. **Date / Period of Enlistment:** 18 May 2011 (USAR) / NIF
- b. **Age at Enlistment / Education / GT Score:** 21 / High School Graduate / 101
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 12B1P, Combat Engineer / 5 years, 1 month, 9 days
- d. **Prior Service / Characterizations:** DEP, 10 March 2007 – 14 August 2007 / NA
RA, 15 August 2007 – 17 May 2009 / HD
RA, 18 May 2009 – 17 May 2011 / HD
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (19 August 2009 – 16 August 2010)
- f. **Awards and Decorations:** ACM-CS, ARCOM, AGCM, NDSM, GWOTSM, ASR, OSR, NATOMDL, CAB
- g. **Performance Ratings:** NA

h. Disciplinary Action(s) / Evidentiary Record: The applicant's DD Form 214, reflects the applicant had completed 3 years, 9 months, and 3 days of active service; released from active duty on 17 May 2009 with an Honorable character of service, under the authority of AR 635-200, Chapter 4, with a narrative reason of Completion of Required Active Service. The applicant was transferred to 3rd Platoon, 350th Engineer Company (WZ3SA3), 5340 Bandini Boulevard, Bell, California 90201-0000.

Orders 15-169-00007, 18 June 2015, reflect the applicant was discharged from the US Army Reserve, under the authority of AR 135-178, effective 18 April 2012, with a general (under honorable conditions) characterization of service.

Orders 15-169-00053, 18 June 2015, reflect so much of Orders 12-102-00015, 11 April 2012, pertaining to the reduction and discharge of the applicant was revoked.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs disability rating decision letter, 16 July 2012, reflecting the applicant was rated 50 percent disability for PTSD with insomnia.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Online application; Orders 12-102-00015; VA compensation letter; VA Rating Decision letter; VA Form 28-8890; and two VA monthly entitlement letters.

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 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 based on 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.

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 Reserve. The applicant's AMHRR does contain a properly constituted discharge order: Orders 12-102-00015, 11 April 2011. The orders indicate the applicant was discharged under the provisions of AR 135-178, with a characterization of service of general (under honorable conditions).

The applicant contends the disabilities incurred from the Afghanistan deployment were PTSD with anxiety and despair, TBI with migraines and headaches, and tinnitus, with a total disability rating of 90 percent, which caused the applicant to not function adequately enough to drive the 62 miles to the unit, let alone execute the requirements of a weekend drill. The Department of Veterans Affairs disability rating decision, 16 July 2012, reflects the applicant was rated 50 percent disability for PTSD with insomnia. The applicant's AMHRR contains no documentation of PTSD diagnosis.

The applicant contends having informed the command staff of the applicant's situation, yet the applicant was still discharged under other than honorable conditions. 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.

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, MDD, Anxiety Disorder, TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service-connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant is 70 percent SC for PTSD and 10 percent SC for TBI with additional potentially mitigating diagnoses of MDD and Anxiety Disorder. The applicant asserts experiencing significant BH conditions that impacted applicant's ability to function sufficiently enough to drive to drill and participate in any meaningful. A review of the records supports the applicant was experiencing significant BH symptoms as well as a host of physical ailments. Of note, the applicant endorsed a history of restricted driving due to anxiety and trauma-related memories. It is reasonable to conclude that this fear of driving and subsequent avoidance played a significant role in the applicant's failure to report to battle assembly. As there is an association between PTSD and avoidance, there is a nexus between the applicant misconduct characterized by non-participation in drill, such that the misconduct is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, including the Board Medical Advisor's opine, the ADRB determined that the applicant's in service connected and VA service connected PTSD outweighed the basis of separation – non-participant in drill.

b. Response to Contention(s):

(1) The applicant contends the disabilities incurred from the Afghanistan deployment were PTSD with anxiety and despair, TBI with migraines and headaches, and tinnitus, with a total disability rating of 90 percent, which caused the applicant to not function adequately enough to drive the 62 miles to the unit, let alone execute the requirements of a weekend drill. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's basis for separation - non-participation in drill.

(2) The applicant contends having informed the command staff of the applicant's situation, yet the applicant was still discharged under other than honorable conditions. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's basis for separation - non-participation in drill.

c. The Board determined that the characterization of service was inequitable based on the applicant's PTSD diagnoses mitigating the applicant's basis for separation – non-participation in drill. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. However, the applicant may request a personal

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001322

appearance hearing to address any further 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 to change the applicant's characterization of service to Honorable because the applicant's PTSD diagnoses mitigated the applicant's basis of separation – non-participant in drill. Thus, the prior characterization is no longer appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as there were no Reasons/SPD Codes listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

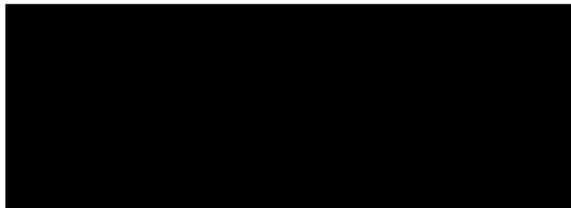
(3) The Board voted not to change the applicant's RE-code as there were no RE-codes listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

10. BOARD ACTION DIRECTED:

- a. Issue a New Separation Order: Yes**
- b. Change Characterization to: Honorable**
- c. Change Authority to: No Change**

Authenticating Official:

4/26/2024



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