

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

The applicant seeks relief contending, in effect, the separation process was unfair. There were no provisions for a sworn statement or a discussion of the applicant's medical history. The applicant experienced challenges which led to situations. When the applicant informed the command of receiving some correspondence in July 2014, the applicant was told to wait and see what would happen next. The applicant then received the discharge orders. The applicant was denied the right to a hearing or JAG representation. The applicant would like to have completed the Army career or amend his discharge papers to reflect a general or honorable discharge. After 17 years of service, the applicant was not provided a fair chance.

b. **Board Type and Decision:** In a records review conducted on 14 December 2023, the board carefully considered the applicant's request, supporting documents, evidentiary record, medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. By a 4-1 vote, the board determined that the characterization was inequitable based on the applicant's length and quality of service, prior HDs, and combat wounded status (Purple Heart recipient) outweighing the UOTH characterization. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General Under Honorable Conditions.

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 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 30 March 2015

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: 15 November 2003 / 6 years / The AMHRR is void of any enlistment contract retaining the applicant on active duty after the most recent reenlistment period.

b. Age at Enlistment / Education / GT Score: 23 / NIF / NIF

c. Highest Grade Achieved / MOS / Total Service: E-6 / 88M30, Motor Transport Operator / 17 years, 7 months, 18 days

d. Prior Service / Characterizations: USAR, 13 August 1997 – 14 November 2003 / NIF
 USAR, 15 November 2003 – 6 December 2003 / NA
 MOB AD, 7 December 2003 – 4 September 2005 / HD
 USAR, 5 September 2005 – 27 June 2006 / NA
 MOB AD, 28 June 2006 – 5 September 2008 / HD
 (Concurrent Service)
 (AMHRR contains mobilization orders, 11 October 2011; however, its disposition is NIF)

e. Overseas Service / Combat Service: SWA / Iraq (7 December 2003 – 12 April 2005); Kuwait/Iraq (18 September 2006 – 27 April 2008)

f. Awards and Decorations: PH, ARCOM-2, AGCM, ARCAM-2, NDSM, GWOTEM, GWOTSM, ICM, ASR, OSR-2, AFRMMD

g. Performance Ratings: March 2004 – 15 February 2007 / Fully Capable
 16 February 2007 – 30 April 2009 / Fully Capable
 1 May 2009 – 30 April 2012 / Fully Capable
 1 May 2012 – 30 April 2014 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Orders 15-083-00017, 24 March 2015, reflect the applicant was reduced from E-5 to E-1 and discharged on 30 March 2015 from the United States Army Reserve with an Under Other Than Honorable Conditions characterization of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs disability rating letter, 13 April 2015, reflecting the applicant was rated 10 percent disability for adjustment disorder with anxious mood and 10 percent for myofascial low back pain and strain with T12 stable compression fracture, residual of IED explosion.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Online application signature page; DD Form 214 (5 September 2008); VA letter; Permanent Orders (PH); Purple Heart certificate; DD Form 214 (4 September 2005); and Orders 15-083-00017.

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), the issues, and documents submitted with the application were carefully reviewed.

The applicant's 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 15-083-00017, 24 March 2015. The orders indicate the applicant was discharged under the provisions of AR 135-178 with a characterization of service of under other than honorable conditions.

The applicant contends the separation process was unfair because there were no provisions for a sworn statement or a discussion of the applicant's medical history, and the applicant was denied the right to a hearing or JAG representation. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's available AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends having experienced challenges which led to situations. The applicant provided a Department of Veterans Affairs disability letter, 13 April 2015, reflecting the applicant was rated 10 percent disability for adjustment disorder with anxious mood and 10 percent disability for injuries or residual of IED explosion. The applicant's AMHRR contains no documentation of any behavioral health diagnosis and is void of a Mental Status Evaluation.

The applicant desires to complete the Army career. At the time of discharge, the applicant received an under other than honorable conditions characterization of service. Army Regulation 601-210, chapter 4, stipulates an under other than honorable conditions discharge constitutes a non-waivable disqualification; thus, the applicant is no longer eligible for reenlistment.

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, Depressive Disorder NOS, Anxiety Disorder NOS, and TBI.

(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 PTSD, Depressive Disorder NOS, and Anxiety Disorder NOS. The VA has service connected the applicant for the Anxiety Disorder and TBI. Service connection establishes that the applicant's TBI also existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple potentially mitigating BH conditions. The applicant was diagnosed in service with PTSD, Depressive Disorder NOS, and Anxiety Disorder NOS, and the VA has service connected the applicant for the Anxiety Disorder and TBI. However, the basis of separation is not contained in the applicant's service record. Without the details regarding the applicant's separation, medical mitigation cannot be determined since any potential nexus between the applicant's BH conditions and the basis of separation is unknown.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the board determined that the applicant's multiple BH conditions are not mitigating because the basis of separation is not contained in the applicant's service record. Medical mitigation cannot be determined without details regarding the basis of separation.

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable. The board considered this contention, the applicant's request, supporting documents, evidentiary record, medical review, and published Department of Defense guidance for liberal consideration. An upgrade to Honorable is not supported at this time due to a lack of information regarding the basis of separation. However, the board voted to grant relief in the form of an upgrade to the characterization of service to General Under Honorable Conditions based on other mitigating factors (length/quality of service, prior periods of honorable service, and combat wounded status).

(2) The applicant contends the separation process was unfair because there were no provisions for a sworn statement or a discussion of the applicant's medical history, and the applicant was denied the right to a hearing or JAG representation. The board considered this contention and determined that a review of the applicant's military record does not contain any indication or evidence of arbitrary or capricious actions by the command and the applicant did not submit any evidence, other than the applicant's statement, to support the contention.

(3) The applicant contends having experienced challenges which led to situations. The Board considered this contention but found no evidence in the official record or applicant-provided documents that military/civilian assistance was pursued. Nevertheless, the Board voted that relief was warranted based on the circumstances outlined above in paragraph 9b (1).

(4) The applicant desires to complete the Army career. The Board considered this contention during proceedings and determined that Army Regulation 601-210, chapter 4, stipulates an under other than honorable conditions discharge constitutes a non-waivable disqualification; thus, the applicant is no longer eligible for reenlistment.

c. The Board determined the characterization is inequitable based on the applicant's length/quality of service, prior HDs, and combat wounded status (Purple Heart recipient). Accordingly, the board voted to grant relief in the form of an upgrade to the characterization of service to General Under Honorable Conditions. The applicant may apply to the Army Board for Correction of Military Records for further action. 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 General Under Honorable Conditions because the applicant's length/quality of service, prior HDs, and combat wounded status (Purple Heart recipient) outweighed the UOTH characterization. No further upgrades were considered due to a lack of information regarding the basis of separation. Accordingly, the prior characterization is no longer appropriate.

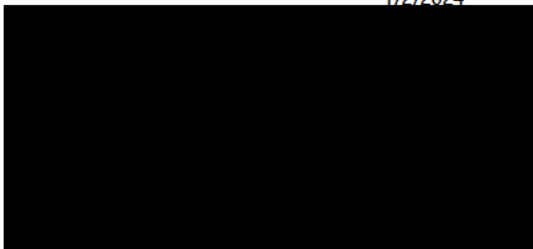
(2) The applicant was USAR and no narrative reason/SPD or RE-code is listed on the discharge paperwork. Therefore, no further upgrade actions are warranted.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** Yes
- b. **Change Characterization to:** General, Under Honorable Conditions
- c. **Change Authority to:** AR 135-178, Paragraph 2-9b

Authenticating Official:

1/2/2024



ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001389

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