

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, the discharge was inequitable because it was based on an isolated incident during 28 months of service with no other adverse action. The applicant believes the punishment imposed regarding their case was too harsh and unreasonable. The applicant contends Captain T., who represented the applicant with this case stated their discharge would automatically upgrade to general after six months. The applicant was a good Soldier with positive counseling statements until the incident in question. The applicant developed post-traumatic stress disorder (PTSD) while serving in the Army. The applicant has been discharged for three years and wants to move on to a more productive life.

b. **Board Type and Decision:** In a records review conducted on 7 December 2023, 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:** 11 May 2012

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

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** NIF / However, the Staff Judge Advocate Memorandum, 3 May 2012, reflects the applicant had four specifications of Article 86: one specification of absence without leave and three specifications of failing to go to their appointed place of duty; three specifications of Article 91: disrespectful language toward, willfully disobeying, and assault upon a noncommissioned officer; two specifications of Article 92: failure to obey a lawful general regulation; and two specifications of Article 134: conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces.

(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: NIF

(5) Separation Decision Date / Characterization: 3 May 2012 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 27 January 2010 / 3 years, 23 weeks
- b. **Age at Enlistment / Education / GT Score:** 27 / GED / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 92F10, Petroleum Supply Specialist / 1 year, 7 months, 19 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Staff Judge Advocate memorandum as described in previous paragraph 3c.
- i. **Lost Time / Mode of Return:** 7 months, 25 days (AWOL, 9 September 2011 – 4 May 2012) / NIF
- j. **Behavioral Health Condition(s):**

(1) Applicant provided: Report of Mental Status Evaluation, 28 June 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Adjustment Disorder with mixed disturbance of emotions and conduct, Alcohol Dependence. Retention of the applicant with this clinical presentation for active-duty service which often include deployment to austere locations and combat operations, would have put the applicant and their unit at increased risk for acute worsening of harm of self or others, worsening of underlying mental health symptoms, ongoing substance abuse, and/or worsening of other significant social, occupational problems. The provider recommended for the good of the applicant and unit the unit pursue an expeditious administrative separation in accordance with chapter 5-17. Because the applicant had not been deployed to an area of combat operations, the case did not need a review from the Office of the Surgeon General. It was the professional opinion of the doctor the applicant would not respond to command efforts at rehabilitation (such as transfer, disciplinary action, or reclassification), or to any behavioral health treatment methods available in the military.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; two DD Form 293; self-authored letter; DA Form 3822; medical records.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for 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) 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 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 authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions. The applicant's AMHRR includes a Staff Judge Advocate Memorandum, 3 May 2012, reflecting the applicant had four specifications of Article 86: one specification of absence without leave and three specifications of failing to go to their appointed place of duty; three specifications of Article 91: disrespectful language toward, willfully disobeying, and assault upon a noncommissioned officer; two specifications of Article 92: failure to obey a lawful general regulation; and two specifications of Article 134: conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces. The AMHRR also included the separation authority's decision memorandum reflecting the applicant, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. However, 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 under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends developing PTSD while serving in the Army. The applicant provided a Report of Mental Status Evaluation, 28 June 2011, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participated in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was diagnosed with:

Adjustment Disorder with mixed disturbance of emotions/conduct and Alcohol Dependence. The AMHRR was void of a mental status report.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends the punishment given was too harsh and unreasonable and that Captain T., who represented the applicant, stated the discharge would automatically upgrade to general after six months. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's issue about an upgrade based on the passage of time was carefully considered. The U.S. Army does not have, nor has it ever had, a policy to automatically upgrade discharges. Each case is decided on its own merits when an applicant submits a DD Form 293 requesting a change in discharge. Changes may be warranted if the Board determines the characterization of service or the reasons for discharge, or both, were improper or inequitable. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends seeking treatment for 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 [REDACTED] 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Anxiety, and Major Depressive Disorder. Additionally, the applicant asserts PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Anxiety. The applicant is also diagnosed and service connected by the VA for Major Depressive Disorder. Service connection establishes that the applicant's Major Depressive Disorder existed during military service, and the applicant self-asserts having PTSD at the time of military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of behavioral health conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder and Anxiety. The applicant is also diagnosed and service connected by the VA for Major Depressive Disorder. The applicant self-asserts having PTSD at the time of military service. Given the nexus between Major Depressive Disorder and avoidance, the applicant's AWOL and FTRs are mitigated. However, there is no natural sequela between an Adjustment Disorder, Anxiety, or Major Depressive Disorder and disrespectful language, disobedience, assault, failing to obey a lawful general order or conduct prejudicial to good order and discipline. None of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. The applicant's asserted PTSD was considered and mitigates disrespect and disobedience in some cases given the nexus with difficulty with authority. However, there is clear evidence in the active-duty medical record that the applicant was evaluated for and clearly found not to have PTSD during military service. The VA has not service connected the applicant for PTSD, further supporting that this condition did not exist during military service.

(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 available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety, Major Depressive Disorder, or PTSD assertion outweighed the totality of the misconduct serving as the basis for separation.

b. Response to Contention(s):

(1) The applicant contends developing PTSD while serving in the Army. The Board liberally considered this contention but found that PTSD would not mitigate the totality of the misconduct that served as the basis of separation. Specifically, PTSD would not mitigate disrespectful language, disobedience, assault, failing to obey a lawful general order or conduct prejudicial to good order and discipline. Additionally, there is clear evidence in the active-duty medical record that the applicant was evaluated and found not to have PTSD during military service. The VA has not service connected the applicant for PTSD.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board liberally considered this contention but determined that the basis of separation contained multiple events. Additionally, AR 635-200 stipulates that a single event may serve as a basis for separation.

(3) The applicant contends the punishment given regarding their case was too harsh and unreasonable and Captain T., who represented the applicant, stated the discharge would automatically upgrade to general after six months. The Board liberally considered this contention and noted that this action is a procedural step which is part of a normal process when an alternative forum is chosen. In this case, the charges were dismissed because the applicant requested to be discharged under the provisions of Chapter 10, AR 635-200, in lieu of trial by court-martial. The convening authority approved that request. There was no evidence of improprieties or legal missteps presented in the evidentiary record.

(4) The applicant contends good service. The Board liberally considered this contention but determined the totality of misconduct that served as the basis of separation fell below a reasonable standard of good service.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001415

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(6) The applicant contends seeking treatment for mental health. The Board considered this contention and determined that there is insufficient evidence in the evidentiary record indicating that the applicant was not provided sufficient access to mental health resources.

c. The Board determined that the discharge is, at this time, proper and equitable considering the current evidentiary record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board determined that the diagnosed BH conditions/asserted conditions do not mitigate the totality of the misconduct that served as the basis of separation. Specifically, disrespectful language, disobedience, assault, failing to obey a lawful general order, and conduct prejudicial to good order and discipline are not mitigated and support the characterization awarded.

(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:

1/4/2024

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001415

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