

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, in 2010 and 2011, the applicant requested a medical review of the injuries sustained while on active duty. The injury was knee locking, which prevented the applicant from running. Later, the applicant was diagnosed with anxiety, then depression, and now bipolar disorder. The applicant believes the military records are incorrect or unfair because the leadership knew the applicant was unable to run based on the medical documents submitted. They provided negative counseling several times. The applicant received one response from the 81st RRC surgeon general's office, to which the applicant replied, but never received a response. The applicant then resubmitted the documents about 90 days later. The applicant believes in having done everything possible to stay in compliance, but the leadership has set the applicant up for failure. The applicant was also diagnosed with anxiety and depression prior to the discharge. The applicant had no documents of the separation, despite having contacted the first sergeant, unit admin, and battalion over the period with no success. The applicant was unaware of the procedure.

b. Board Type and Decision: In a records review conducted on 28 November 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: NIF / AR 135-178 / NIF / NIF / NIF / General (Under Honorable Conditions)

b. Date of Discharge: 12 December 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: 9 May 2007 / 8 years

b. Age at Enlistment / Education / GT Score: 17 / High School Letter / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 31B10, Military Police / 5 years, 7 months, 4 days

d. Prior Service / Characterizations: USAR, 9 May 2007 – 6 August 2008 / NA
IADT, 7 August 2008 – 15 October 2008 / HD
USAR, 16 October 2008 – 29 November 2008 / NA
MOB, 30 November 2008 – 30 November 2009 / HD
(Concurrent Service)

e. Overseas Service / Combat Service: SWA / Iraq (23 January 2009-16 November 2009)

f. Awards and Decorations: ARCOM, AAM, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR, AFRMMD

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Orders 12-342-00033, 7 December 2012, reflect the applicant was discharged under the authority of AR 135-178, effective 12 December 2012, from the United States Army Reserve, and a General (Under Honorable Conditions) characterization of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Psychiatrist letter, 17 April 2015, indicates the applicant had psychiatric disorders: Post-Traumatic Stress Disorder and Bipolar Disorder.

Department of Veterans Affairs disability rating, undated, reflecting the applicant was rated 30 percent disability for anxiety disorder with Major Depressive Disorder.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Online application; Psychiatrist letter; VA Mental Disorders Disability Benefits Questionnaire; VA Summary of Benefits letter; USARC Profile Request Form; Functional Capacity Certificate Form; DA Form 7349; Medical Record Progress Notes; USAR Separation Orders 12-342-00033; VA disability rating letter; and applicant's self-authored statement.

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 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 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 12-342-00033, 7 December 2012. 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 requests a narrative reason change to a medical retirement for disability. Orders are published when service members are discharged from the U.S. Army Reserve, which indicate the effective date and characterization of the discharge. Narrative reasons and RE Codes usually are not included in the order. Inasmuch as the applicant's discharge order does not have these elements, the ADRB has no basis for changing the discharge order.

The applicant contends requesting for a medical review of injuries sustained while on active duty, and the discharge should have been for medical reasons. Army Regulations, in pertinent part, stipulate commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct. The available medical evidence in the AMHRR is void of any indication the applicant was suffering from a disabling medical or mental condition during the discharge processing, warranting separation processing through medical channels.

The applicant contends being diagnosed with anxiety, depression, and bipolar disorder. The applicant provided several medical documents indicating diagnoses of PTSD and Bipolar Disorder and a rating of 30 percent disability for anxiety disorder with major depressive disorder. The applicant's AMHRR contains no documentation of any behavioral health diagnosis.

The applicant contends the military records are incorrect and unfair because the leadership knew the applicant was unable to run based on the medical documents submitted, and instead was provided negative counseling several times. The applicant's available AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends receiving no documents of the separation, despite having contacted the first sergeant, unit admin, and battalion over the period with no success, and the applicant was unaware of the process. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

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, based on the Board's Medical Advisor's opine and a review of the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, that the applicant has the following potentially-mitigating diagnoses/experiences: Post Traumatic Stress Disorder, and Major Depressive Disorder. Additionally, the applicant asserts Generalized Anxiety Disorder and Bipolar Disorder.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board applied liberal consideration, including considering the opinion of the Board Medical Advisor, and opined, that in the absence of the applicant's basis of separation, an informed opinion regarding mitigation cannot be provided. That said, there is no indication in the records that at the time the separation, the applicant had a BH condition that failed medical retention IAW AR 40-501, Chapter 3-33.

(4) Does the condition or experience outweigh the discharge? **No.** 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 Post Traumatic Stress Disorder, Major Depressive Disorder, or asserted Generalized Anxiety Disorder and Bipolar Disorder outweighed the misconduct leading to the applicant's separation.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with anxiety, depression, and bipolar disorder. The Board liberally considered this contention but determined that, while the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, or asserted Generalized Anxiety Disorder and Bipolar Disorder could outweigh the applicant's discharge, the Board was unable to determine whether the applicant's behavioral health conditions actually outweighed the applicant's discharge without the Board Medical Advisor determination on medical

mitigation, which cannot be made in this case. Without knowing the facts and circumstances relating to the applicant's discharge, the Board was unable to determine if the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, or asserted Generalized Anxiety Disorder and Bipolar Disorder outweighs the applicant's discharge. Therefore, a discharge upgrade is not warranted, at this time

(2) The applicant requests a narrative reason change to a medical retirement for disability. The Board determined that the applicant's requested change to a medical retirement does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(3) The applicant contends requesting for a medical review of injuries sustained while on active duty, and the discharge should have been for medical reasons. The Board determined that the applicant's request for a medical review does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

(4) The applicant contends the military records are incorrect and unfair because the leadership knew the applicant was unable to run based on the medical documents submitted, and instead was provided negative counseling several times. The Board liberally considered this contention, but found insufficient supporting documentation in the applicant's AMHRR or applicant-provided evidence. Therefore, a discharge upgrade is not warranted.

(5) The applicant contends receiving no documents of the separation, despite having contacted the first sergeant, unit admin, and battalion over the period with no success, and the applicant was unaware of the process. The Board liberally considered this contention but found insufficient supporting documentation in the applicant's AMHRR or applicant-provided evidence. Therefore, a discharge upgrade is not warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of 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 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 Post Traumatic Stress Disorder, Major Depressive Disorder, or self-asserted Generalized Anxiety Disorder and Bipolar Disorder did not outweigh the applicant's medically unmitigated offense(s) which were the basis of separation. The Board considered the totality of the applicant's record and found that it does not warrant a discharge upgrade. The Board found that the applicant's contentions that the applicant's military records are incorrect and that the applicant should have been medically separated were not supported by the available evidence. 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001427

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:

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs