

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, mistreatment while in the military. The applicant went absent without leave (AWOL) to visit a parent in the hospital because the applicant's unit refused to give the applicant permission to visit their parent. The applicant purchased a round-trip ticket to Egypt for one week to visit their parent in the intensive care unit (ICU), knowing the trouble the applicant could face. The applicant considered it an honor to be close to their parent in the hospital when needed. The parent suffered giving birth and raising the applicant, jointly with their other parent, who passed away before the applicant joined the military. The applicant became responsible for their parent and the applicant's siblings. The applicant believed it was the applicant's duty to visit their parent in the hospital, not knowing if the applicant would see the parent again. During the applicant's service in the Army, the applicant was told the applicant was Bin Ladin's cousin, and Bin Ladin sent the applicant on a mission to kill Soldiers. The comments were repeated on a daily basis. The applicant was told, "You are a terrorist; you are a betrayer," either directly or indirectly. The Soldiers made jokes and fun of the applicant and the applicant was forced to hide because the brigade commander was present in the unit and others were afraid the applicant would complain about the discriminatory treatment the applicant was receiving. Because of the applicant's name and background, the applicant was forced to low-crawl for half a mile after 10 days of hernia surgery. The applicant joined the Army after 11 September 2001, to show the community the applicant was a Muslim, but not a terrorist, as the applicant was told, and to help the country which opened its arms to the applicant. The applicant came to the United States because the applicant married a U.S. citizen, not to execute any mission.

During basic training, the applicant was forced to repeat the gas chamber training three times. Every time the applicant would go to the gas chamber, the applicant believed the applicant would suffocate and die. The drill sergeants insisted the applicant should go until the applicant stopped crying, twitching, and moving hysterically. The twitching and fear continued until now. The applicant was diagnosed with Amyotrophic Lateral Sclerosis (ALS), which is non-curable. The applicant's doctor stated 95 percent of the doctor's patients diagnosed with ALS were in the military and were exposed to some chemicals, similar to the applicant, and it has a mental and physical effect on humans. The applicant was told the applicant had three to five years to live. The applicant never told the doctor about the applicant's experiences in the Army, but the applicant remembered what the doctor stated. The applicant is suffering from depression, always thinking something bad would happen to the applicant or someone would attack the applicant. It is difficult for the applicant to concentrate on anything. If the memorandum regarding post-traumatic stress disorder (PTSD), supported changing the character of service for Vietnam veterans, the applicant believes the applicant also suffered physically and mentally because of military service. The applicant further details the contentions in self-authored statements submitted with the application.

b. Board Type and Decision: In a records review conducted on 13 December 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD outweighing the AWOL basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and a change to the reentry eligibility (RE) code to 3.

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: 10 September 2003

c. Separation Facts:

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 5 August 2003, the applicant was charged with: The Charge: Violating Article 86, UCMJ, The Specification: Being absent from the unit between 1 April and 29 May 2003.

(2) Legal Consultation Date: 6 August 2003 / The applicant submitted a conditional waiver, waiving consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge. However, the applicant was not entitled to an administrative separation board.

(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: 21 August 2003 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 April 2002 / 3 years

b. Age at Enlistment / Education / GT Score: 32 / Bachelor's Degree / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92Y10, Unit Supply Specialist / 1 year, 3 months, 23 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Charge Sheet as described in previous paragraph 3c.

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Absent Without Leave (AWOL)," effective 1 April 2003;
From "AWOL" to "Dropped From Rolls (DFR)," effective 1 May 2003; and
From "DFR" to "PDY," effective 29 May 2003.

Memorandum, subject: Request for Discharge In Lieu of Trial by Court-Martial, 20 August 2003, reflects the brigade commander recommended an under other than honorable conditions discharge and commented the applicant was cooperative with authorities resulting in valuable information for the Federal Bureau of Investigation.

i. Lost Time / Mode of Return: 30 days (AWOL, 1 April 2003 – 30 April 2003) / NIF / The applicant's AMHRR reflects the applicant was AWOL for 57 days, 1 April 2003 to 28 May 2003; however, the DD Form 214 shows the days between 1 and 28 May 2003 were not chargeable.

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs (VA) letter, 20 November 2010, reflecting the VA rated the applicant 20 percent service connected disabled.

Department of Veterans Affairs, medical documents, between 22 February 2013 and 17 July 2015, reflecting the applicant was diagnosed with ALS; depression; generalized anxiety disorder; adjustment disorder with depressed mood; unspecified depressive disorder, rule out major depression.

Psychological Evaluation, 13 August 2015, reflecting the applicant was examined on 26 June 2015, and reported harassment and discrimination during military service. The applicant was diagnosed with PTSD; insomnia because of PTSD; and major depressive disorder, recurrent severe without psychotic features.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 215; DD Form 293; four self-authored statements; electronic mail messages; psychological evaluation; Review Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire; The American Legion letter; U.S. Senator letter; Certificate of Live Birth; VA Identification Card; Disabled American Veterans card; the applicant's parent's medical document; VA medical records; two VA letters; VA information page; ten third-party statements; and separation documents.

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 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(4) provides no Soldier will be discharged per this regulation under other than honorable conditions unless afforded the right to present his or her case before an administrative discharge board.

(5) Paragraph 3-7c(5) provides as an exception to paragraph 3-7c(4), a discharge under other than honorable conditions may be issued without board action if the Soldier requests discharge in lieu of trial by court-martial under chapter 10. The separation authority must verify the rights contained within chapter 10 have been satisfied.

(6) Paragraph 3-7(h) in effect at the time, provided a Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if the Soldier has been afforded the opportunity to consult with a consulting counsel. The Soldier must certify in writing the Soldier understands the Soldier may receive a discharge under other than honorable conditions and the adverse nature and possible consequences of such a discharge. The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(7) 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.

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

(9) 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.)

(10) 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.

(11) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early

separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 contends being diagnosed with PTSD and ALS. The applicant provided several medical documents indicating the applicant was diagnosed with ALS; adjustment disorder with depression; generalized anxiety disorder; adjustment disorder with depressed mood; unspecified depressive disorder, rule out major depression; PTSD; insomnia because of PTSD; and major depressive disorder, recurrent severe without psychotic features. The VA rated the applicant 20 percent service-connected disabled. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends family issues affected behavior and ultimately contributed to the discharge. Third party letters supported the applicant's contention the reason the applicant went AWOL was because of the parent's health issue. 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 harassment and discrimination by members of the unit. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. 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 third party statements provided with the application recognize the applicant's good military service. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends good moral character as a civilian and as a Soldier. The third party statements provided with the application supports 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'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, GAD, Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 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 as there is an association between PTSD and AWOL, there is a nexus between the applicant's misconduct characterized by AWOL such that the misconduct is mitigated by the disorder.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD and discrimination outweighed the AWOL basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD and ALS. The Board considered this contention during proceedings and determined an upgrade in discharge was warranted based on the applicant's PTSD fully outweighing the applicant's AWOL basis for separation.

(2) The applicant contends family issues affected behavior and ultimately contributed to the discharge. 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 AWOL basis for separation.

(3) The applicant contends harassment and discrimination by members of the unit. The Board determined that this contention was valid and voted to upgrade the characterization of service due to applicant's PTSD, partially resulting from the harassment and discrimination, fully outweighing the applicant's AWOL basis for separation.

(4) The applicant contends good service. 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 AWOL basis for separation.

(5) The applicant contends good moral character as a civilian and as a Soldier. 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 AWOL basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's PTSD outweighing the AWOL basis for separation. Therefore, the Board voted to grant relief in the

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form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and a change to the reentry eligibility (RE) code to 3. However, the applicant may request a personal appearance hearing to address 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 and discrimination experienced mitigated the applicant's misconduct of AWOL. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The Board voted to change the RE code to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:

12/15/2023

X

Presiding

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