

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, being a 100 percent disabled veteran for traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). The applicant spoke with J. from their Reserve unit and requested to be placed in the IRR and was later informed the request had been approved. The applicant requested their honorable discharge certificate through the National Records Division and found out they received a general discharge from the Reserve. The applicant contends they never received a phone call or any paperwork from their unit. The applicant states they served in Iraq and received a combat action badge and two Army Commendation Medals.

b. **Board Type and Decision:** In a records review conducted on 5 December 2023, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's PTSD mitigating the applicant's missing over 9 battle assemblies basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason is proper and equitable and voted not to change it.

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:** Unsatisfactory Participation / AR 135-178, Chapter 13 / NA / NA / General (Under Honorable Conditions)

b. **Date of Discharge:** 9 November 2012

c. **Separation Facts:**

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

(2) **Basis for Separation:** The applicant was informed of the following reasons: Unexcused absence from 9 or more UTAs as defined by AR 135-91, Chapter four.

On 13 August 2012, the applicant's commander mailed the applicant the notification via certified mail, with a suspense of 30 days to acknowledge the notice and rights.

Commander's Report, 20 August 2012, reflects the applicant was notified of the proposed separation via certified mail on, 13 August 2012. The applicant was informed of the following reasons:

The applicant has continued to miss Battle Assemblies and has accumulated nine or more unexcused absence with in a 12-month period.

The Army Reserve would be best served by discharging the applicant as a continued attempt of rehabilitation of the Solder has not solved the continued problem of absenteeism.

The Soldier has shown no desire to remain in the Army Reserve and would be a detriment to the Army if ordered to active duty.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: The applicant failed to respond to the notification of separation, thereby waiving right to counsel.

(5) Administrative Separation Board: The applicant failed to respond to the notification of separation, thereby waiving right to an administrative separation board.

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 March 2010 / Terminal date of Reserve obligation end date: 3 November 2014.

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / 103

c. Highest Grade Achieved / MOS / Total Service: E-4 / 12C10, Bridge Crewmember / 5 years, 11 months, 23 days

d. Prior Service / Characterizations: RA, 15 November 2006 – 7 March 2010 / HD

e. Overseas Service / Combat Service: SWA / Iraq (30 December 2008 – 24 December 2009)

f. Awards and Decorations: ARCOM-2, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Commander's Report as described in previous paragraph 3c.

Letter of Instructions – Unexcused Absence, 25 April 2012, reflects the applicant was absent from a scheduled unit training assembly (UTA) or a multiple unit training assembly (MUTA) for the following periods:

20 April 2012 (MUTA 1 and 2)

21 April 2012 (MUTA 1 and 2)

Affidavit of Service by Mail, reflects the Letter of Instructions, 25 April 2012, was mailed to the applicant via certified mail on 2 May 2012.

Letter of Instructions – Unexcused Absence, 15 May 2012, reflects the applicant was absent from a scheduled unit training assembly (UTA) or a multiple unit training assembly (MUTA) for the following periods:

- 12 May 2012 (MUTA 1 and 2)
- 13 May 2012 (MUTA 1 and 2)

Affidavit of Service by Mail, reflects the Letter of Instructions, 15 May 2012, was mailed to the applicant via certified mail on 22 May 2012.

Letter of Instructions – Unexcused Absence, 18 June 2012, reflects the applicant was absent from a scheduled unit training assembly (UTA) or a multiple unit training assembly (MUTA) for the following periods:

- 15 June 2012 (MUTA 1 and 2)
- 16 June 2012 (MUTA 1 and 2)

Affidavit of Service by Mail, reflects the Letter of Instructions, 18 June 2012, was mailed to the applicant via certified mail on 21 June 2012.

On 13 August 2012 the Unit Administrator for the 428th Engineer Company mailed a Notification of Separation, 7 August 2012 to the applicant.

Four Developmental Counseling Forms, for unexcused absences and separation.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Partial VA Rating Decision letter, reflects an evaluation of 100 percent service connected for TBI with PTSD effective date of 11 January 2013.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Online application; DD Form 214 and discharge orders from the USAR.

6. POST SERVICE ACCOMPLISHMENTS: The states obtaining a good paying job.

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) prescribes 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 of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) Paragraph 2-9a prescribes an honorable characterization 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.

(2) Paragraph 2-9b prescribes, if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as general (under honorable conditions). Characterization of service as general (under honorable conditions) is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

(3) Chapter 12 (previously Chapter 13) provides in pertinent part, that individuals can be separated for being an unsatisfactory participant. Soldier is subject to discharge for unsatisfactory participation when it is determined that the Soldier is unqualified for further military service because: The Soldier is an unsatisfactory participant as prescribed by AR 135-91, chapter 4; Attempts to have the Soldier respond or comply with orders or correspondence.

(4) Paragraph 12-3 prescribes the service of Soldiers separated under this chapter will be characterized as honorable or under honorable conditions as determined under chapter 2, section III, unless an uncharacterized description of service is warranted under paragraph 2-11.

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 partial 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 12-310-00010, 5 November 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 contends never being informed about the imminent discharge. The evidence in the applicant's AMHRR shows the unit commander attempted to contact the applicant on 13 August 2012 and mailed the discharge packet to the last known address via certified mail. The evidence of the record shows the applicant failed to submit a reply. In accordance with AR 135-178, paragraph 3-12, this failure to submit a reply within 30 days of receipt of the notice constitutes a waiver of the rights.

The applicant contends being a 100 percent disabled veteran for traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). The applicant provided a partial VA Rating Decision letter reflecting an evaluation of 100 percent service connected for TBI with PTSD. The AMHRR is void of a mental status report.

The applicant contends having spoken with J. from their Reserve unit and requested to be placed in the IRR and was later informed the request had been approved. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The applicant contends good service, including a combat tour.

The applicant contends obtaining employment. 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 A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, MDD.

(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 combat-related 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 avoidance, there is a nexus between the applicant's misconduct characterized by multiple unexcused absence and SC diagnoses.

(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 outweighed the missing over 9 battle assemblies for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends never being informed of the imminent 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 basis of separation.

(2) The applicant contends being 100 percent disabled veteran for traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). The Board considered this contention during proceedings and voted to upgrade the applicant's discharge based on the applicant's PTSD fully outweighing the applicant's basis of separation.

(3) The applicant contends having spoken with J. from their Reserve unit and requested to be placed in the IRR and was later informed the request had been approved. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's basis of separation.

(4) The applicant contends good service, including a combat tour. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's basis of separation.

(5) The applicant contends obtaining employment. 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 and MDD fully outweighing the applicant's basis for separation.

c. The Board determined that the characterization of service was inequitable based on the applicant's PTSD mitigating the applicant missing over 9 battle assemblies basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason is proper and equitable and voted not to change it. 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 mitigated the applicant's misconduct of missing over 9 battle assemblies. Thus, the prior characterization is no longer appropriate.

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

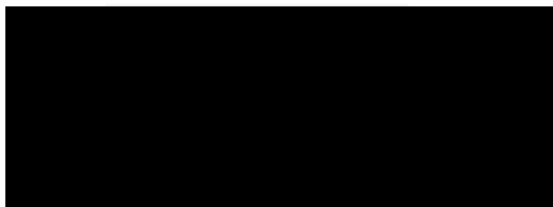
(3) The RE code will not change, as there were no RE-codes listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for this item.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

2/1/2024



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