

**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 the under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, having issues with PTSD, headaches, both feet, and a few other things while deployed. After the deployment, the applicant was immediately scheduled for surgery on one foot, but after the surgery, the applicant's foot did not get any better, so the applicant decided not to have surgery on the other foot. During this time, the applicant started seeing someone for depression and requested a medical discharge. Along the way, the applicant was in some trouble and the medical discharge was complete, but the medical discharge was stopped, and chapter action was started. The applicant contends being held past the ETS date and the medical discharge date. The applicant was given the option to have a court-martial or take an under other than honorable conditions (UOTH) discharge. The applicant contends not being informed of the consequences of either option, so the applicant took the UOTH after being informed it would only take one week to be processed by the Army. The applicant states being informed of having a pattern of misconduct but received a good conduct medal and was not in any trouble until after the deployment.

**b. Board Type and Decision:** In a records review conducted on 2 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 8 March 2011**c. Separation Facts:**

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** On 27 January 2011, the applicant was charged with:

Charge I: Violating Article 80, UCMJ, for on or between 1 April of 2010 and 30 April 2010, attempt to steal money, of a value greater than \$500, the property of USAA.

Charge II: Violating Article 81, UCMJ, for on or between 1 April of 2010 and 30 April 2010, conspire with L., to commit an offense under the Uniform Code of Military Justice, to wit: larceny of money, of a value greater than \$500, the property of USAA, and in order to effect the object

of the conspiracy the accused did file a false police report with the Junction City Police Department claiming their TA-50 had been stolen and the accused made a false claim to their insurance company, USAA and L., made a phone call to the insurance company posing as an official from CIF and informed the insurance company the allegedly missing TA-50 was valued at about \$7500.

Charge III: Violating Article 86, 18 July 2010, without authority, fail to go at the time prescribed to their appointed place of duty.

Charge IV: Violating Article 91, UCMJ:

Specification 1: On or about 12 April 2010, received a lawful order from SGT P., a noncommissioned officer, then known by the applicant to be a noncommissioned officer, to get off their phone, an order which it was their duty to obey, willfully disobey the same.

Specification 2: On or about 7 July 2010, received a lawful order from SGT G., a noncommissioned officer, then known by the applicant to be a noncommissioned officer, to collect all the trash out of each garbage can in the company, an order which it was their duty to obey, willfully disobey the same.

Specification 3: On or about 18 August 2010, was disrespectful in language toward SGT G., a noncommissioned officer, then known by the applicant to be a noncommissioned officer, who was then in the execution of their office, by saying, "you better watch your back, stupid", or words to that effect.

Charge V: Violating Article 107 UCMJ:

Specification 1: On or about 16 September 2010, with intent to deceive, make to SFC G., an official statement, to wit: SPC E. spoke directly with Senator C., and the senator was travelling to Manhattan to talk directly with the applicant, which statement was totally false.

Specification 2: March or April 2010, with intent to deceive, make to the Junction City Police Department an official statement, to wit: "my car was broken into, and things were stolen from it," or words to that effect, which statement was totally false, and was then known by the applicant to be so false.

Charge VI: Violating Article 128 UCMJ, on or about 8 December 2010, unlawfully strike in the face with their fist or push L.

**(2) Legal Consultation Date:** 17 February 2011

**(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:** General (Under Honorable Conditions) / The intermediate commanders recommended under other than honorable conditions.

**(5) Separation Decision Date / Characterization:** 23 February 2011 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001533**

**a. Date / Period of Enlistment:** 30 January 2007 / 3 years, 2 weeks / Extension of service was at the request and for the convenience of the government.

**b. Age at Enlistment / Education / GT Score:** 22 / High School Graduate / 94

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 88M10, Motor Transport Operator / 6 years, 10 months, 9 days

**d. Prior Service / Characterizations:** ARNG, 30 April 2004 – 14 June 2004 / NA  
IADT, 15 June 2004 – 8 October 2004 / UNC  
ARNG, 9 October 2004 – 29 January 2007 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (9 May 2007 – 6 August 2008)

**f. Awards and Decorations:** AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR

**g. Performance Ratings:** NA

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

CG Article 15, 16 September 2010, for failing to go at the time prescribed to appointed place of duty on 18 July 2010. Between 12 April and 18 August 2010, disobeyed a lawful order on two occasions and was disrespectful to a noncommission officer. The applicant demanded a trial by court martial.

Military Police Report, 24 October 2010, reflects the applicant was apprehended for: larceny of Private property; Conspiracy to commit falsely reporting crime; Officer or employee of the united states chapter 43; Conspiracy to commit insurance fraud (on post).

Military Police Report, 9 December 2010, reflects the applicant was apprehended for: Assault consummated by battery (on post).

Memorandum, Request for Discharge, 17 February 2011, reflects the applicant understands if the request for discharge is accepted, the applicant may be discharged under conditions other than honorable. The applicant had been advised and understood the possible effects of an under other than honorable conditions discharge and because of the issuance of such a discharge the applicant would be deprived of many or all Army benefits and may be ineligible for many or all benefits administered by the Department of Veterans Affairs and be deprived of rights and benefits as a veteran under both Federal and State law.

Numerous Developmental Counseling Forms, for various acts of misconduct.

**i. Lost Time / Mode of Return:** None

**j. Behavioral Health Condition(s):**

**(1) Applicant provided:** Memorandum For Physical Evaluation Board, 23 August 2010, the applicant was seen for MEB prescreen in June 2010, and diagnosed with Depressive disorder Not Otherwise specified which met retention standards. The VA C&P provider diagnosed the applicant with Axis I: Adjustment Disorder with mixed anxiety and depressed mood. Axis II: Easy to anger, Immature coping skills. The service member does not have a

psychiatric condition that warrants disposition through medical or administrative channels and does not warrant a Psychiatric Addendum to the Medical Evaluation Board.

VA Benefits Estimate Letter, undated, reflects a service connective evaluation of 30 percent for Adjustment disorder with mixed anxiety and depression and an overall rating for 50 percent.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** Online application; DD Form 214; VA Benefits Estimate Letter; medical records; VA Form 21-0819.

**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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

e. 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.

f. 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.

g. 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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant 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 suffering from PTSD and Depression and pending a medical discharge prior to getting into trouble. The applicant provided a Memorandum For Physical Evaluation Board, 23 August 2010, reflecting the applicant was seen for MEB prescreen in June 2010, and diagnosed with Depressive disorder Not Otherwise specified which met retention standards. The VA C&P provider diagnosed the applicant with Axis I: Adjustment Disorder with mixed

anxiety and depressed mood. Axis II: Easy to anger, Immature coping skills. The applicant did not have a psychiatric condition which warranted disposition through medical or administrative channels and did not warrant a Psychiatric Addendum to the Medical Evaluation Board. Also, a VA Benefits Estimate Letter, undated, reflecting a service connective evaluation of 30 percent for Adjustment disorder with mixed anxiety and depression and an overall rating for 50 percent. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES. If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial. The AMHRR is void of a mental status report.

The applicant contends being held past the ETS and medical discharge dates and then given the option to have a court martial or take an under other than honorable conditions (UOTH) discharge. The applicant contends not being informed of the consequences of either option, so the applicant took the UOTH after being informed it would only take one week to be processed by the Army. Memorandum, Request for Discharge, 17 February 2011, reflects the applicant understood if the request for discharge was accepted, the applicant may be discharged under conditions other than honorable. The applicant had been advised and understood the possible effects of an under other than honorable conditions discharge and because of the issuance of such a discharge the applicant would be deprived of many or all Army benefits and may be ineligible for many or all benefits administered by the Department of Veterans Affairs and be deprived of rights and benefits as a veteran under both Federal and State law. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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

#### **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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, Depression. 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 Depression.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of BH conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder and Depression. Given the nexus between Depression, decreased energy, and avoidance, applicant's Depression mitigates the FTR. However, there is no natural sequela between Depression or an Adjustment Disorder and any of the other misconduct that led to the applicant's separation to include larceny, false official statements/police report, disobeying a lawful order, disrespect, or assault. And while the applicant self-asserts PTSD, which has a nexus with difficulty with authority and

can mitigate disrespect and disobeying lawful orders in some cases, there is no medical evidence to support the applicant's asserted PTSD and therefore, no mitigation of this misconduct.

**(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 Adjustment Disorder, Depression and asserted PTSD outweighed the basis for applicant's separation – larceny, false official statements/police report, disobeying a lawful order, disrespect, and assault.

**b. Response to Contention(s):**

**(1)** The applicant contends suffering from PTSD and Depression and pending a medical discharge prior to getting into trouble. The Board considered this contention and the applicant's assertion of PTSD, however the Board determined the applicant's asserted behavioral health conditions did not outweigh all the misconduct. The applicant's larceny, false official statements/police report, disobeying a lawful order, disrespect, and assault were not mitigated by the Board Medical Advisor therefore the discharge was proper and equitable.

**(2)** The applicant contends being held past the ETS and medical discharge dates and then given the option to have a court martial or take an under other than honorable conditions (UOTH) discharge. The applicant contends not being informed of the consequences of either option, so the applicant took the UOTH after being informed it would only take one week to be processed by the Army. The Board considered this contention and determined the applicant decided to go to a court martial from a Company grade Art 15. Applicant was informed of the options and possible consequences regarding VA benefits, which the applicant signed the memorandum acknowledging this on 17 February 2011.

**(3)** The applicant contends good service, including a combat tour. The Board considered the applicant's six years of service, including a combat tour in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's larceny, false official statements/police report, disobeying a lawful order, disrespect, and assault.

**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 Adjustment Disorder, Depression and asserted PTSD did not excuse or mitigate the offenses of larceny, false official statements/police report, disobeying a lawful order, disrespect, and assault. The Board also considered the applicant's contention regarding being held past the ETS and medical discharge dates and found that the totality of the applicant's record does not warrant a discharge upgrade. 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell



**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001533**

below that level of satisfactory service warranting a General discharge or 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:**

1/24/2024

**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  
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