

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is uncharacterized. The applicant requests an upgrade to honorable conditions.

The applicant seeks relief contending, in effect, the discharge is inequitable because the applicant served in the Texas Army National Guard for four years prior to active duty and was deployed to Afghanistan in 2005 to 2006. Despite experiencing PTSD symptoms and other physical issues because of combat service, the applicant decided to enlist on active duty after returning from the deployment. While on active duty, the applicant sought PTSD counseling, but instead was notified of receiving an entry level uncharacterized discharge under AR 635-200, paragraph 5-17. The applicant never should have received an entry-level discharge after serving in the military for four years, including a yearlong combat tour. The applicant's service record demonstrates exemplary behavior and honorable service both in combat and at home. The applicant may have been retained if the Army had provided adequate assistance and counseling. The VA has diagnosed the applicant with PTSD and received a 40 percent disability rating, proving the applicant should never have been separated with an uncharacterized discharge. The Army should have provided counseling and medical help, and an honorable discharge. On 20 November 2006, the applicant began to work in law enforcement with the McAllen Police Department and is now serving as a supervisor and communications sergeant. The applicant has never been in trouble at work and has continued to serve the local community faithfully. The applicant has a master's degree in criminal justice, no criminal record, and has never been arrested. This demonstrates the applicant is responsible and desires to serve. The applicant is happily married, has children, owns a home, and provides for the family. The applicant is a well-respected member of the community who served honorably as an infantry Soldier. An uncharacterized discharge for PTSD is wrong, and a modification to an honorable characterization of service would provide justice for the regrettable administrative decision against the applicant in September 2006.

b. Board Type and Decision: In a records review conducted on 12 October 2023, and by a 5-0 vote, the Board determined that the characterization of service was improper. The applicant was not in an initial entry status to warrant an Uncharacterized discharge. Therefore, the Board granted relief in the form of an upgrade of the applicant's characterization of service to Honorable. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

Please see Section 9 of this document for more detail regarding the Board's decision.

Board member names available upon request.

3. DISCHARGE DETAILS:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001543

a. Reason / Authority / Codes / Characterization: Condition, Not a Disability / AR 635-200, Chapter 5-17 / JFV / RE-3 / Uncharacterized

b. Date of Discharge: 29 September 2006

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 18 September 2006

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant had an adjustment disorder with mixed anxiety and depressed mood, and related continuing deficiencies in conduct and performance as follows: nervous, crying, hopeless, panic attacks, and poor performance.

(3) Recommended Characterization: Uncharacterized

(4) Legal Consultation Date: On 18 September 2006, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 22 September 2006 / Uncharacterized

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 August 2006 / 3 years

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 108

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years, 10 months, 29 days

d. Prior Service / Characterizations: ARNG, 1 November 2002 – 19 July 2004 / NA
IADT, 20 Jul 2004 – 22 October 2004 / HD
ARNG, 23 October 2004 – 6 March 2005 / NA
MOB, 7 March 2005 – 11 June 2006 / HD
ARNG, 12 June 2006 – 9 August 2006 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (10 May 2005 – 8 May 2006)

f. Awards and Decorations: ARCOM, AAM, AGCM, ARCAM, NDSM, ACM, GWOTSM, ASR, OSR, AFRMMD, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Two Developmental Counseling Forms for being recommended for separation and having panic attacks, hopelessness, poor performance, crying, and nervousness.

Mental Status Evaluation as described in paragraph 4j(2).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Veterans Administration Disability rating decision, 27 June 2011, reflecting the applicant was rated 30 percent disability for PTSD (also claimed as sleep disturbances and memory loss).

Progress Notes (Psychology Note), 1 June 2011 to 8 January 2015, reflect the applicant was receiving therapy for PTSD, Chronic, Unspecified Depressive Disorder.

(2) AMHRR Listed: Report of Mental Status Evaluation, 25 August 2006, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings and could appreciate the difference between right and wrong. It was recommended the applicant be separated from the military under Chapter 5-17, AR 635-200. The psychiatric condition did not amount to disability but would significantly interfere with the assignment to or performance of duty, and it was unlikely efforts to rehabilitate or develop into a satisfactory military member would be successful. The applicant's condition seriously impairs the ability to function in the Army, and future incapacity because of inability to adjust was expected. The applicant was diagnosed with AXIS I: Adjustment Disorder with Mixed Anxiety and Depressed Mood.

Report of Medical History, 22 August 2006, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Adjustment Disorder.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 with listed enclosures, DD214

6. POST SERVICE ACCOMPLISHMENTS: The applicant is employed with a police department as a supervisor and communications sergeant and has obtain a master's degree in Criminal Justice.

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 3-9 states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

(5) Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government.

(6) Paragraph 5-1 states a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. A general (under honorable conditions) discharge is normally inappropriate for individuals separated under the provisions of paragraph 5-14 (previously paragraph 5-17) unless properly notified of the specific factors in the service that warrant such characterization.

(7) Paragraph 5-14 (previously paragraph 5-17) specifically provides that a Soldier may be separated for other physical or mental conditions not amounting to a disability, which interferes with assignment to or performance of duty and requires that the diagnosis be so severe that the Soldier's ability to function in the military environment is significantly impaired.

(8) Glossary defines entry-level status for RA Soldiers is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service. Active duty is defined as full time duty in the active military service of the United States, includes active duty for training. The glossary further defines Active Army as consisting of: (1) Regular Army Soldiers on active duty; (2) the Army National Guard of the United States (ARNGUS) and the U.S. Army Reserve (USAR) Soldiers on active duty; (3) Army National Guard Soldiers in the service of the United States pursuant to a call; and (4) all persons appointed, enlisted, or inducted into the Army without component. Excluded are ARNGUS and USAR Soldiers serving on: (1) active duty for training; (2) Active Guard Reserve status (AGR); (3) active duty for special work; (4) temporary tours of active duty for 180 days or less; and (5) active duty pursuant to the call of the President (10 USC 12304).

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 "JFV" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-14 (previously Chapter 5-17), Condition, Not a Disability.

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: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's AMHRR includes evidence the applicant was evaluated by competent medical authority, who determined the applicant had a psychiatric condition, an adjustment disorder with mixed anxiety and depressed mood. It was determined the applicant's psychiatric condition not amounting to disability would significantly interfere with the assignment or performance of duty and it was unlikely efforts to rehabilitate or develop into a satisfactory member of the military would be successful, and it was recommended to separate the applicant under Chapter 5-17, AR 635-200.

The applicant contends the service record demonstrates exemplary behavior and honorable service both in combat and at home. The Board considered the applicant's service accomplishments and quality of service according to DODI 1332.28.

The applicant contends suffering from PTSD caused by service in combat and the VA has diagnosed the applicant with PTSD and received a 40 percent disability rating, proving the applicant never should have been separated with an uncharacterized discharge. The applicant provided several medical documents and a VA Disability rating decision, 1 July 2015, reflecting the applicant was rated 30 percent disability for PTSD (also claimed as depression and anxiety disorder). The applicant's AMHRR contains documentation which supports a diagnosis of in-service adjustment disorder with mixed anxiety and depressed mood. The record shows the applicant underwent a mental status evaluation (MSE) on 25 August 2006, which indicates the applicant was mentally responsible and able to recognize right from wrong. The MSE was considered by the separation authority.

The applicant contends being a well-respected member in the community, maintains an employment with the law enforcement, and has earned a master's degree in criminal justice. 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? **No.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, PTSD. However, further analysis is not necessary because the applicant's reason for separation was medical and not due to misconduct.

(2) Did the condition exist, or experience occur during military service? **N/A.**

(3) Does the condition or experience excuse or mitigate the discharge? **N/A.**

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends the discharge was inequitable because the applicant should not have received an entry-level discharge after serving in the military for four years, including a yearlong combat tour in Afghanistan from 7 March 2005 to 11 June 2006, and then reenlisting for three years in the Regular Army. The Board considered this contention and determined that the applicant was not in an entry-level status at the time of separation as required for an Uncharacterized characterization of service. The applicant's DD214s and NGB 22 reflect that the applicant completed AIT in October 2004 and subsequently served over 360 days mobilized to Afghanistan in support of Operation Enduring Freedom as a member of the Texas Army National Guard before reenlisting in the Regular Army. Therefore, the Board voted to change the applicant's characterization of service to Honorable.

(2) The applicant contends the service record demonstrates exemplary behavior and honorable service both in combat and at home. The Board considered this contention but did not ultimately address it based on 9b(1) upgrade to HD.

(3) The applicant contends suffering from PTSD caused by service in combat and the VA has diagnosed the applicant with PTSD and received a 40 percent disability rating. The Board considered this contention but did not ultimately address it based on 9b(1) upgrade to HD.

(4) The applicant contends being a well-respected member in the community, maintains an employment with the law enforcement, and has earned a master's degree in criminal justice. The Board considered this contention but did not ultimately address it based on 9b(1) upgrade to HD.

c. The Board determined that the characterization of service was improper. The applicant was not in an initial entry status to warrant an Uncharacterized discharge. Therefore, the characterization not being proper and equitable, the Board granted relief in the form of an upgrade of the applicant's characterization of service to Honorable. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant was not in an entry-level status at the time of separation as required for an Uncharacterized characterization of service. 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 the applicant's medical discharge was discharged was both proper and equitable.

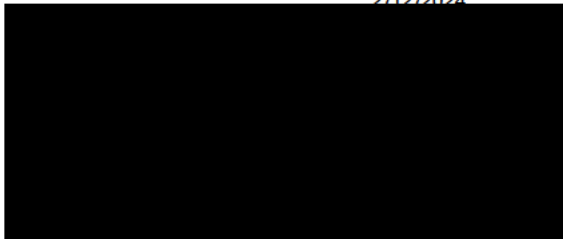
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

2/12/2024



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