

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 under other than honorable conditions. the applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, after returning from an AWOL status, the applicant was discharged with an under other than honorable conditions characterization of service. The applicant believes the discharge should be upgraded because of having worked intermittently. The applicant, who had Schizophrenia, was a Soldier whose psychiatric symptoms were exacerbated by the NCO's psychological tactics. The applicant would better serve the country with psychological counseling and employment services.

b. **Board Type and Decision:** In a records review conducted on 26 September 2023, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's Schizophrenia mitigating the applicant's AWOL offense. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. 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:

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:** 7 December 2005

c. Separation Facts:

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 8 November 2005, the applicant was charged with: The Charge: Violation of Article 85, UCMJ, for being in Desertion with intent to remain away permanently from 30 August 2004 until apprehended on 21 October 2005.

(2) **Legal Consultation Date:** 21 November 2005

(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: 28 November 2005 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 30 October 2003 / 4 years

b. Age at Enlistment / Education / GT Score: 24 / Bachelor's Degree / 128

c. Highest Grade Achieved / MOS / Total Service: E-4 / 25C10, Radio Operator Maintainer / 2 years, 1 month, 8 days / The period of lost time (AWOL) is included in the Net Active Service This Period at block 12c of the DD Form 214.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR, GWOTSM

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: A Developmental Counseling Form for being in desertion and AWOL.

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

From "Present for Duty (PDY)" to "Absent Without Leave (AWOL)," effective 30 August 2004;
From "AWOL" to "Dropped From Rolls (DFR)," effective 29 September 2004;
From "DFR" to "Confined by Civil Authorities (CCA)," effective 9 October 2005;
From "CCA" to "Confined by Military Authorities (CMA)" effective 19 October 2005; and
From "CMA" to "PDY," effective 21 October 2005.

Charge sheet as described in previous paragraph 3c.

i. Lost Time / Mode of Return: 417 days (AWOL, 30 August 2004 – 21 October 2005) / Apprehended by Civil Authorities. This period is not annotated on the DD Form 214 block 29.

j. Behavioral Health Condition(s):

(1) Applicant provided: Pathways to Wellness letter with Physician's Initial Assessments, 10 December 2015, indicates the applicant, a patient at the clinic, was diagnosed with "Schizophrenia 295.90."

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149 and Pathways to Wellness letter with medical assessments.

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 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 10-8a 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.)

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 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 because of having worked intermittently; the discharge should be upgraded. 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.

The applicant contends being diagnosed with Schizophrenia. The applicant provided medical documents indicating a diagnosis of Schizophrenia, and prescribed medication. The applicant's AMHRR contains no documentation of any behavioral health diagnosis.

The applicant contends the NCOs' psychological tactics have exacerbated the applicant's psychiatric symptoms. There is no evidence in the applicant's AMHRR the applicant sought assistance or reported the harassment.

The applicant contends with psychological counseling and employment services, the applicant could better serve the country. Eligibility for veterans' benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance. The Board does not grant relief to gain employment or enhance employment opportunities.

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: Schizophrenia.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that given the course of the disorder it more likely than not that the applicant's Schizophrenia existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's Schizophrenia mitigates the AWOL offense. Records showed the applicant reported the condition existed prior to service and that the applicant was again hospitalized for the disorder post-service. Given the nature and course of the disorder it is more likely than not the disorder existed during service and given the disorders association with poor reality testing and impaired decision making, there is a nexus between the applicant's misconduct characterized by AWOL and the diagnosis of Schizophrenia, 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 Schizophrenia outweighed the applicant's medically mitigated AWOL basis of separation.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with Schizophrenia. The Board liberally considered this contention and determined that the applicant's Schizophrenia outweighed the applicant's medically mitigated AWOL basis of separation. The Board did not find that upgrade to Honorable was warranted as the totality of the applicant's service record does not demonstrate the meritorious service warranted for an upgrade to Honorable.

(2) The applicant contends because of having worked intermittently; the discharge should be upgraded. 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 Schizophrenia outweighed the applicant's AWOL basis of separation. The Board did not find that an upgrade to Honorable was warranted as the totality of the applicant's service record does not demonstrate the meritorious service warranted for an upgrade to Honorable.

(3) The applicant contends the NCO's psychological tactics exacerbated the applicant's psychiatric symptoms. 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 Schizophrenia outweighed the applicant's AWOL basis of separation. The Board did not find that an upgrade to Honorable was warranted as the totality of the applicant's service record does not demonstrate the meritorious service warranted for an upgrade to Honorable.

(4) The applicant contends with psychological counseling and employment services, the applicant could better serve the country. 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 Schizophrenia outweighed the applicant's AWOL basis of separation. The Board did not find that upgrade to Honorable was warranted as the totality of the applicant's service record does not demonstrate the meritorious service warranted for an upgrade to Honorable.

c. The Board determined that the characterization of service was inequitable based on the applicant's Schizophrenia mitigating the applicant's AWOL offense. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them. The Board did not find that upgrade to Honorable was warranted as the totality of the applicant's service record does not demonstrate the meritorious service warranted for an upgrade to Honorable. The applicant has exhausted the applicant's appeal options available with ADRB. However, the applicant may still apply to the Army Board for

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001580

Correction of Military Records. 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 grant partial relief and change the applicant's characterization of service to General based on the applicant's Schizophrenia outweighed the applicant's AWOL offense. Thus, the prior characterization is no longer appropriate. The Board did not find that upgrade to Honorable was warranted as the totality of the applicant's service record does not demonstrate the meritorious service warranted for an upgrade to Honorable.

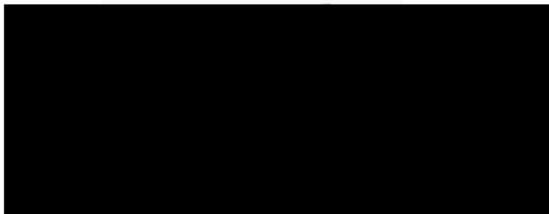
(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

(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: Yes**
- b. Change Characterization to: General, Under Honorable Conditions**
- c. Change Reason / SPD Code to: No Change**
- d. Change RE Code to: No Change**
- e. Change Authority to: No Change**

Authenticating Official:



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