

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

**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, through counsel, requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being under the therapist's care for psychotherapy for approximately two years. The applicant believes the applicant served the country honorably. While examining the applicant's military history and psychiatric record, the therapist discovered clinically significant impairment in functioning caused by a number of factors, including the applicant gradually worsening psychiatric condition and negative side effects of medication. The applicant began to show signs of mental illness: anxiety, irritability, insomnia, and depression, while in Iraq. Because of problems with the applicant's security clearance, which began before entrance into the military, the applicant was assigned ancillary duties and harassed by lower members of the chain of command. The applicant suffered from several physical ailments which caused the applicant to fail the Army Physical Fitness Test (APFT). As animosity between the applicant and the superiors intensified, the applicant's weapon was taken and the applicant was ordered to see military mental health professionals. The applicant was not informed of any diagnosis but was instructed to attend group therapy for stress management and prescribed medication to treat the insomnia. The applicant redeployed and the psychiatric symptoms increased, as did animosity with the superiors. The applicant experienced racing thoughts and the applicant's medication was changed, but the applicant believed military mental health professionals ignored the other complaints.

In November 2010, the applicant attempted suicide with a screwdriver. A civilian psychiatric inpatient unit diagnosed the applicant with an unspecified type of depression and prescribed medications. In the following weeks, the applicant complained of severe side effects, which the applicant contends were ignored. The debilitating side effects included drowsiness, amnesia, forgetfulness, irritability, anger aggression, muscle weakness, lack of coordination, headache, depressed mood, weak breathing, confusion, slurred speech in the morning, hallucinations, blurred vision, and dry mouth. Within days of these complaints, the applicant was involved in a physical altercation with superiors, which led to the discharge. The therapist concluded the applicant was suffering from a mood disorder, either of a bipolar type or cyclothymia, which began and progressed during military service, and attention deficit hyperactivity disorder (ADHD), inattentive type. The applicant's current psychiatrist diagnosed the applicant with cyclothymia, ADHD, and post-traumatic stress disorder (PTSD). In the therapist's opinion, the applicant acquired ADHD in early childhood and cyclothymic disorder during military service. The applicant's level of functioning prohibits the applicant from obtaining gainful employment and the applicant relies on the applicant's sibling for basic needs. The applicant frequently isolates at home because of impaired social functioning. The therapist believes the nature of the applicant's discharge was largely the result of the applicant's difficulties in adjusting to garrison routine after service in the Iraq and, in part, precipitated the event which triggered the discharge.

**b. Board Type and Decision:** In a records review conducted on 7 September 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:** 28 December 2010

**c. Separation Facts:**

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** On 15 December 2010, the applicant was charged with:

Charge I: Violating Article 128, UCMJ:

Specifications 1 through 3: On 14 December 2010, unlawfully kick Sergeant (SGT) M. M. in the genitalia with the boot, unlawfully strike SGT M. M. on the shoulder with the fist, and unlawfully bite SGT M. M. on the arm with the teeth.

Specifications 4 and 5: On 14 December 2010, unlawfully strike SGT J. W. on the neck with the fist and on the shoulder with the fist.

Specifications 6 through 8: On 14 December 2010, unlawfully strike SGT J. M. on the chest with the fist and on the shoulder with the fist and unlawfully scratch SGT J. M. on the arm with the fingernails.

Specification 9: On 14 December 2010, assault SGT M. M. by striking at SGT M. M. with the fist.

Charge II: Violating Article 108, UCMJ, The Specification: On 14 December 2010, without proper authority willfully damage by striking and causing a hole in a wall, military property, the amount of said damage in the sum of less than \$500.

Charge III: Violating Article 95, UCMJ, The Specification: On 14 December 2010, resist being apprehended by pulling away from having hand irons placed on the applicant by Specialist W. S., an armed forces policeman.

Charge IV: Violating Article 91, UCMJ:

Specification 1: On about 14 December 2010, was disrespectful in language toward SGT J. M., a noncommissioned officer, by saying to SGT J. M., "I can do what the fuck I want."

Specification 2: On about 14 December 2010, was disrespectful in language toward SGT J. M., a noncommissioned officer, by saying to SGT J. M., "I'm not talking to no fucking body."

**(2) Legal Consultation Date:** 16 December 2010

**(3) Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

**(4) Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** 21 December 2010 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 20 June 2007 / 6 years

b. **Age at Enlistment / Education / GT Score:** 18 / GED / 112

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 25B10, Information Technology Specialist / 3 years, 6 months, 4 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** Korea, SWA / Iraq (11 November 2009 – 15 November 2010)

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

g. **Performance Ratings:** NA

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

Company Grade Article 15, 16 June 2010, for being disrespectful in language toward Staff Sergeant (SSG) U. D. (28 April 2010); being disrespectful in deportment toward SSG U. D. (16 April 2010); and failing to go at the time prescribed to the appointed place of duty (16 April 2010). The punishment consisted of a reduction to E-3; forfeiture of \$423 pay (suspended); and extra duty 14 days (7 days suspended).

Bar to Reenlistment Certificate, 10 December 2010, reflects a bar to reenlist was initiated against the applicant for various acts of misconduct and APFT failure. The applicant's Army Military Human Resources Record is void of the second page of the form, which provides acknowledgment and approval information.

Confinement Order, 15 December 2010, reflects the applicant was placed in pre-trial confinement pending court-martial.

Memorandum, subject: Military Magistrate's Conclusions Re: Pretrial Confinement Review for [Applicant], 16 December 2010, reflects the magistrate determined continued pretrial confinement was warranted.

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

From "Present for Duty (PDY)," to "Military Confinement" effective 16 December 2010; and From "Military Confinement" to "PDY," effective 21 December 2010.

Inmate's Release Order, 21 December 2010, reflect the applicant was released because the charges were withdrawn.

Numerous Developmental Counseling Forms, for but not limited to:

- Insubordinate conduct toward an NCO on multiple occasions;
- Failure to obey order or regulation;
- Damage or destruction to Government property;
- Assault;
- Failure to obey lawful order;
- Barracks not cleaned to standard;
- Receiving a citation for Minor in consumption of alcohol;
- Failing the Army Physical Fitness Test;
- Being recommended for Bar to Reenlistment; and
- Being absent without leave (AWOL).

**i. Lost Time / Mode of Return:** 5 days (Military Confinement, 16 December 2010 – 20 December 2010) / Released from Confinement

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

**(1) Applicant provided:** Evanston Vet Center, Readjustment Counseling Therapist letter, undated, reflecting the applicant was suffering from a mood disorder, either bipolar type or cyclothymia and had been diagnosed with cyclothymia; attention deficit hyperactivity disorder; and PTSD.

**(2) AMHRR Listed:** Memorandum, subject: Mental Health Evaluation of [Applicant], 22 December 2010, reflects the applicant could understand and participate in administrative proceedings; was mentally responsible; and could appreciate the difference between right and wrong. The applicant was diagnosed with: Anxiety disorder not otherwise specified (NOS).

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; Department of Veterans Affairs Statement in Support of Claim; Evanston Vet Center therapist letter; and medical records.

**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.)

(7) 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.

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 of 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 being diagnosed with PTSD, cyclothymia, mood disorder, and ADHD, and prescribed medications, which affected behavior and ultimately led to the discharge. The applicant provided several medical documents indicating a diagnosis of in-service PTSD, cyclothymia, mood disorder, and ADHD, and the applicant was prescribed medication. The AMHRR shows the applicant underwent a mental health evaluation (MHE) on 22 December 2010, which indicates the applicant could understand and participate in administrative proceedings; was mentally responsible; and could appreciate the difference between right and wrong. The applicant was diagnosed with: Anxiety disorder NOS. The MHE was considered by the separation authority.

The applicant contends harassment and discrimination by members of the chain of command. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment; however, the applicant submitted evidence in support of this contention in the form a letter from a VA mental health provider.

The applicant contends the chain of command and military mental health professionals ignored the applicant's complaints regarding the mental health conditions. 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 applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's 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.

## 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, Anxiety Disorder NOS, Depression, Panic Disorder, Mood Disorder (either Cyclothymia or Bipolar per documentation), and PTSD.

(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, Anxiety Disorder NOS, Depression, and Panic Disorder. Post service, the applicant has also

been diagnosed with a Mood Disorder (either Cyclothymia or Bipolar per documentation) and PTSD.

**(3)** Does the condition or experience actually excuse or mitigate the discharge?

**Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD mitigates the applicant's offense of resisting apprehension and disrespectful language as there is a nexus between PTSD and difficulty with authority. While mood disorder (either bipolar or Cyclothymia) could mitigate physical aggression if the applicant was in an acutely manic or psychotic state given the nexus between mood disorder and aggression, the applicant's medical records reflect that the applicant demonstrated logical and goal-directed thought process.; therefore, the applicant's mood disorder does not mitigate the applicant's assault offenses. Finally, the Board Medical Advisor opined that the applicant's Adjustment Disorder, Anxiety Disorder NOS, Depression, and Panic Disorder do not mitigate the applicant's assault or property damage offenses as there is no natural sequela between any of these conditions and the offenses.

**(4)** Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's Adjustment Disorder, Anxiety Disorder NOS, Depression, Panic Disorder, Mood Disorder, and PTSD do not outweigh the medically unmitigated offenses - multiple counts of physical assault and property damage.

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

**(1)** The applicant contends being diagnosed with PTSD, cyclothymia, mood disorder, and ADHD, and prescribed medications, which affected behavior and ultimately led to the discharge. The Board considered this contention and determined the applicant's PTSD mitigates applicant's disrespect and resisting apprehension, however the remaining misconduct of physical assault or property damage are not excused or mitigated by applicant's PTSD, cyclothymia, mood disorder, and ADHD, and prescribed medications.

**(2)** The applicant contends harassment and discrimination by members of the chain of command. The Board considered this contention and determined there is insufficient evidence in the applicant's or provided by the applicant to support the chain of command discriminated and harassed the applicant. Ultimately the Board voted the applicant's discharge is proper and equitable.

**(3)** The applicant contends the chain of command and military mental health professionals ignored the applicant's complaints regarding the mental health conditions. The Board considered this contention and determined there is insufficient evidence in the applicant's official record or provided by the applicant to support that the chain of command and military mental health professionals ignored the applicant's complaints regarding the mental health conditions. Rather, the Board determined that the applicant's record supports that the applicant was provided care from BH facilities during military service.

**(4)** The applicant contends good service, including a combat tour. The Board considered this contention but determined that these factors did not outweigh the applicant's physical assault or property damage.

**(5)** The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.



(6) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do 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.

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 based on the applicant's Adjustment Disorder, Anxiety Disorder NOS, Depression, Panic Disorder, Mood Disorder, and PTSD not outweighing the medically unmitigated misconduct - multiple counts of physical assault and property damage. With only partial medical mitigation, the Board voted that the current discharge is proper and equitable. Therefore, the applicant's UOTH was proper and equitable as the applicant's misconduct fell below that level of satisfactory service warranting a GD or meritorious service warranted for an upgrade to HD. 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.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, 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.

**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:**

X

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Presiding Officer, COL, U.S. ARMY  
Army Discharge Review Board

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001649

**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