

**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. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being bullied into signing a Chapter 10, in which it was never explained the applicant would be reduced to E-1 and given an under other than honorable conditions discharge. In May 2012, false allegations were made against the applicant by a married person. At the time, the applicant was given two options. The first option was to go through a court-martial and likely serve a maximum sentence in Fort Leavenworth for adultery; and the second option was to sign a Chapter 10 and be discharged. Neither of the options were fully explained to the applicant, who was encouraged by the lawyer to sign the Chapter 10. When the applicant signed the Chapter 10, the lawyer stated, since the enlistment contract was ending in a few months, a Chapter 10 simply expedited the discharge. At the time, the applicant was never shown the paperwork which fully explained the Chapter 10 or told rank and benefits would be taken or given an under other than honorable conditions discharge. Ultimately, the sexual harassment and rape prevention program of the U.S. Army found all allegations to be false and the person dropped all charges against the applicant prior to being discharged. The applicant is requesting a discharge upgrade to receive medical and educational benefits from the Department of Veterans Affairs. The way the applicant was discharged from the U.S. Army after 8 years of honorable service was unjust, and unfair.

**b. Board Type and Decision:** In a records review conducted on 9 August 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:** 6 June 2012

**c. Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file. However, the applicant provided a copy of the separation decision memorandum reflected in 3c(6).

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** NIF

**(2) Legal Consultation Date:** NIF

**(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: NIF**

**(5) Separation Decision Date / Characterization:** 17 May 2012 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 5 August 2006 / 6 years

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

**c. Highest Grade Achieved / MOS / Total Service:** E-6 / 15J3P, OH-58D Armament / Electrical / Avionics Systems Repairer / 7 years, 10 months, 4 days

**d. Prior Service / Characterizations:** RA, 3 August 2004 – 4 August 2006 / HD

**e. Overseas Service / Combat Service:** SWA / Afghanistan (18 April 2009 – 5 April 2010; 22 September 2011 – 23 November 2011); Iraq (31 July 2006 – 16 July 2007)

**f. Awards and Decorations:** ARCOM-2, AAM-3, MUC, AGCM-2, NDSM, ACM-2CS, GWOTSM, ICM-CS, NCOPDR-2, ASR, OSR-2, NATOMDL

**g. Performance Ratings:** 1 July 2009 – 30 June 2010 / Fully Capable  
1 July 2010 – 30 June 2011 / Fully Capable  
1 July 2011 – 30 November 2011 / Fully Capable

**h. Disciplinary Action(s) / Evidentiary Record:** CID Report of Investigation Final, dated 23 April 2012, reflects an investigation did not establish probable cause to believe the applicant committed the offense of rape and sodomy as initially reported. After a thorough investigation and a review of the totality of the investigative facts and interviews, the initial complaint could not be substantiated. It was determined the initial allegation of rape and sodomy was incorrect and during a follow-up interview it was determined the victim consented to the sexual acts. Investigation established probable cause to believe the applicant committed the offense of cruelty and maltreatment of subordinates when the applicant engaged in an inappropriate sexual relationship with the victim and belittled the victim in a work environment in front of other Soldiers. Investigation established probable cause to believe the applicant committed the offense of Obstruction of Justice when the applicant instructed the victim to delete all text messages sent to the victim cell phone. Major [redacted] Special Victims Prosecutor, XVIII Airborne Corps, FBNC, opined probable cause did not exist to believe a sexual assault occurred. The facts do not describe a prima facie case of sexual assault. CM Prosecutor, XVIII Airborne Corps, FBNC, opined probable cause did not exist to believe a sexual assault occurred. The facts do not describe a prima facie case of sexual **assault**.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; self-authored letter; Memorandum, dated 17 May 2012.

**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 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 applicant's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of under other than honorable conditions. The applicant provided a copy of the separation authority decision memorandum reflecting the separation authority approved the applicant's discharge under the provisions of AR 635-200, Chapter 10, with a characterization of Under Other Than Honorable Conditions.

The applicant contends discharge was unjust and unfair. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The applicant contends being bullied into signing a Chapter 10, in which it was never explained the applicant would be reduced to E-1 and given an under other than honorable conditions discharge. The applicant's AMHRR is void of the specific facts and circumstances surrounding the applicant's discharge. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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.

The applicant contends good service, including a three combat tours. 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: PTSD and possible TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found evidence of PTSD in VA treatment records, at least in part associated with combat, and reference to potential TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has evidence of PTSD associated with combat per VA treatment records, although there is limited data to support active symptoms at the time of service. However, under liberal consideration guidelines, PTSD will be presumed to be relevant at time of service. PTSD does not result in the inability to distinguish right from wrong and adhere to the right, and there is no nexus between PTSD and cruelty/maltreatment and obstruction of justice of the nature described in the record.

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

b. Response to Contention(s):

(1) The applicant contends discharge was unjust and unfair. 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

(2) The applicant contends being bullied into signing a Chapter 10, in which it was never explained the applicant would be reduced to E-1 and given an under other than honorable conditions discharge. The Board considered this contention and determined that there is insufficient evidence to support the applicant was bullied into signing a Chapter 10. However, this action is a procedural step which is part of a normal process when an alternative forum is chosen. In this case, the charges were dismissed because the applicant requested to be discharged under the provisions of Chapter 10, AR 635-200, in lieu of trial by court-martial and the convening authority approved that request. There was no evidence presented to the Board to convince the Board of any mitigating circumstances.

(3) 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.

(4) The applicant contends good service, including a three combat tours. The Board considered the applicant's 7 years of service, including 3 combat tours in Afghanistan (2) and Iraq, and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's cruelty and maltreatment of subordinates by belittling and engaging in sex with subordinate, and obstruction based on the CID report.

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 PTSD and TBI did not excuse or mitigate the offenses of cruelty and maltreatment of subordinates by belittling and engaging in sex with subordinate, and obstruction based on the CID report. The Board also considered the applicant's contention regarding the discharge being unjust and unfair 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 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:**

2/21/2024

**X**

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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