

**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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the recent post-traumatic stress disorder (PTSD) diagnosis is linked to the applicant's combat and military service. The applicant believes the previous undiagnosed behavioral changes were consistent with PTSD and led the applicant to act in a manner which was inconsistent with the applicant's more than 18 year exemplary career during the applicant's fourth combat tour in 2005. The characterization of discharge was inequitable because a satisfactory review, considering the applicant's honorable service and good conduct, was not conducted during the discharge process. The applicant was not provided an opportunity to address the Commanding General prior to approval of the applicant's request for a chapter 10. The applicant had no history of adverse action in the applicant's military career or history of the charges levied against the applicant and the applicant believed this would be considered, but it was not. The applicant included a letter to the Board which expands on the applicant's military service and combat tours.

The applicant had battled anger, depression, and bouts of tears frequently in the past several years but refused to believe anything was wrong. The applicant never used drugs until this past year, when the applicant suffered a mental breakdown and reached a point of desperation. The applicant was admitted to two separate mental health facilities on three occasions in the last 12 months. The applicant is actively seeking treatment and counseling, which the applicant intentionally avoided until this year because the applicant did not want to be seen as weak. The discharge has prevented the applicant from finding meaningful employment and receiving Department of Veterans Affairs (VA) benefits to address the mental health issues. It is still difficult for the applicant to admit the applicant has PTSD and suspects the applicant is suffering from traumatic brain injury (TBI), which the applicant is unable to have properly evaluated.

The applicant's goal is to get the applicant's life back together, beginning with a fair assessment of the applicant's military service for a character of discharge which is consistent and equitable to the level of service the applicant provided the country and not based on a couple of months. The applicant's actions in Afghanistan were not indicative of the caliber of Soldier, leader, and noncommissioned officer (NCO) the applicant was and held oneself and others accountable to throughout the applicant's career. The applicant was shocked when the applicant received an other than honorable discharge upon requesting a chapter 10, believing the applicant's service would be taken into consideration. The applicant further details the contentions in a self-authored statement submitted with the application.

**b. Board Type and Decision:** In a records review conducted on 5 October 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 / General (Under Honorable Conditions)

**b. Date of Discharge:** 21 September 2005

#### **c. Separation Facts:**

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** NIF / Memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial [Applicant], 29 August 2005, reflects the applicant voluntarily requested discharge in lieu of court-martial, under AR 635-200, Chapter 10, because of the following charges preferred against the applicant under the Uniform Code of Military Justice authorized the imposition of a bad-conduct or dishonorable discharge:

Article 90 – Disobey a Superior Commissioned Officer  
Article 92 – Violation of General Order or Regulation  
Five charges of Article 134:

Fraternization;  
Obstructing Justice;  
General Article;  
Threat, Communicating; and  
Indecent Acts.

**(2) Legal Consultation Date:** 29 August 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:** 2 September 2005 / Under Other Than Honorable Conditions

### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 29 January 2004 / Indefinite

**b. Age at Enlistment / Education / GT Score:** 36 / 1 Year College / 115

**c. Highest Grade Achieved / MOS / Total Service:** E-8 / 31B5PXH, Military Police / 18 years, 7 months, 12 days

**d. Prior Service / Characterizations:** RA, 10 February 1987– 28 June 1990 / HD  
RA, 29 June 1990 – 10 May 1992 / HD  
RA, 11 May 1992 – 2 April 1995 / HD  
RA, 3 April 1995 – 8 September 1998 / HD  
RA, 9 September 1998 – 28 January 2004 / HD

**e. Overseas Service / Combat Service:** Bosnia, Germany, Panama, SWA / Afghanistan (2 January 2005 – 15 September 2005); Iraq – Kuwait (2 March 2003 – 1 January 2004); Kuwait (5 June 1990 – 4 October 1990)

**f. Awards and Decorations:** BSM, MSM-2, ARCOM-3, AAM-4, ASUA-2, AGCM-6, NDSM-2, AFEM, SWASM, KCM, NCOPDR-3, ASR, OSR-3, KLM (Kuwait), NATOMDL, ACM, GWOTEM, GWOTSM

**g. Performance Ratings:** October 2003 – March 2004 / Fully Capable  
 April 2004 – December 2004 / Among the Best  
 January 2005 – July 2005 / Marginal

**h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 19 March 2004, reflects on 14 March 2004, the applicant was apprehended for: operating a vehicle while intoxicated (off post) and unsafe lane usage (on post).

General Officer Memorandum of Reprimand, 31 March 2004, reflects the applicant was driving while intoxicated. After being stopped for reckless driving on 13 March 2004, the applicant was administered a field sobriety test, which the applicant performed poorly. The applicant was administered a chemical test for intoxication which indicated a blood alcohol content of .178. The applicant submitted a rebuttal statement.

Orders 262-0007, 19 September 2005, reflects the applicant was reduced from E-8 to E-1, effective 10 September 2005.

The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant's grade was restored to E-8.

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

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

**(1) Applicant provided:** Poplar Springs Hospital Discharge Summary, 15 April 2015, reflecting the applicant was admitted on 25 March 2015, because of a chief complaint or reason of depression, PTSD, and methamphetamine dependence. The applicant was referred to inpatient dual-diagnosis treatment from the applicant's incarceration because of ongoing difficulties with anxiety, depressed mood, and suicidal ideations. The applicant was discharged on 15 April 2015, with the following diagnoses:

- Major depressive disorder;
- Methamphetamine dependence;
- PTSD;
- Financial, legal, and familial stressors;
- Global Assessment of Functioning (GAF) of 65

Holly Hill Hospital Aftercare and Crisis and Instructions, 15 June 2015, reflecting the applicant was admitted into the hospital on 10 June 2015, because of suicidal ideations and PTSD. The applicant was diagnosed with bipolar I disorder, current or most recent episode manic, severe, and stimulant use disorder, moderate, amphetamine type substance. The applicant was discharged on 15 June 2015.

Poplar Springs Hospital letter, 19 January 2016, reflecting the applicant was treated on an inpatient basis at Poplar Springs Hospital from 25 March 2015 to 14 April 2015. The applicant's treatment focused on combat-related post-traumatic stress disorder.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; two DD Forms 293; two self-authored statements; military service record; applicant's biography; newspaper article, "Military Police NCOs vie for excellence"; Poplar Springs Hospital medical documents; Holly Hill Hospital medical documents; and numerous third party character references.

**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) 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.

(5) Paragraph 10-8a stipulates a discharge under other than honorable conditions is normally 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.)

(6) 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 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 general (under honorable conditions) discharge received by the applicant was appropriate under the regulatory guidance.

The applicant contends combat-related PTSD and suspected TBI affected behavior, which ultimately led to the discharge. The applicant provided several medical documents indicating diagnoses of major depressive disorder; methamphetamine dependence; combat-related PTSD; financial, legal, and familial stressors; Global Assessment of Functioning (GAF) of 65; bipolar I disorder, current or most recent episode manic, severe; and stimulant use disorder, moderate, amphetamine type substance. The applicant was hospitalized on two occasions to treat mental health conditions. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends a satisfactory review, considering the applicant's honorable service and good conduct was not conducted during the discharge process. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends exemplary service for more than 18 years, including four combat tours. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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 the Department of Veterans Affairs for further assistance.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good military service.

#### **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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD. Additionally, the applicant asserts Depression, TBI, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant is diagnosed and service-connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service. The applicant also self-asserts Depression and TBI.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate or excuse the discharge. The applicant is diagnosed and service-connected by the VA for PTSD. The applicant also self-asserts Depression and TBI. While the applicant was diagnosed 10 years post-service with Depression and Bipolar Disorder, there is no medical evidence to support that the applicant's Depression or Bipolar Disorder existed during military service. Also, there is no medical documentation to support applicant's asserted TBI. Therefore, the only potentially mitigating condition is PTSD. PTSD does not have a natural sequela with fraternization, obstructing justice, communicating threats, or indecent acts, so none of these charges are mitigated. And while PTSD can mitigate disobeying an officer and violating a general order in some cases due to the nexus with difficulty with authority, there is a lack of specification of the applicant's charges. The Board's Medical Advisor is unable to opine whether the applicant's PTSD contributed to this misconduct without the details of the charges.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD, asserted TBI, or asserted Depression outweighed the applicant's medically unmitigated offenses of fraternization, obstructing justice, communicating threats, or indecent acts.

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

(1) The applicant contends combat-related PTSD and suspected TBI affected behavior, which ultimately led to the discharge. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's PTSD or asserted TBI and Depression outweighed the applicant's medically unmitigated offenses of fraternization, obstructing justice, communicating threats, or indecent acts. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends a satisfactory review that considered the applicant's honorable service and good conduct including exemplary service for more than 18 years, and four combat tours was not conducted during the discharge process. The Board considered the totality of the applicant's record, including 18 years of service, multiple overseas and combat tours, and the numerous awards received, but determined that these factors did not outweigh the applicant's medically unmitigated offenses of fraternization, obstructing justice, communicating threats, or indecent acts.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but found that the applicant was charged with seven different offenses and that the applicant's misconduct was not an isolated event. Therefore, a discharge upgrade is not warranted.

(4) 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.

(5) 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 does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact the Department of Veterans Affairs for further assistance.

**c.** The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for 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 not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's PTSD and asserted TBI and Depression did not outweigh the applicant's medically unmitigated offenses of fraternization, obstructing justice, communicating threats, or indecent acts. The Board also considered the applicant's contention that the misconduct was an isolated incident and found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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 General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable.



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

**AR20210001729**

(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.

**10. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

1/4/2024

**X**

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

**Legend:**

AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs