

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, being under great stress and anxiety in 2004 and 2005 and was unable to cope with the stress and anxiety. The applicant attempted to end their life on post. The applicant states being admitted to Palo Verde Behavioral Health and was discharged on 31 May 2005, with a diagnosis of post-traumatic stress disorder and major depressive psychosis, unspecified. The physician recommended the applicant be discharged from the Army. Once the applicant returned to Fort Huachuca, the applicant was supposed to be seen by behavioral health to determine if they were fit for duty or separation. This was a crucial step not taken by the unit, which caused more mental issues for the applicant. The applicant believed their mental state was not good, and the unit failed them, so instead of going on PCS leave on 18 July 2005, the applicant went AWOL. The applicant contends being diagnosed with borderline personality disorder by behavioral health at Fort Huachuca in April 2014. The applicant believes they should have been separated for medical reasons due to being diagnosed with three different mental disorders, and the unit's failure to follow guidance (MEDCOM Regulation 40-38 and DODI 1332.38) and is reason enough to upgrade discharge.

b. Board Type and Decision: In a records review conducted on 7 July 2023, and by a 3-2 vote, the Board determined that the characterization of service was inequitable based on the applicant's PTSD and MDD partially mitigating the applicant's AWOL basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. 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: 27 June 2014**c. Separation Facts:**

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 29 April 2014, the applicant was charged with: Charge I: Violating Article 85, UCMJ, for Desertion from on or about 24 May 2005, to on or about 10 January 2014.

(2) Legal Consultation Date: 13 May 2014

(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: 22 May 2014 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 December 2012 / 5 years

b. Age at Enlistment / Education / GT Score: 27 / High School Graduate / 109

Highest Grade Achieved / MOS / Total Service: E-3 / 42F10, Human Resource Information System Management Specialist / 1 year, 6 months, 21 days

c. Prior Service / Characterizations: None

d. Overseas Service / Combat Service: None

e. Awards and Decorations: NDSM, GWOTSM, ASR

f. Performance Ratings: NA

g. Disciplinary Action(s) / Evidentiary Record: Military Police Report, dated 6 September 2005, reflects the applicant was apprehended for: Report of incident vehicle impounded (on post).

Military Police Report, dated 19 December 2012, reflects the applicant was apprehended for: Desertion (on post).

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

From "PDY" to "AWOL," effective 24 May 2005;
From "AWOL" to "DFR," effective 23 June 2005; and
From "DFR" to "PDY," effective 17 January 2014.

Military Police Report, dated 10 January 2014, reflects the applicant was apprehended for Desertion Apprehended by Civilian Authorities (off post).

Memorandum for Commander, dated 5 March 2014, Line of Duty Determination reflects the applicant was AWOL at the time of contracting HIV.

Grand Theft / Forged Instrument Conviction (State of Florida – civilian conviction), dated 24 April 2008

h. Lost Time / Mode of Return: AWOL for 8 years, 7 months and 24 days, 24 May 2005 to 17 January 2014. This period is not annotated on the DD Form 214 block 29.

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, dated 10 February 2014, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; The applicant was diagnosed with: Axis: Phase of life problem; Axis III: HIV Positive.

Report of Medical Examination, undated, the examining medical physician noted in the comments section: HIV and continue current training.

5. APPLICANT-PROVIDED EVIDENCE: Online application; MEDCOM Regulation 40-38 and DOD Directive.

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 635-40, paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

e. 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.

f. 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.

g. 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 being admitted to Palo Verde Behavioral Health and being discharged on 31 May 2005, with a diagnosis of post-traumatic stress disorder and major depressive psychosis, unspecified. A Report of Mental Status Evaluation, dated 10 February 2014, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong. The applicant was diagnosed with: Axis: Phase of life problem; Axis III: HIV Positive. A Report of Medical Examination, undated, the examining

medical physician noted in the comments section: HIV and continue current training. The MSE was considered by the command.

The applicant contends being diagnosed with borderline personality disorder by behavioral health at Fort Huachuca in April 2014. The applicant believes should have been separated for medical reasons due to being diagnosed with three different mental disorders, and the unit's failure to follow guidance (MEDCOM Regulation 40-38 and DODI 1332.38) and is reason enough to upgrade discharge. The applicant contends the discharge should have been for medical reasons. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

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: PTSD and major depressive disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant's PTSD and major depressive disorder existed during the applicant's military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD partially mitigates the applicant's AWOL/Desertion offense as PTSD is associated with avoidance behaviors such as AWOL and desertion. However, the applicant's PTSD does not fully mitigate the applicant's AWOL/Desertion offense as the length of time of that the applicant was AWOL/desertion (over eight (8) years) and the applicant's failure to return on the applicant's own volition is beyond that typically associated with PTSD-related avoidance. The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD partially mitigates the applicant's AWOL/Desertion offense as PTSD is associated with avoidance behaviors such as AWOL and desertion. However, the applicant's PTSD does not fully mitigate the applicant's AWOL/Desertion offense as the length of time of that the applicant was AWOL/desertion (over eight (8) years) and the applicant's failure to return on the applicant's own volition is beyond that typically associated with PTSD-related avoidance.

(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 applicant's PTSD and MDD outweighed the applicant's partially medically mitigated the AWOL/Desertion basis for separation and warrants a partial upgrade of the characterization of service. The Board determined that a full relief is not warranted based on the applicant's civilian offense of grand theft larceny which occurred during the time period that the applicant was AWOL.

b. Response to Contention(s):

(1) The applicant contends being admitted to Palo Verde Behavioral Health and discharged on 31 May 2005, with a diagnosis of post-traumatic stress disorder and major depressive psychosis, unspecified, and he should have received follow-up care. The Board considered this contention and accordingly voted to grant relief in the form of a partial upgrade of the characterization of service to General, Under Honorable Conditions based on the applicant's PTSD and MDD partially mitigating the AWOL basis for separation. However, the Board found an upgrade to Honorable is not supported by the evidence as the applicant's overall service, given the nature of the misconduct not being fully outweighed, was not sufficiently meritorious to warrant an Honorable discharge (applicant had significant legal involvement while in AWOL status, to include at least one episode of in which it appears he received probation for a theft/fraud-related charge).

(2) The applicant contends was diagnosed with borderline personality disorder by behavioral health at Fort Huachuca in April 2014. The applicant believes should have been separated for medical reasons due to being diagnosed with three different mental disorders, and the unit's failure to follow guidance (MEDCOM Regulation 40-38 and DODI 1332.38) and is reason enough to upgrade discharge. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

c. The Board determined that the characterization of service was inequitable based on the applicant's PTSD and MDD partially mitigating the applicant's AWOL basis for separation. Accordingly, the Board voted to grant relief in the form of a partial upgrade – General Under Honorable Conditions. However, the applicant may request a personal appearance hearing to address further 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 to change the applicant's characterization of service to General, Under Honorable Conditions based on the applicant's PTSD and MDD partially mitigating the applicant's AWOL basis for separation. Thus, the prior characterization is no longer appropriate. The Board found an upgrade to Honorable is not supported by the evidence of record as discussed in paragraph 9b(4) above. The Honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of accept conduct and performance of duty or is otherwise meritorious that any other characterization would be clearly inappropriate. The Board found that the applicant's overall service, given the nature of the misconduct not being fully outweighed, was not sufficiently meritorious to warrant an Honorable discharge applicant had significant legal involvement while in AWOL status, to include at least one episode of in which it appears he received probation for a theft/fraud-related charge).

(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.

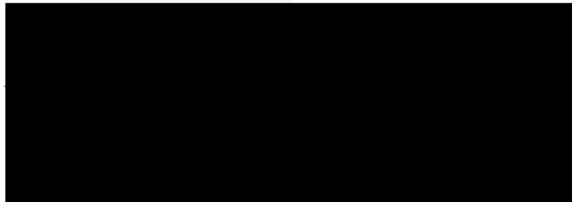
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

1/22/2024



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