

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. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, a combat veteran, who was court-martialed after a head surgery to remove tumors. The applicant contends being diagnosed with PTSD and Gulf War Syndrome.

b. Board Type and Decision: In a records review conducted on 9 August 2023, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, time since misconduct and the applicant paid the money owed to the government. 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 were proper and equitable and voted not to change them. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnoses warranting consideration prior to reentry of military service.

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: 10 June 2003**c. Separation Facts:**

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): The Charge Sheet is NIF, however the Special Court-Martial Order, dated 6 March 2003, reflects the applicant was charged with:

Charge 1: Article 107 Plea: Not Guilty. Finding: Dismissed. Three Specification for signing a false official statement on 13 June 2001.

Charge II: Article 121 Plea Guilty. Finding Guilty.

Specification 1: Larceny of U.S. currency, military property of the U.S. Government, of a value of about \$6,098.50, between on or about 13 June 2001 and 31 December 2001. Plea: Guilty. Finding: Guilty.

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Specification 2: Larceny of U.S. currency, military property of the U.S. Government, of a value of about \$1,751.41, on or about 29 June 2001. Plea: Not Guilty. Finding: Not Guilty.

(2) Legal Consultation Date: 4 March 2003 / The applicant's defense counsel on the behalf of the applicant requested a discharge in lieu of trial by court-martial. Special Court-Martial Order number 3 dated 6 March 2003, reflects the charges and specification were dismissed pursuant to the applicant's approved request for discharge in lieu of Trial by Court-Martial.

(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: 6 March 2003 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 16 January 1997 / 6 years

b. Age at Enlistment / Education / GT Score: 27 / some college / 112

c. Highest Grade Achieved / MOS / Total Service: E-5 / 75H30 Personnel Service Specialist / 13 years, 10 months, 10 days

d. Prior Service / Characterizations: RA, 31 July 1989 – 27 January 1993 / HD
RA, 28 January 1993 – 25 July 1995 / HD
RA, 26 July 1995 – 15 January 1997 / HD

e. Overseas Service / Combat Service: Korea, SWA / Saudi Arabia (3 December 1990 – 22 April 1991)

f. Awards and Decorations: AAM-6, AGCM-3, MUC, ASUA-2, NDSM-2, SWASM-3BSS, NCOPDR, ASR, OSR-2, KLM-SA, KLM-KU

g. Performance Ratings: December 1996 – January 99 / Fully Capable
February 1999 – January 2000 / Fully Capable
February 2000 – May 2000 / Among the Best
June 2000 – December 2000 / Marginal
January 2001 – May 2001 / Fully Capable
June 2001 – November 2001 / Marginal
December 2001 – July 2002 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Special Court-Martial Number 3, dated 6 March 2003, reflect the findings of guilty and the sentence were disapproved. The charges and specifications are dismissed. The accused's request for discharge pursuant to the provisions of Chapter 10, Army Regulation 635-200, approved on this date for the issuance of a discharge under other than honorable conditions. All rights, privileges, and property of which the accused has been deprived by virtue of these proceedings will be restored.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** Medical Progress Notes, dated 27 October 2015, reflect a diagnosis of PTSD and generalized anxiety disorder.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Online application; ARBA letter; DD Form 214; Order Number 3; Finding of Facts; Compensation and Pension Exam Report; Medical Records; Application of the new law memo.

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 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 diagnosis with PTSD and Gulf War Syndrome. The applicant provided a Medical Progress Notes, dated 27 October 2015, reflecting a diagnosis of PTSD and generalized anxiety disorder. The applicant's AMHRR is void of a mental status evaluation,

The applicant contends being a combat veteran, was court-martialed after head surgery to remove tumors. The AMHRR reflects the applicant served in Saudi Arabia from 3 December 1990 to 22 April 1991. The applicant's finding during the court-martial were disapproved. The charges and specifications were dismissed. The applicant's request for discharge pursuant to the provisions of Chapter 10 was approved on 6 March 2003. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

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, generalized anxiety disorder, anxiety disorder secondary to Frey's Syndrome.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found compelling evidence of PTSD, generalized anxiety disorder, and anxiety disorder due to a medical condition (Frey's Syndrome) relevant to applicant's period of service.

(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 charge sheet is not in file, although court-martial documentation shows multiple charges and specifications to include 1 specification with a guilty finding for larceny of US currency, military property of the United States. Following this determination, it appears the applicant was subsequently allowed to separate via Chapter 10. The presence of PTSD and generalized anxiety disorder noted as clinical diagnoses within VA records, and presumed present during service under liberal consideration guidelines despite absence of a service-connected finding, do not result in the inability to differentiate right from wrong and adhere to the right and therefore do not mitigate the larceny offense for which applicant was found guilty; an apparent prior diagnosis of Anxiety Disorder due to a Medical Condition (Frey's Syndrome) would also not result in any such mitigation for the same rationale. Consultation with an agency physician medical advisor indicated that none of the medical conditions in applicant's contentions to include Gulf War Syndrome, parotid adenoma with excision, or Frey's Syndrome would be considered a mitigating condition for the misconduct in question.

(4) Does the condition or experience outweigh the discharge? **No.**

b. Response to Contention(s):

(1) The applicant contends being diagnosis with PTSD and Gulf War Syndrome. The Board considered this contention and determined the applicant was diagnosed with PTSD and Frey's syndrome, however neither diagnosis mitigates or excuses applicant's larceny basis for separation. Ultimately, the Board voted to upgrade the characterization of service to General, Under Honorable Conditions due to applicant's length and quality of service, to include combat service, time since misconduct and the applicant paid the money owed to the government outweighing the misconduct.

(2) The applicant contends being a combat veteran, had a court-martial trail after head surgery to remove tumors. The Board considered this contention during proceedings, but ultimately did not address the contention due to applicant's length and quality of service, to include combat service, time since misconduct and the applicant paying the money owed to the government outweighing the misconduct.

c. The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service, time since misconduct and the applicant paid the money owed to the government. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable

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Conditions. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to applicant's BH diagnoses warranting consideration prior to reentry of military service. 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 because the applicant's length and quality of service, to include combat service, time since misconduct and the applicant paid the money owed to the government outweighed the applicant's misconduct of larceny. Thus, the prior characterization is no longer appropriate.

(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.

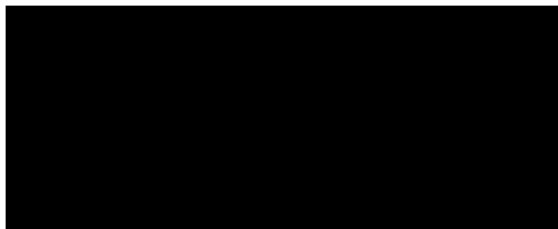
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

12/29/2023



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