

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 period under review is honorable. The applicant's narrative reason, RE Code and SPD code is being reconsidered.

The applicant seeks relief contending, in effect, being forced to resign in lieu of court martial for disobeying an order to stay away from the applicant's house. The applicant suffered from post-traumatic stress disorder (PTSD) and anxiety. On 28 March 2003, the applicant was wounded in Iraq, and after returning from Iraq, the applicant sought treatment through a private medical provider for PTSD because of embarrassment regarding the applicant's issues. The applicant eventually told the chain of command, but the chain of command did not offer any help. In January 2004, the applicant and the spouse were arrested for domestic violence. The applicant was instructed not to go back to the residence by the chain of command, not by the police or military police. The applicant was made to stay at the staff duty desk in civilian clothes. The applicant did not have any personal belongings. The applicant's spouse's parent transported the applicant to the residence to get clothes. The applicant and the spouse did not see each other. The applicant retrieved the clothes and returned to the staff duty desk. The applicant did not believe the applicant was disobeying a direct order. The applicant served the country honorably. After going through the war in Iraq and being wounded in combat, the applicant did not know what was going on mentally. The applicant returned to duty after being wounded and when the applicant returned to the States, the applicant sought treatment. The domestic violence charges were dropped against the applicant. The applicant suffered from a severe mental disorder and the VA rated the applicant 80 percent disabled.

b. **Board Type and Decision:** In a records review conducted on 5 December 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 600-8-24, Paragraph 3-13 / DFS / Honorable

b. **Date of Discharge:** 7 June 2004

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 9 March 2004, the applicant was charged with:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001929

Charge I: Violating Article 86, UCMJ: The Specification: On 13 January 2004, on two occasions, fail to go at the time prescribed to the appointed place of duty.

Charge II: Violating Article 90, UCM: The Specification: On 20 January 2004, willfully disobeyed a lawful command from Captain (CPT) J. R., a superior commissioned officer, to stay at Battalion Headquarters until relieved by Lieutenant Colonel (LTC) E. M. or Major (MAJ) M. O.

Charge III: Violating Article 92, UCMJ:

Specification 1: Between 12 and 30 July 2003, was derelict in the performance of duties by willfully failing to notify the chain of command the applicant was leaving and left the country of Kuwait.

Specification 2: Between 1 September 2003 and 1 January 2004, was derelict in the performance of duties by willfully failing to gather names of Soldiers wishing to reserve artwork depicting Operation Iraqi Freedom, prepare the battalion for MIP inspection, and remove or replace vehicles on display in the battalion area.

Charge IV: Violating Article 115, UCMJ: The Specification: On 12 July 2003, in a hostile fire pay zone, for the purposes of avoiding the duty as a battalion staff officer, feign a painful medical condition involving facial and other bodily scars.

Charge V: Violating Article 134, UCMJ: Between August and December 2003, dishonorably fail to pay debt to MilitaryLoans.com, in the sum of \$3161.28, which amount became due and payable on 12 December 2002.

(2) Legal Consultation Date: 25 March 2004

(3) Basis for Separation: Pursuant to applicant's request for Resignation, In Lieu of Trial by Court-Martial under the provisions of Chapter 3, AR 600-8-24.

(4) Separation Decision Date / Characterization: 29 April 2004 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 1 March 2002 / 4 years

b. Age at Appointment: / Education: 22 / Bachelor's Degree

c. Highest Grade Achieved / MOS / Total Service: O-3 / 19A, Armor / 5 years, 17 days

d. Prior Service / Characterizations: USARCG, 22 May 1999 – 17 August 1999 / NA
ARNG, 18 August 1999 – 31 July 2001 / HD
USARCG, 1 August 2001 – 28 February 2002 / NA

e. Overseas Service / Combat Service: SWA / Iraq (NIF); Kuwait (NIF)

f. Awards and Decorations: PH, NDSM, GWOTEM, GWOTSM, ASR

g. Performance Ratings: 2 February 2002 – 20 December 2002 / Best Qualified
21 December 2002 – 25 May 2003 / Fully Qualified
26 May 2003 – 26 January 2004 / Do Not Promote

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

Memorandum for Record, subject: Fraudulent Departure from Kuwait by [Applicant], 8 August 2003, reflects on 12 July 2003, the applicant left Kuwait and returned to Fort Stewart without permission or notifying the chain of command. The applicant lied to the attending medical personnel in order to be sent home. Once home, the applicant failed to follow the doctor's instructions and seek further treatment. When confronted after the battalion returned home, the applicant confessed the applicant left the country to see the spouse and to save the applicant's marriage.

MilitaryLoans.com, Letter of Indebtedness, 2 December 2003, reflects the applicant had an open account with the company, which was delinquent, with a balance of \$3161.28 and a past due amount of \$941. The debt was incurred on 12 December 2002.

Military Police Report, 10 January 2004, reflects the applicant was apprehended for: simple battery – DVA, disorderly house, and warrant served felony deposit account fraud (civil – off post).

Commander, USAHRC message, 7 May 2004, subject Resignation for the Good of the Service (RFGOS), reflects the applicant's RFGOS was approved and HRC requested the Headquarters, issue orders effecting the applicants discharge with a General (Under Honorable Conditions). The DD Form 214 would cite the message and Chapter 3, AR 600-8-24. The SPD Code would be DFS in accordance with AR 635-5-1.

The applicant provided two Garden City Police Department Citation Disposition, 12 October 2007, with attached citations, reflecting on 27 October 2004, the charges of maintaining a disorderly house and simple battery had been dismissed without prejudice.

The applicant provided U.S. Army Human Resources Command (HRC) letter, 8 April 2013, reflecting Honorable T. G., requested the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) on behalf of the applicant. The HRC responded the office was unable to locate the applicant's DD Form 214 and in lieu of the DD Form 214, produced AHRC Form 3553-1 (Statement of Military Service).

Statement of Military Service, 22 May 2020, reflects the applicant's date of entry as 15 September 2001 and separation date as 7 June 2004. The applicant was separated with an honorable discharge, with the case of separation as completion of required service.

Four Developmental Counseling Forms, for but not limited to:

Failing to be at the appointed place of duty at the time prescribed 0600 and 0900 formations,

Failing to follow a direct order to remain at the battalion headquarters until relieved,

Being arrested for domestic violence and having an outstanding warrant for arrest for felony debt,

Failing to meet the suspense as the point of contact for collecting reservations,

Inability to perform simple staff functions to develop a plan to prepare the battalion for MIP inspection, and

Unsatisfactory performance.

i. Lost Time / Mode of Return: NIF

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs Medical Center records, between 7 October 2015 and 12 August 2018, reflecting the applicant was diagnosed with PTSD, TBI, persistent depressive disorder, and unspecified anxiety disorder.

Department of Veterans Affairs (VA) letter, 14 February 2016, reflecting the VA rated the applicant 80 percent service-connected disabled.

Department of Veterans Affairs eBenefits webpage, 14 February 2016, reflecting the VA rated the applicant service-connected disabled for headaches associated with traumatic brain injury (TBI), 30 percent; mild TBI with cognitive issues with headaches, 10 percent; and post-traumatic stress disorder (PTSD), combat, unspecified depressive disorder and traumatic brain injury, 70 percent.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: Two DD Forms 149; DD Form 293; Statement of Military Service; self-authored statement; Purple Heart Certificate; Purple Orders; ARNG separation orders; Army separation orders; VA letter; VA eBenefits webpage; medical records; two Garden City Police Department Citation Dispositions, with citations; Army Review Boards Agency Case Tracking System page; two USAHRC letters; National Personnel Records Center letter; ADRB Case report and Directive Case Number AR20090003375; ADRB letter.

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 600-8-24 (Officer Transfers and Discharges), sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23, provides the authorized types of characterization of service or description of separation.

(2) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(3) Chapter 3, prescribes the rules for processing voluntary resignations. Except as provided in paragraph 3-1b, any officer of the RA or USAR may tender a resignation under the provisions of this chapter. SECARMY (or designee) may accept resignations and orders will be issued by direction of the CG, HRC. An officer whose resignation has been accepted will be separated on the date specified in DA's orders or as otherwise directed by the DA. An appropriate discharge certificate as specified by the CG, HRC, will be furnished by the

appropriate commander at the time the officer is separated. The date of separation, as specified or directed, will not be changed without prior approval of HQDA nor can valid separation orders be revoked subsequent to the specified or directed date of separation.

(4) Paragraph 3-9 (previously 3-13), outlines the rules for processing requests for resignation for the good of the Service in lieu of trial by a general court-martial.

(5) Paragraph 3-9i, states an officer separated under this paragraph normally receives characterization of service of under other than honorable conditions.

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 "DFS" as the appropriate code to assign Officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 3-13, in lieu of trial by court-martial.

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 contends suffering from PTSD and anxiety, the conditions affected behavior, which led to the discharge; the VA rated the applicant 80 percent service-connected disabled. The applicant provided several medical documents indicating the VA rated the applicant for headaches associated with TBI, 30 percent; mild TBI with cognitive issues with headaches, 10 percent; and PTSD, combat, unspecified depressive disorder and TBI, 70 percent. Additionally, the applicant's medical records reflect a diagnosis of persistent depressive disorder and unspecified anxiety disorder. The applicant's AMHRR is void of a mental status evaluation.

The applicant contends the charge of domestic violence was dismissed. The applicant provided evidence the charges of maintaining a disorderly house and simple battery were dismissed without prejudice. The applicant's AMHRR shows the applicant's court-martial charges did not involve any charges regarding assault or any charges related to domestic violence.

The applicant contends the command did not offer any help with the applicant's mental health issues. There is no evidence in the applicant's AMHRR the applicant sought assistance or reported the mental health concerns.

The applicant contends good service, including a combat tour.

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 [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 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, MDD, Mood Disorder, Anxiety Disorder, and TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant's PTSD, MDD, Mood Disorder, Anxiety Disorder, and TBI existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD mitigates the applicant's AWOL and FTR offenses as there is a nexus between these offenses and avoidance. However, the applicant's PTSD, MDD, Mood Disorder, Anxiety Disorder, and TBI do not mitigate the applicant's offenses of willfully disobeying a superior commissioned officer, failure to obey an order or regulation, malingering and failing to pay debts as this misconduct is not within the normal sequela of PTSD, MDD, Mood Disorder, or Anxiety, and there is nothing in the record to support the applicant's mTBI was of a severity to impair the applicant's ability to differentiate between right and wrong and adhere to the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberally consideration, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD, MDD, Mood Disorder, Anxiety Disorder, and TBI do not outweigh the medically unmitigated misconduct - disobeying an order, failed to obey a regulation, malingering, and failing to pay debts.

b. Response to Contention(s):

(1) The applicant contends suffering from PTSD and anxiety, the conditions affected behavior, which led to the discharge, and the VA rated the applicant 80 percent service-connected disabled. The Board considered this contention and determined the applicant's PTSD partially outweighed the basis of separation - leaving theater early and FTRs; however, the applicant's PTSD, MDD, Mood Disorder, Anxiety Disorder, and TBI do not outweigh the medically unmitigated misconduct - disobeying an order, failed to obey a regulation, malingering, and failing to pay debts. Therefore, the discharge is proper and equitable.

(2) The applicant contends the command did not offer any help with the applicant's mental health issues. The Board considered this contention and determined there is insufficient evidence in the applicant's record to support this contention. Ultimately, 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.

(3) The applicant contends good service, including a combat tour. The Board considered the applicant's 5 years of service, including a combat tour in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's medically unmitigated misconduct of disobeying an order, failed to obey a regulation, malingering, and failing to pay debts.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted the applicant's 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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001929

(1) The Board determined the discharge is proper and equitable as the ABCMR upgraded the discharge with a Character of Honorable, therefore, no further relief is available.

(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 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

X

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