ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE
AR20210005086

1. **Applicant's Name:** [redacted]

   a. **Application Date:** 8 September 2020

   b. **Date Received:** 9 September 2020

   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, the applicant was experiencing hardship which led the applicant to stop reporting for drill. The applicant completed the first term of service without incidence and only had 7 months remaining on the second enlistment when the applicant stop drilling. The applicant holds a Real Estate Brokers License and operates a brokerage and is a homeowner.

   b. **Board Type and Decision:** In a records review conducted on 17 January 2024, and by a 4-1 vote, the board determined that the characterization of service was inequitable based on the applicant's in-service mitigating factors (length, quality) and post service accomplishments mitigate the misconduct of failure to report to drill. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to honorable.
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:** NIF / AR 135-178 / NIF / NIF / NIF / Under Other Than Honorable Conditions

   b. **Date of Discharge:** 20 October 2016

   c. **Separation Facts:**

      (1) **Date of Notification of Intent to Separate:** NIF

      (2) **Basis for Separation:** The applicant was informed of the following reasons: NIF.

      (3) **Recommended Characterization:** NIF

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

      (5) **Administrative Separation Board:** NIF

      (6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 27 June 2013 / 3 years (USAR)

b. Age at Enlistment / Education / GT Score: 21 / bachelor's degree / NIF

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92A10, Automated Logistical Specialist / 8 years, 6 months, 5 days.

d. Prior Service / Characterizations: RA, 17 July 2008 – 17 December 2008 (IADT)
(Concurrent Service)
USAR, 15 April 2008 – 27 June 2013 / HD

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, ASR

g. Performance Ratings: 1 August 2013 – 31 July 2014 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: NIF

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, personal statement, Real Estate Broker's License, USAR Discharge Order, DA Form 638 (Recommendation for Award), AAM Certificate, ARCAM Memorandum, Promotion Orders, Academic Accolades, COA, Certificate of Completion-2, Enlistment contract

6. POST SERVICE ACCOMPLISHMENTS: The applicant holds a Real Estate Brokers License and operates a brokerage and is a homeowner.

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), dated 25 September 2019, 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 135-178 prescribes the policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) Paragraph 2-9a prescribes an honorable characterization 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.

(2) Paragraph 2-9b, prescribes, if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as general (under honorable conditions). Characterization of service as general (under honorable conditions) is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

(3) Paragraph 2-9c, prescribes the service may be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons, and under other circumstances.

(4) Chapter 13 (previously Chapter 14) provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the Army Reserve. The applicant's AMHRR does contain a properly constituted discharge order: Orders 16-287-00022, dated 13 October 2016. The orders indicate the applicant was discharged under the provisions of AR 135-178, with a characterization of service of under other than honorable conditions.

The applicant contends, in effect, the applicant was experiencing hardship which led the applicant to stop reporting for drill. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends, in effect, the applicant completed the first term of service without incident and only had 7 months remaining on the second enlistment when the applicant stopped drilling. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant holds a Real Estate Brokers License, operates a brokerage and is a homeowner. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

If the applicant desires a personal appearance hearing, it will be the applicant's responsibility to meet the burden of proof since the discharge packet is not available in the official record.

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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience excuse or mitigate the discharge? **N/A**

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

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable. The board considered the request during proceedings and granted an upgrade based on the applicant's in-service mitigating factors (length, quality) and post service accomplishments outweighing the misconduct of failure to report to drill. Therefore, the prior characterization is no longer appropriate.

(2) The applicant contends they were experiencing family and financial hardship which led the applicant to stop reporting for drill. The Board considered this contention during proceedings, and the contention was addressed by granting an upgrade based on the information outlined above in paragraph 9b (1).

(3) The applicant contends they completed their first term of service without incident and only had 7 months remaining on their second enlistment when the applicant stopped drilling. The Board considered this contention during proceedings, and the contention was addressed by granting an upgrade based on the information outlined above in paragraph 9b (1).

c. The Board determined that the characterization of service was inequitable based on the applicant's in-service mitigating factors (length, quality) and post service accomplishments that mitigate the misconduct of failure to report to drill, and thus, warranting relief. 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 Honorable based on the applicant's in-service mitigating factors (length, quality), severe family matters, and post service accomplishments. These factors outweighed the misconduct of failure to report to drill. Therefore, the prior characterization is no longer appropriate.

(2) As there were no Reasons/SPD Codes/RE-codes listed on the applicant's discharge paperwork due to being in the Army Reserves, no upgrade actions are required for these items.

10. BOARD ACTION DIRECTED:

a. Issue a New DD-214 / Separation Order: Yes

b. Change Characterization to: Honorable

c. Change Authority to: No Change

Authenticating Official:

2/2/2024

[redacted]

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