

**1. Applicant's Name:**

- a. **Application Date:** 18 December 2020
- b. **Date Received:** 18 December 2020
- 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 Under Other than Honorable Conditions. The applicant requests an upgrade to Honorable and a narrative reason change, along with upgrading their separation and reentry codes.

b. The applicant seeks relief contending, they have served honorably during their 13 years in service. They wish to have their discharge changed due to their traumatic brain injury (TBI) and posttraumatic stress disorder (PTSD) which was undiagnosed until they left the military. They would either like to finish their 7 years left on active duty or be able to find government work.

c. **Board Type and Decision:** In a telephonic personal appearance conducted on 5 February 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. *Please see Board Discussion and Determination 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:** 16 July 2018

**c. Separation Facts:**

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

(2) **Basis for Separation:** Pursuant to the applicant's request for voluntary discharge under provision of AR635-200, Chapter 10, In Lieu of Trial by Court-Marital.

(3) **Recommended Characterization:** NIF

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

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

(6) **Separation Decision Date / Characterization:** 13 June 2018 / Under Other than Honorable Conditions

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** (3rd Reenlistment) 18 May 2017 / 6 years

**b. Age at Enlistment / Education / GT Score:** 31 / Associate Degree / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-6 / 13B1P 5W 1K Cannon Crewmember / 12 years and 3 months

**d. Prior Service / Characterizations:**

- RA (27 May 2012 – 17 May 2017) Honorable
- RA (11 October 2005 – 26 May 2012) Honorable

**e. Overseas Service / Combat Service:**

- Germany / None (20 March 2006 – 11 February 2011)
- SWA / Afghanistan (11 May 2007 – 25 July 2008)  
(22 November 2009 – 4 November 2010)  
(22 February – 4 September 2012)

**f. Awards and Decorations:** ARCOM-5, AAM-3, MUC-2, VUA, NDSM, GWOTSM, ACM-2CS-2, NOPDR, ASR, OSR, NATOMDL, CAB, SRPRCHTB, AIR ASLT, MQBE-R

**g. Performance Ratings:**

- 28 February 2014 – 27 February 2015 / Among the Best
- 27 February 2017 – 26 February 2018 / Qualified

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

(1) On 18 May 2017, the applicant completed their 3rd reenlistment for 6 years as an SSG.

(2) The Enlisted Record Brief provides the applicant deployed three times to Afghanistan for a total of 34 months; They served overseas in Germany for nearly 5 years. Their awards include but are not limited to five Army Commendation Medals, three Army Achievement Medals, two Army Good Conduct Medals, and Afghanistan Campaign Medal with 2 Campaign Stars. On 19 June 2018, they were flagged, Suspend Favorable Personnel Actions (FLAG), for a field-initiated involuntary separation (BA).

(3) On 5 April 2018, the applicant was charged in violation of Article 121, UCMJ for stealing money, property of the government, valuing \$500 on or about 28 February 2017. Charges were referred to the special court-martial convened by CMCO number 7, dated 23 March 2018 as amended by CMCO number 9, dated 23 March 2018.

(4) The applicant's request to be voluntarily discharged in lieu of trial by court-martial IAW AR 635-200, Chapter 10, is missing from the record as well as the defense counsel's acknowledgement of the request.

(5) Notwithstanding administrative irregularity, on 12 June 2018, the battalion commander recommended approval of the applicant's voluntary discharge request with a characterization of service of Under Other than Honorable Conditions.

(6) On 13 June 2018, the separation approval authority approved the separation with a characterization of service of Under Other than Honorable Conditions and reduction to the

lowest enlisted rank.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 16 July 2018 with an Under Other than Honorable Conditions characterization of service. Their total net service is 12 years, 10 months, and 16 days.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** The applicant provided Department of Veterans Affairs Notes from Great Lakes Health System, dated 3 December 2020, indicated they were diagnosed with PTSD, chronic, moderate; and Major Depressive Disorder (MDD), moderate. Additionally, VA Disability Ratings, dated 14 December 2020, in effect, reflecting the applicant was rated 30 percent service-connected disability for Other Specified Trauma and Stressor Related Disorder, 10 percent for Traumatic Brain Injury; and 50 percent for Obstructive Sleep Apnea. The applicant was awarded a combined disability rating of 100 percent.

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293 (Application for the Review of Discharge); Veteran Affairs (VA) Medical Records; VA.gov Disability Rating Printout; VA Summary of Benefits Letter; DD Form 214 (Certificate of Release or Discharge from Active Duty)

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with this 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), 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 635-200 provides the basic authority for the separation of enlisted personnel.

(1) 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.

(2) 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.

(3) An 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.

**(4)** Chapter 10, Discharge in Lieu of Trial by Court Martial is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable.

**(a)** After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions.

**(b)** The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel
- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

**(5)** Chapter 15 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.

**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:

**(1)** RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

g. Manual for Courts-Martial (2012 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military laws is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 121 (larceny) states in subparagraph wrongful appropriation of a value of \$500 or less, the maximum punishment consists of bad-conduct discharge, forfeiture of all pay and allowances and confinement for 1 year.

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

a. The applicant requests an Honorable discharge, a narrative reason change, along with upgrading their separation and reentry codes. A review of the AMHRR provides there was administrative irregularity in the proper retention of official military records, specifically, the applicant's voluntary request for discharge IAW AR 635-200, Chapter 10, and the defense counsel's acknowledgement of the request.

(1) A review of the available evidence provides the applicant completed their third reenlistment in the Regular Army as an SSG. They deployed to combat in Afghanistan for 34 months, as well as serving 5 years in Germany. The applicant was charged for stealing money, in the amount of \$500, property of the government. Review of the records provide administrative irregularity in the proper retention of records, specifically the voluntary request and defense counsel acknowledgement is missing from the record. However, the available evidence does provide the separation authority's approval of the voluntary request. They were separated with an Under Other than Honorable Conditions and reduced to the lowest enlisted grade. The applicant completed 1 years, 1 month, and 29 days of their 6-year contractual obligation.

(2) A medical and mental examination was not required for the voluntary discharge ILO trial by court-martial but could have been requested by the Soldier.

b. Army Regulation 635-200 states Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a soldier who is discharge 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. For 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.

c. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In

reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

**9. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE:** In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

**a. The applicant submitted the following additional document(s):** Applicant provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.

**b. The applicant presented the following additional contention(s):** N/A.

**c. Counsel / Witness(es) / Observer(s):** N/A.

**10. 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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder with Mixed Mood and Conduct and Personality Disorder, Generalized Anxiety Disorder, Traumatic Brain Injury, self-asserted Post Traumatic Stress Disorder.

**(2)** Did the condition exist or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder with Mixed Mood and Conduct and Personality Disorder.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that trauma and TBI would impair an individual's ability to commit fraud/larceny as the actions require multiple steps, over time reflecting conscious, purposeful, and coordinated steps reflective of intact cognitive processes. Accordingly, there is no nexus between trauma/TBI and the basis for separation. Rather, the applicant's diagnosed Personality Disorder drove the misconduct which was merely a continuation of a pattern of misconduct and violation of others' rights and societal norms. While a Personality Disorder provides context, it is not mitigating as an individual understands right from wrong, can make conscious and clear choices, and is aware of the consequences of their actions if caught.

**(4)** Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder with Mixed Mood and Conduct and Personality Disorder, Generalized Anxiety Disorder, Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated larceny offense.

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

**(1)** The applicant contends that the applicant's previously undiagnosed PTSD and TBI affected the applicant's actions. The Board liberally considered this contention but determined

that the available evidence did not support a conclusion that the applicant's Adjustment Disorder with Mixed Mood and Conduct and Personality Disorder, Generalized Anxiety Disorder, Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated larceny offense.

(2) The applicant contends good service. The Board considered the applicant's 13 years of service, including overseas service in Germany and multiple combat tours in Afghanistan and the numerous awards received. The Board determined that the applicant's record does not outweigh the applicant's medically unmitigated larceny offense.

(3) The applicant contends desiring to rejoin the Military Service and complete an active duty career before pursuing government work. The Board considered this contention but that a change to the applicant's reentry eligibility code is not warranted because there are not sufficient factors to mitigate the applicant's larceny offense.

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 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 Adjustment Disorder with Mixed Mood and Conduct and Personality Disorder, Generalized Anxiety Disorder, Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder did not outweigh the applicant's medically unmitigated larceny offense. The Board also considered the applicant's contention regarding good service 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge.

(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.



**11. 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:**

3/29/2024

X

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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