1. Applicant's Name:

- a. Application Date: 1 February 2021
- b. Date Received: 1 February 2021
- c. Counsel: None
- 2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:
 - a. Applicant's Requests and Issues:

(1) The current characterization of service for the period under review is under than honorable conditions. The applicant requests an upgrade of the characterization of their service in the U.S. Army Reserve (USAR) to either general (under honorable conditions) or honorable and their rank/grade be reinstated from private/E-1 back to specialist/E-4.

(2) The applicant seeks relief stating when they moved to Germany for civilian employment in July 2001, they received an honorable discharge from the U.S. Army National Guard (ARNG) and transferred to the USAR.

(3) In late 2004, mobilization orders were sent to their parents address in the United States, when they actually received these orders, they responded promptly initiating an application for an exemption. Their request was denied, and their appeals were also denied. At that time, a possible mobilization would have had a catastrophic economic consequence. Their employment in Germany was subject to none of the protections as they are for U.S. Army reservist in the United States. Their right to work in Germany would have ended if they were to depart. They had medical issues that were incompatible with continued military service. Neither their medical conditions nor the unique economic circumstances of living and working in Germany were given fair consideration.

(4) Their initial enlistment in the ARNG was based on a waiver for problems with their left ear and permanent partial loss of hearing. They were ultimately diagnosed with cholesteatoma, with a surgery in 2005 and another procedure in 2006. A physician used by the U.S. Army for Soldiers with Ear Nose and Throat issues confirmed their diagnosis. Since it was inconceivable to them that the U.S. Army would have willingly sought to hinder their treatment for and recovery from a serious condition, they were left to conclude that when their request for an exemption for mobilization was considered, these key factors were not taken into account.

(5) Their circumstances at the time were exceptional and physically incompatible with military service or appearing for evaluation. They did their best to show this at the time and have never understood why they merited anything but an Honorable discharge.

b. Board Type and Decision: In a records review conducted on 14 February 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Commission of a Serious Offense / Army Regulation 135-178, Paragraph 12-1c / NIF / Under Other Than Honorable Conditions

b. Date of Discharge: 14 September 2007

c. Separation Facts:

- (1) Date of Notification of Intent to Separate: 13 March 2007
- (2) Basis for Separation: ordered to active duty and failed to obey that order.
- (3) Recommended Characterization: Under Other Than Honorable Conditions
- (4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: 6 September 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. Date / Period of Enlistment: 27 July 2001 / 6 years (USAR)
- b. Age at Enlistment / Education / GT Score: 17 / HS Graduate / 130

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42A1O, Human Resources Specialist / 7 years, 7 months, 1 day.

- d. Prior Service / Characterizations: ARNG, 4 February 2000 26 July 2001 / HD IADT, 7 August 2000 – 13 January 2001 / UNC (Concurrent Service)
- e. Overseas Service / Combat Service: None
- f. Awards and Decorations: ASR
- g. Performance Ratings: NA
- h. Disciplinary Action(s) / Evidentiary Record:

(1) A Standard Form 88 (Report of Medical Examination), dated 7 December 1999, reflects the applicant is not qualified for service. [Note: The National Guard Bureau memorandum approving the applicant's enlistment waiver for their medical condition is not in evidence for review.]

(2) Headquarters, 99th Regional Support Command Orders 02-275-00177, dated 2 October 2002, transferred the applicant to the USAR Control Group (Annual Training), effective that date with the reason as inactivation, reorganization, or relocation.

(3) U.S. Army Human Resources Command (HRC) Orders M-09405386, dated 19 September 2004, reflects the applicant was ordered to report for a period of active duty for mobilization processing with a reporting dated of 26 October 2004. The purpose was a partial mobilization in Support of Operation Iraqi Freedom. The applicant was instructed, "if upon reporting for active duty you fail to meet deployment medical standards (whether because of a temporary or permanent medical condition), then you may be released from active duty, returned to your prior reserve status, and returned to your home address, subsequent order to active duty upon resolution of the disqualifying medical condition."

(4) A HRC memorandum, subject: Legal Review of Delay and Exemption Board (DEB) Recommendation – [Applicant], dated 3 January 2006, the assistant command judge advocate, responds to the request for a legal opinion regarding the DEB recommendation concerning the applicant's request for exemption from involuntary mobilization due to extreme personal hardship, stating –

(a) The DEB recommended the applicant's request be denied, and they report as ordered [for mobilization]. There is no legal objection to the DEB recommendation.

(b) The applicant claims they should be exempt from mobilization because they had surgery on their ear and will have surgery on their nasal passage. They previously submitted a request for exemption based upon their civilian employment in Germany and shoulder, hip, and urinary problems. They were granted a 30-day delay and their appeal to HRC was denied. The Command Surgeon has reviewed the applicant's documentation and has concluded the applicant should report as ordered and may be evaluated at the mobilization station as required.

(5) Twelve HRC Orders, dated 27 October 2004 through 24 January 2006, changed the applicant's reporting dated twelve times.

(6) A memorandum, a Cover Letter for the Commander of HRC, subject: Mobilization Failure to Report Soldier Verification, undated, the chief, Mobilization Accountability Assurance Team stated they have determined that the applicant was aware of their mobilization based on verbal contact via telephone with HRC and verbal or written contact with HRC requesting a delay or exemption from mobilization. The Remarks reflect the applicant stated on 21 April 2006 that they will not report for mobilization.

(7) A HRC Letter dated 2 October 2006 informed the applicant -

(a) On 19 September 2004, they were involuntary mobilized to active duty in the U.S. Army, pursuant to the Presidential Executive Order of 14 September 2001. To date, they applicant has not reported to their mobilization station, as required by their orders.

(b) Their failure to report has placed them in violation of the Uniform Code Military Justice and they will soon be considered as a failure to report to their place of duty. It is unfortunate that the Commander, HRC has to take this final action to locate them. If the applicant fails to report to their duty station and fail to contact the Mobilization Accountability Assurance Team by 5 September 2006, they will be considered for administrative separation under adverse conditions.

(8) A memorandum, HRC, subject: Commander's Report for Separation – [Applicant], dated 4 January 2007, the Human Resources Assistance, Transition and Separation Branch, recommends the applicant be separated from the USAR and that their service be characterized as Under Other Than Honorable Conditions. Additionally, the applicant was issued mobilization orders, dated 19 September 2004. They failed to submit a request through the Delay and Exemption Team. Information has been received that has verified they have failed to report as ordered. The applicant's refusal to comply with mobilization orders reflects they have no potential for future service. Accordingly, the circumstances of this case clearly indicate no other disposition of this case is appropriate. At this time the applicant has not been notified of any pending involuntary separation action from the Individual Ready Reserve.

(9) A memorandum, HRC, subject: Notification of Separation Proceedings under Army Regulation 135-178, dated 13 March 2007, the commander notified the applicant of the initiation of actions to separate them from the USAR. The reason for the proposed action is that the

applicant was ordered to active duty and failed to obey that order. The commander recommended the applicant receive an Under Other Than Honorable Conditions characterization of service. [Note: a Postal Service Form 3800 (Certified Mail Receipt) reflects the Notification of Separation Memorandum was signed for on 22 March 2007 and the signature is unidentifiable.]

(10) A memorandum, HRC, for the Commanding General, subject: Involuntary Separation – [Applicant], dated 9 April 2007, responds to the request for a legal review regarding the involuntary separation of the applicant, with an Other Than Honorable Conditions discharge and reduction to the rank/grade of private/E-1, for failing to report as ordered. The assistance command judge advocate states:

(a) There is no legal objection to the involuntary separation under the provision of Army Regulation 135-178, paragraph 12-1c (Misconduct). The applicant was issued mobilization orders dated 19 September 2004. The applicant's mother contacted HRC on 28 September 2004 to obtain information on the DEM process, as the applicant is living in Germany. The applicant submitted a request for exemption, which was disapproved. The applicant indicated they wished to appeal; however, an appeal was not received. During the processing of the applicant's exemption request, their orders were amended twelve times, with a final report date of 26 March 2006. The applicant has failed to comply with their mobilization orders and remains absent from their place of duty.

(b) On 15 March 2007, the applicant was sent a Notification of Proposed Separation memorandum vial the United States Postal Service, to the most recent address furnished by the applicant. On 22 March 2007, the notification was successfully delivered to the Soldier's address, but the signature on the return receipt is unidentifiable.

(11) A memorandum, HRC, subject: Involuntary Separation – [Applicant], dated 6 September 2007, the separation authority approved the involuntary separation of the applicant for misconduct under the provisions of Army Regulation 135-178, paragraph 12-1c (Misconduct). The applicant will be issued an Under Other Than Honorable Conditions discharge from the USAR and will be reduced in rank/grade to private/E-1.

(12) HRC Orders # B-09-790196, dated 13 September 2007, reflects the applicant's reduction in rank/grade from specialist/E-4 to private/E-1, effective that day.

(13) HRC Orders D-09-719653, dated 17 September 2007, reflects the applicant's discharge from the USAR, effective 14 September 2007, with an Under Other Than Honorable Conditions characterization of service.

(14) HRC Orders M-09-405386R, dated 19 September 2007, reflects the applicant's mobilization order, dated 19 September 2004 is revoked.

i. Lost Time / Mode of Return: NIF

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Letter to Board, with attachments reflecting the applicant's medical condition at the time they were ordered to active duty.

6. POST SERVICE ACCOMPLISHMENTS: none submitted with application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (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 U.S. Code, Section 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 (DoD) 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; Title 10 U.S. Code; Section 1553, DoD Directive 1332.41, and DoD Instruction 1332.28.

d. Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures), dated 1 March 2005, defined ARNG of the United States and USAR service obligations. It prescribed policies and procedures governing the various types of service obligations and participation requirements.

(1) Paragraph 3-3 (Satisfactory Participation of USAR Control Group Soldiers) stated Soldiers assigned to the Control Groups Annual Training have participation requirements. They are satisfactory participants if they –

- complete and promptly return all military correspondence.
- promptly report any change of address to the Commander, HRC
- comply with other requirements imposed by the Commander, HRC
- report for a one day muster each year when directed by proper authority.

(2) Chapter 4 (Absences) governed absences from Ready Reserve training, it applies to all Army National Guard of the United States (ARNGUS) and USAR Soldiers. Soldiers should be aware of their service obligation as assigned Soldiers of the IRR. Soldiers should further be aware of the prerequisites for satisfactory participation and the actions that may result from unsatisfactory participation. This information is provided to IRR Soldiers. Soldiers who relocate outside the United States may be transferred/reassigned to the USAR Control Group.

e. Army Regulation 135-178 (Enlisted Administrative Separations), dated 13 April 2007, set policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of ARNGUS and USAR enlisted Soldiers for a variety of reasons.

(1) 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. When a Soldier is discharged before expiration of the service obligation for a reason for which an honorable characterization is discretionary, the following considerations apply, to include –

(a) An honorable characterization may be awarded when disqualifying entries in the Soldier's military record are outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service.

(b) It is a pattern of behavior and not an isolated instance which should be considered the governing factor in determining the character of service.

(c) Unless otherwise ineligible, a Soldier may receive an honorable characterization of service if he or she has, during his or her current enlistment, or any extension thereof, received a personal decoration.

(2) A General discharge is if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

(3) A Under Other Than Honorable Conditions Discharge, service may, but is not required to be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, homosexual conduct, unsatisfactory participation, or security reasons. The Adjutant General will direct reduction in grade to private/E-1 when the Soldier is discharged under other than honorable conditions.

(4) Chapter 12 (Misconduct) stated a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more circumstances to include, paragraph 12-1c (Commission of a Serious Offense) stated commission of a serious military or civilian offense if the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the Uniform Code of Miliary Justice (UCMJ).

(5) Paragraph 12-8 (Characterization of Service) stated characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (Under Honorable Conditions) may be warranted. 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 inappropriate.

f. Army Regulation 601-25 (Delay in Reporting for and Exemption from Active Duty, Initial Active Duty for Training, and Reserve Forces Duty) dated 7 March 1986, prescribed policy, and procedures for delay in and exemption from entry on active duty, initial active duty for training, and Reserve Forces Duty for members of the ARNGUS, and the USAR. Exceptions will be made on an individual basis only by Headquarters, Department of the Army.

(1) Paragraph 4-5 (Delay or Exemption) stated during a partial mobilization, Reserve Component members may be delayed or exempted form mobilization only under conditions shown in table 2-1 (rules 31 through 37), to include, extreme personal hardship, which may be approved for a period not to exceed 30 days and when warranted delay may be renewed for 30 days; and for, temporary medical disqualification, which may be approved for a period of 30 days. Depending on circumstances and needs of the nation and military service when a mobilization is authorized, Headquarters, Department of the Army may issue separate instructions authorizing delay or exemption for other reasons.

(2) Paragraph 4-8 (Approving Authority) stated authority to grant delay and exemption during a partial mobilization is assigned, to include, Continental United States Army commanders and state adjutants' generals may approve a delay of 60 days or less for unit members under their jurisdictional control. Commanding General, U.S. Army Reserve Components Personnel and Administrative Center [now HRC] is the approval authority for members of the Individual Ready Reserve and Standby Reserve.

g. 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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, misconduct (serious offense).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DOD Instruction 1332.28.

b. A review of the available evidence provides the applicant was ordered to active duty for partial mobilization in Support of Iraqi Freedom and failed to report. The applicant's request for exemption from involuntary mobilization due to extreme personal hardship was denied by HRC. They completed 6 years, 1 month, and 19 days service this period and completed their 6-year USAR enlistment contractual obligation.

c. Army Regulation 135-178, chapter 12 establishes policy and prescribes procedures for separation members when it is determined that the Soldier is unqualified for further military service, to include for a commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. 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. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by **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 actually 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 of the characterization of their service in the U.S. Army Reserve (USAR) to either general (under honorable conditions) or honorable and their rank/grade be reinstated from private/E-1 back to specialist/E-4. The board considered this contention and determined that a change to the applicant's characterization of service is not warranted because there were no behavioral health mitigating factors for the board to consider. The board also considered the applicant's seven years of service, applicant statement, and DoD guidance for liberal consideration, but these factors did not outweigh the serious misconduct: ordered to active duty and failed to obey that order (The applicant's total service was not

sufficiently meritorious to warrant an honorable discharge. Thus, the applicant was properly and equitably discharged.

(2) The applicant contents a possible mobilization would have had a catastrophic economic consequence. Their employment in Germany was subject to none of the protections as they are for U.S. Army reservist in the United States. Their right to work in Germany would have ended if they were to depart. They had medical issues that were incompatible with continued military service. Neither their medical conditions nor the unique economic circumstances of living and working in Germany were given fair consideration. The board considered this contention during its deliberations but ultimately did not address the contention due to the decision outlined above in 9b (1).

(3) The applicant contends they were left to conclude that when their request for an exemption for mobilization was considered key factors were not taken into account. The board considered this contention during its deliberations but ultimately did not address the contention due to the decision outlined above in 9b (1).

(4) The applicant contends their circumstances at the time were exceptional and physically incompatible with military service or appearing for evaluation. They did their best to show this at the time and have never understood why they merited anything but an Honorable discharge. The board considered this contention during its deliberations but ultimately did not address the contention due to the decision outlined above in 9b (1).

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted their 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 of all the evidence before the board, the applicant did not have any behavioral health mitigating factors for the board to consider. By disobeying an ordered to active duty and failed to obey that order (The applicant was issued mobilization orders dated 19 September 2004) - basis of separation. 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.

(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.

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:

3/12/2024



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