

1. Applicant's Name: [REDACTED]**a. Application Date:** 15 February 2021**b. Date Received:** 17 February 2021**c. Counsel:** [REDACTED]**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 through counsel, an upgrade to honorable along with a reentry (RE) code, separation program designator (SPD) code, and a narrative reason change.

The applicant's counsel contends, in effect, the applicant's reason for separation and RE code resulted from errors of discretion and should be amended as a matter of propriety because they were unduly harsh when compared to the circumstances leading to the separation. The applicant's counsel contends the applicant was absent without leave based on a need to handle family matters after a request for leave was denied. The applicant's counsel contends the applicant went to behavioral health in significant stress and expressed a plan for suicide. The applicant was admitted to for inpatient psychiatric ward. The applicant was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct.

b. Board Type and Decision: In a records review conducted on 26 April 2024, and by a 5-0 vote, the Board determined that the character of service the applicant received upon separation was inequitable and voted for an upgrade to characterization of service to General, Under Honorable conditions. There will be no change to the narrative reason for separation or the re-entry code due to the misconduct .

Please see Section 9 of this document for more detail regarding the Board's decision.

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: 9 January 2018**c. Separation Facts:**

(1) **Date DD Form 458 (Charge Sheet):** Charge Sheet, 13 December 2017, reflects the applicant was absent from organization from 22 September 2017 to on or about 8 December 2017.

(2) **Legal Consultation Date:** On 14 December 2017, the applicant voluntarily requested discharge in lieu of trial by court-martial under AR 635-200, Chapter 10, for charges preferred against the applicant under the Uniform Code of Military Justice.

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 4 January 2018 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 July 2016 / 3 years, 16 weeks

b. Age at Enlistment / Education / GT Score: 20 / HS Graduate / 94

c. Highest Grade Achieved / MOS / Total Service: E-1 / 11B10, Infantryman / 1 year, 2 months, 29 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: See Charge Sheet as described in item 3c(1)

i. Lost Time / Mode of Return: AWOL X 77 days (22 September 2017 – 7 December 2017) / Apprehended by civilian authorities.

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant's counsel provides medical records pertaining to the applicant being diagnosed with adjustment disorder with depressed mood.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Counsel's Brief with 21 Enclosures (151 total pages)

6. POST SERVICE ACCOMPLISHMENTS: The applicant's counsel states the applicant is financially stable and is employed as a Security Officer by Chelan County Public Utility District

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) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Paragraph 3-7c states Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II).

(7) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

(8) 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 Trial by Court-Martial.

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI

1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-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.

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

RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

The applicant requests, through counsel, an upgrade to honorable along with a RE code, SPD code, and narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's counsel requests the applicant's narrative reason, SPD code, and RE code be changed. The applicant was separated under the provisions of Chapter 10, with an under other than honorable conditions discharge, SPD code of "KFS", and RE code of "4." The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial By Court-Martial" and the separation code is "KFS." Army Regulation 635-5, Separation Documents governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason or SPD code to be entered under this regulation. RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

The applicant's counsel contends the applicant's reason for separation and RE code resulted from errors of discretion and should be amended as a matter of propriety because they were unduly harsh when compared to the circumstances leading to the separation.

The applicant's counsel contends the applicant was absent without leave based on a need to handle family matters after a request for leave was denied.

The applicant's counsel contends the applicant went to behavioral health in significant stress and expressed a plan for suicide, was admitted to for inpatient psychiatric ward, and was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct.

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 A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnosis: Adjustment Disorder

(2) Did the condition exist or experience occur during military service? **Yes.** Adjustment 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 while an Adjustment Disorder is not mitigating, records do confirm extenuating circumstances and episodic family crisis that could have contributed to his urgency to return home rather than wait for chapter finalization.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition did not outweigh the basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant's counsel contends the applicant's reason for separation and RE code resulted from errors of discretion and should be amended as a matter of propriety because they were unduly harsh when compared to the circumstances leading to the separation. The Board considered this contention and determined that the applicant received the appropriate reason for separation and RE code. The applicant's conduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The applicant's counsel contends the applicant was absent without leave based on a need to handle family matters after a request for leave was denied. The Board considered this contention and determined that the applicant's family issues does not mitigate the applicant's AWOL as the Army affords many avenues to Soldiers including seeking assistance for hardship. A request for leave must be approved for a soldier to leave their place of duty.

(3) The applicant's counsel contends the applicant went to behavioral health in significant stress and expressed a plan for suicide, was admitted to for inpatient psychiatric ward, and was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. The Board considered this contention, however The Board's Medical Advisor determined that the medical condition is not mitigating.

d. The Board determined that the character of service the applicant received upon separation was inequitable and voted for an upgrade to the characterization of service to General, Under Honorable Conditions. There will be no change to the narrative reason for

separation or the re-entry code due to the misconduct. The applicant's conduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

e. Rationale for Decision:

(1) The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. Although the BH condition (Adjustment Disorder) doesn't mitigate the misconduct (AWOL) the Board concurred with the Medical Advisor that the extenuating circumstances with family crisis contributed to the applicant's eagerness to return home and to not wait for chapter finalization. The Board decided the discharge was harsh due to the family issues. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and voted for an upgrade to characterization of service but not a change to narrative reason and RE Code change due to the misconduct.

(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.

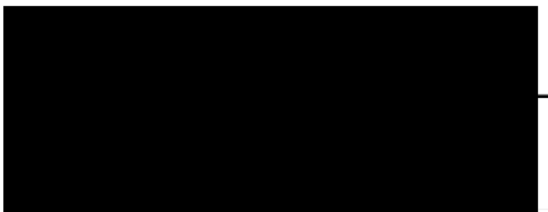
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

7/30/2024



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

