

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 18 January 2021**b. Date Received:** 27 January 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 and a narrative reason change.

The applicant's counsel seeks relief contending, in effect, the applicant's misconduct was caused, in part, by post-traumatic stress disorder (PTSD) caused by significant abuse and neglect which the applicant suffered prior to military service. The applicant's counsel contends the applicant was stalked by an ex-spouse and went absent without leave due to fear. The applicant's counsel contends the applicant was not provided a 72-hour period in which to consider submitting a request for discharge; the commander unlawfully requested a statement from the applicant without advising the applicant of rights; the consulting counsel failed to follow proper discharge and separation procedures and did not cover all the briefing topics required by regulation. The applicant's counsel states, even if the board determined the characterization of the applicant's discharge was proper, the applicant's post-service conduct and accomplishments demonstrates the misconduct was caused, in part, by PTSD.

**b. Board Type and Decision:** In a records review conducted on 16 August 2024, and by a 5-0 vote, the Board voted to grant relief in the form of an upgrade of the characterization to General (Under Honorable Conditions). There will be no change to the narrative reason for separation or SPD code. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

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

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 12 April 2006**c. Separation Facts:** Provided by applicant's counsel.

**(1) Date DD Form 458 (Charge Sheet):** Charge Sheet, 16 March 2006, reflects the applicant was charged with being absent without authority from on or about 24 January 2006 until on or about 13 March 2006.

**(2) Legal Consultation Date:** On 16 March 2006, 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:** 28 March 2006 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 23 August 2005 / 4 years

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

c. **Highest Grade Achieved / MOS / Total Service:** E-2 / None / 8 moths, 9 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** None

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 47 days (24 January 2006 – 12 March 2006 / NIF

j. **Behavioral Health Condition(s):**

**(1) Applicant provided:** The applicant's counsel provides an examination report from a psychologist, 28 December 2020, which reflects, in part, the applicant was diagnosed with an acquired psychiatric disorder to include PTSD.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293, Counsel's Brief with 23 exhibits (260 total pages)

**6. POST SERVICE ACCOMPLISHMENTS:** Counsel states the applicant has obtained an associate's and baccalaureate degree. The applicant has excelled both educationally and in the applicant's career field.

**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.

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.

**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 and a 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 service AMHRR is void of the complete facts and circumstances concerning the events which led to his discharge from the Army, but the applicant's counsel provided a copy of the applicant's separation file.

The applicant's counsel requests the applicant's narrative reason for the discharge be changed. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was separated under the provisions of Chapter 10, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial." 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. The regulation stipulates no deviation is authorized. There is no provision for any other reason.

The applicant's counsel contends the applicant's misconduct was caused, in part, PTSD caused by significant abuse and neglect which the applicant suffered prior to military service. The separation file provided by the applicant's counsel was void of a Mental Status Evaluation or a mental health diagnosis. The applicant's counsel provides an examination report from a psychologist, 28 December 2020, which reflects, in part, the applicant was diagnosed with an acquired psychiatric disorder to include PTSD.

The applicant's counsel contends the applicant was stalked by an ex-spouse and went absent without leave due to fear. 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's counsel contends the applicant was not provided a 72-hour period in which to consider submitting a request for discharge; the commander unlawfully requested a statement from the applicant without advising the applicant of rights; and consulting counsel failed to follow proper discharge and separation procedures and did not cover all the briefing topics required by regulation.

The applicant's counsel states, even if the board determined the characterization of the applicant's discharge was proper, the applicant's post-service conduct and accomplishments demonstrates the misconduct was caused, in part, by PTSD. 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.

#### **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 diagnoses/experiences: Adjustment Disorder with Depressed Mood, Post Traumatic Stress Disorder (PTSD), and Intimate Partner Violence (IPV) victim.

(2) Did the condition exist, or experience occur during military service? **Yes.** Adjustment Disorder with Depressed Mood and Intimate Partner Violence victim resulting in in-service trauma.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's diagnosis of PTSD related to the IPV in-service, the IPV occurring prior to the misconduct, and nexus between the IPV traumas and need to escape for safety, the basis is mitigated.

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

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

(1) The applicant's counsel contends the applicant's misconduct was caused, in part, by PTSD which was caused by significant abuse and neglect which the applicant suffered prior to military service. The Board considered this contention during proceedings and voted to grant relief in the form of an upgrade to the characterization of service.

(2) The applicant's counsel contends the applicant was stalked by an ex-spouse and went absent without leave due to fear. The Board considered this contention during proceedings and voted to grant relief in the form of an upgrade to the characterization of service.

(3) The applicant's counsel contends the applicant was not provided a 72-hour period in which to consider submitting a request for discharge; the commander unlawfully requested a statement from the applicant without advising the applicant of rights; and consulting counsel failed to follow proper discharge and separation procedures and did not cover all the briefing topics required by regulation. The Board considered this contention during proceedings, but ultimately did not address the contention due to the decision to upgrade the characterization of service.

**c.** The Board determined the discharge is inequitable based on the applicant's circumstances surrounding the discharge (PTSD and Intimate Partner Violence victim, which resulted with in-service trauma). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General (Under Honorable Conditions). The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

**d. Rationale for Decision:**

(1) Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable. The Board determined the applicant's circumstances surrounding the discharge (PTSD and Intimate Partner Violence victim) mitigated the applicant's misconduct of Absent Without Leave. Therefore, the Board voted to change the applicant's characterization of service to General, Under Honorable Conditions.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

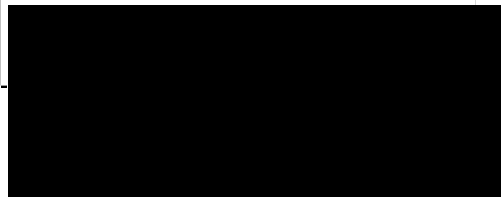
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214:** 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:** AR 635-200

**Authenticating Official:**

8/21/2024



**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