

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 24 November 2020
- b. **Date Received:** 27 November 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is Bad Conduct. The applicant requests an upgrade to honorable and a narrative reason change.

b. The applicant states in effect, the defense counsel for their special court martial deemed their initial enlistment chapter 11 discharge (due to anxiety and depression) irrelevant in the case. However, they strongly disagree and wish to present that as evidence for upgrade of discharge. They were always deemed to be a high risk enlistment, yet the Army allowed them to re-enlist and has turned its back on them in the years since their discharge. They do not believe their assigned counsel had their best interest in mind. Their subsequent enlistment showed impeccable service, up until the incident that resulted in a BCD. All character witness testimonies at the court martial proceedings were proof of them being a model soldier and one incident should not characterize their entire service history. Since the time of their court martial proceeding there has been intense focus from the US Army on the mental health of soldiers. Their incident preceded much of the statistical data that has been assembled by the Department of Defense, however they should not be excluded from needing support. Presently, they are still prescribed medication for anxiety and depression and symptoms appear to be dramatic while dealing with the effects of PTSD from their traumatic incident while in service. With their current characterization they are excluded from seeking VA support for mental health, additionally they suffer from intense chronic pain from injuries they suffered during service, and they wish to seek ongoing pain relief from the Department of Veteran Affairs.

c. In the summer of 1999, they were granted an entry level discharge from basic training after a psychiatric evaluation determined their mental health in stressful environments to be a detriment to their self and to their unit. Their defense counsel did not wish to present this information and they feel that their case was not fairly presented nor were their documented mental health condition given merit. They are humbly asking that the board reconsider the status of their discharge and grant them an honorable discharge based on the fact that they were a model soldier up until the time of their incident. They strongly believe if their court martial was held today, the outcome would be different given the sensitivity to the topic of mental health.

d. **Board Type and Decision:** In a records review conducted on 15 March 2024, and by a 4-1 vote, the Board determined that clemency is warranted based on applicant being able to access medical assistance through the VA. Accordingly, the Board voted to grant relief by upgrading the applicant's characterization of service to General. The narrative reason and RE code will not change.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210008055

a. Reason / Authority / Codes / Characterization: Court-Martial, Other / AR 635-200, Ch 3/ JJD / RE-4 / Bad Conduct

b. Date of Discharge: 9 November 2006

c. Separation Facts:

(1) Pursuant to Special Court-Martial empowered to adjudge a Bad-Conduct Discharge: Special Court-Martial order number 7; 16 December 2004 the applicant was found guilty of violating Articles 107, 115 and 134 of the UCMJ.

(2) Adjudged Sentence: Reduced to private (E-1), ten months of confinement and to be discharged with a bad conduct discharge.

(3) Date / Sentence Approved: 16 December 2004 / Reduced to private (E-1), to be confined for ten months and a bad conduct discharge will be executed.

(4) Appellate Reviews: The record of trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence

(5) Date Sentence of BCD Ordered Executed: 18 May 2006

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 October 2001 / 4 years

b. Age at Enlistment / Education / GT Score: 20 / Highschool Graduate / 124

c. Highest Grade Achieved / MOS / Total Service: E-4 (Specialist) / 68W10 Health Care Specialist

d. Prior Service / Characterizations: RA; 19990602 – 19990721 / UNC

e. Overseas Service / Combat Service: None / Iraq [date NIF]

f. Awards and Decorations: NDSM, GWTSM, ASR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides the applicant enlisted in the United States Army Reserve at the rank of E-3 with an active-duty obligation of 4 years on 6 September 2001. The applicant wrote statement for reenlistment:

- They made a mistake of opting to go home, it was a huge mistake that has troubled them since the day they left basic training. “ I am prepared physically, but most of mentally, to commit myself to the US Army.... I hope that my words are enough to convince anyone that I am prepared to do my best for myself and for the army”

(2) A Department of The Army Report of Result of Trial document provides the applicant plead guilty and was found guilty of violating three articles of the UCMJ on 16 December 2004. Article 107; false official statement, Article 115; malingering and Article 134; wrongfully and willfully discharge a firearm.

(3) A Special Court-Martial Order provides the applicants sentence was adjudged on 16 December 2004 after they plead guilty and were found guilty for making an official statement that another soldier's weapon negligently discharged into their leg which the statement was false and known to be false, near Baghdad Iraq in a hostile fire pay zone the applicant intentionally injured their self by firing a weapon into their leg for the purpose of avoiding their service on 29 April 2004, and they wrongfully and willfully discharged a firearm inside of a guard tower to endanger human life on 29 April 2004 in Baghdad Iraq. Punishment consisted of a rank deduction to E-1, ten months of confinement and a bad conduct discharge.

(4) A Personnel Action Document provides that the applicants duty status changed from present for duty (PDY) to confined by military authorities on 16 December 2004.

- The applicant's duty status changed from confined by military authorities to PDY on 14 August 2005; completed confinement sentence.

(5) A Special Court-Martial Order document dated 18 May 2006 provides the applicant completed the confinement portion of their sentence their Bad Conduct discharge was executed after being affirmed on 25 April 2005.

(6) A Certificate of Release or Discharge from Active-Duty document provides the applicant was discharged on 9 November 2006 with a total NET active service of 4 years, 4 months, and 19 days; member has not completed first full term of service.

i. **Lost Time / Mode of Return:** Confinement; 20041216 – 20050813

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

(1) **Applicant provided:** The applicant provides the suffer from anxiety, depression, and PTSD, however they did not provide any medical documentation to support their diagnosis. They did provide an established patient medical document that provides they requested anxiety medication from a provider.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: A DD Form 293 (Discharge Review) application, a self-authored statement, an illegible copy of an ERB, 2- counseling statements from 1999 that provides they were being processed for a chapter 11 discharge, and their entire chapter 11 separation packet in support of their application.

- A Report of Mental Status Evaluation document dated 25 June 1999 provides "soldier member states [they] can longer make it in basic training, soldier member appears to be emotionally unstable and is at risk for acting out if [they] are retained in training. They demonstrated no motivation to train and will "do anything to get out" suicide gestures are possible.
- A discharge counseling document provides the applicant was counseled by the battalion chaplain on 7 July 1999, the applicant was unable to adapt to the military environment, they were unable to deal with family issues while in the US

Army, they were unwilling at that time to deal with the separation from their child, their emotional ties to home disrupted their ability to train for service.

6. POST SERVICE ACCOMPLISHMENTS: None provided in support of their 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 provides the authorized types of characterization of service or description of separation.

(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) A Bad Conduct discharge will be given to a soldier only after an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

(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 "JDD" as the appropriate code to assign enlisted soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.
- 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.

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 upgrade to honorable. The applicant's DD Form 214 provides the applicant received a bad conduct discharge which is considered appropriate for a soldier found guilty by a special court martial.

b. Based on the available evidence the applicant enlisted in the army for the second time at the age of 20, they completed 2 years, and 6 months of their contractual obligation before they intentionally injured their self by firing a weapon into their leg while inside of a guard tower; deployed in Iraq. They provided a false official statement, that another soldier's weapon negligently discharged into their leg. The applicant plead guilty for violating 3 articles of the UCMJ.

c. The applicant's AMHRR provides the applicant was found guilty by a special court-martial; the sentence was approved by the convening authority. A properly constituted DD Form 214 provides the applicant was discharged under the provisions of AR 635-200, Chapter 3, court-martial (other), with a bad conduct characterization of service on 9 November 2009.

d. The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency to moderate the severity of the punishment imposed.

e. 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 applicant asserts anxiety, depression, and PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found applicant self asserts his psychological issues began during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has no mitigating BH conditions. While the applicant contends they suffered from in-service anxiety, depression, and PTSD, the only BH documentation available for review are a 1999 Report of Mental Status which documents that the applicant was emotionally unstable and at risk for acting out if retained in the Army and a 1999 chaplain's note which states the applicant's emotional ties to home disrupted their ability to train in the military. Neither of these documents provide sufficient evidence of a mitigating BH condition. The applicant's self-asserted diagnoses of anxiety/depression/PTSD also do not mitigate his misconduct as none of these conditions affects one's ability to distinguish right from wrong and act in accordance with the right.

(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: Denied; 16 Septemeber 2011

c. Response to Contention(s):

(1) The applicant contends they were always deemed to be a high risk enlistment and they army allowed them to reenlist.

The Board considered this contention valid.

(2) The applicant contends they had impeccable service up until their incident, and one incident should not characterize their entire service history.

The Board acknowledged this contention.

(3) The applicant contends, their assigned counsel did not have their best interest in mind, by not including their previous discharge as evidence.

The Board acknowledged this contention.

d. After carefully examining the applicant's record of service during the period of enlistment under review and all other evidence presented, the Board determined that clemency is warranted based on applicant being able to access medical assistance through the VA. Accordingly, the Board voted to grant relief by upgrading the applicant's characterization of service to General. The narrative reason and RE code will not change. 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.

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e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service based on the following reasons. The Board's Medical Advisor found the applicant self asserts his psychological issues began during military service. The Board's Medical Advisor applied liberal consideration and opined that there is insufficient evidence to fully mitigate the applicant's misconduct. However, after considering the applicant's self-assertion of OBH issues while deployed as well as BH documentation provided by the applicant which was dated 1999, 5 years before his misconduct, it is the opinion of the Agency BH provider that there is sufficient evidence to support partial mitigation of his misconduct under liberal consideration. The Board members carefully considered the applicant's request, supporting documents and evidence in the records. Based on the fact the Army allowed the applicant to re-enlist despite his previous discharge (UNCH – inability to adapt to the military environment) and elapsed time since the misconduct, the Board concurred the current discharge is inequitable and warranted an upgrade on the basis of clemency.

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

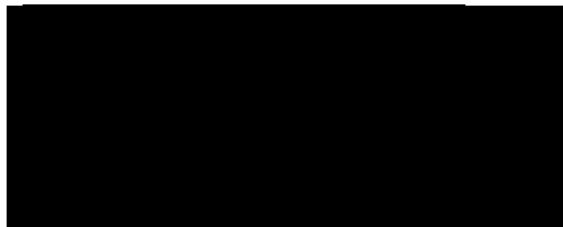
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

3/25/2024



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