

1. Applicant's Name: [REDACTED]

a. Application Date: 20 November 2020

b. Date Received: 25 November 2020

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 other than honorable conditions. The applicant requests an upgrade of the characterization of their service in the Army National Guard (ARNG) and a change of the narrative reason for separation.

(2) The applicant seeks relief contending the reason for the discharge was due to being wrongfully incarcerated for 11 years. During their incarceration they were not attending all training events since they were in the custody of the state of California. After being incarcerated for 11 years they were fully exonerated and cleared of all charges that kept them from attending all training with the ARNG. Due to no fault of their own, they were incarcerated and subsequently discharged for misconduct that they have full documentation of exoneration.

b. Board Type and Decision:

(1) The issue regarding the correction of the applicant's ARNG discharge, their discharge has been upgraded by the California ARNG on 8 August 2024 with the issuance of a National Guard Bureau (NGB) Form 22a (NGB Correction to NGB Form 22 (National Guard Report of Separation and Record of Service)) by correcting item 24 (Character of Service) to Honorable, item 25 (Type of Certificate Issued) to NGB Form 55 (Honorable Discharge from the Armed Forces of the United States (ARNG)), and item 26 (Reenlistment Eligibility) – to RE-1. Therefore, the remaining applicant's request is the correction of item 23 (Authority and Reason) – which currently reflects Conviction by Criminal Court.

(2) In a records review conducted on 19 February 2025, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's wrongful incarceration for 11 years, in which the applicant was fully exonerated and cleared of all charges, outweighing the applicant's basis for separation of wrongful incarceration. Therefore, the Board voted to recommend relief with issuance of a new NGB Form 22a, with a change to the narrative reason for separation to Secretarial Authority. The Board's recommendation was forwarded to the Chief, National Guard Bureau, California Military Department, to the Adjutant General, State of California, under the provisions of 10 USC § 1553, for final approval.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: NIF / California Military and Veterans Code, Section 260 and National Guard Regulation, Paragraph 8-26e(1) / NIF / Honorable

b. Date of Discharge: 1 July 2008

c. Separation Facts: The applicant's case separation file is void from their Army Military Human Resource Record (AMHRR).

4. SERVICE DETAILS:

- a. Date / Period of Reenlistment:** 21 March 2005 / 6 years (ARNG)
- b. Age at Reenlistment / Education / GT Score:** 30 / HS Graduate / 85
- c. Highest Grade Achieved / MOS / Total Service:** E-5 / 88M1O, Motor Transportation Operator / 16 years, 3 months, 2 days
- d. Prior Service / Characterizations:** NA
- e. Overseas Service / Combat Service:** SWA / Iraq (1 January 2005 – 30 October 2005)
- f. Awards and Decorations:** AGCM, NDSM-2, ASR, AFRM-M, GWTSM, ICM
- g. Performance Ratings:** November 2004 – October 2005, Among the Best
April 2004 – November 2005, Among the Best
March 2005 – November 2005, Fully Capable
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) A memorandum, California Army National Guard, 746th Combat Sustainment Support Battalion, subject: Delinquent Noncommissioned Officer Evaluation, dated 17 February 2009, the battalion executive officer states the applicant has been incarcerated pending criminal charges effective 15 November 2005. The request is made that for the period beginning 11 January 2008 be granted as Non-Rated Time. The basis for this action is the temporary removal of the rated individual from their duty position pending a final disposition of on-going criminal proceedings. The request is for non-rated time to continue until these proceedings are completed and the applicant is either convicted of the charges or returned to duty.

(2) The California Army National Guard Orders 113-1022, dated 23 April 2009, reflects the applicant was discharged from the ARNG and as a Reserve of the Army, effective 1 July 2008. The type of discharge is shown as General (Under Honorable Conditions).

(3) A NGB Form 22 (National Guard Report of Separation and Record of Service) dated 8 August 2024, reflects the applicant was separated from the ARNG on 1 July 2008. The NGB Form 22 shows in –

- item 10d (Total Service for Pay) – 15 years, 14 days
- item 10e (Total Service for Retired Pay) – 10 years, 10 months, 10 days
- item 23 (Authority and Reason) – California Military and Veterans Code, Section 260 and National Guard Regulation, Paragraph 8-26e(1); Conviction by Criminal Court
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Type of Certificate Used) – NGB Form 56 [General Discharge Under Honorable Conditions from the Armed Forces (ARNG)]
- item 26 (Reenlistment Eligibility) – RE-3

(4) A NGB Form 22a (NGB Correction to NGB Form 22), dated 8 August 2024, reflects the following corrections –

- item 24 (Character of Service) – Honorable

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- item 25 (Type of Certificate Issued) – NGB Form 55 (Honorable Discharge from the Armed Forces of the United States (ARNG))
- item 26 (Reenlistment Eligibility) – RE-1

i. Lost Time / Mode of Return: NIF

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 149 (Application for Correction of Military Records under the Provisions of Title 10, U.S. Code, Section 1552)
- Awards and Certificated
- ARNG Discharge Order
- Superior Court, Memorandum of Decision (Petition for Writ of Habeas Corpus)
- District Attorney's Office Letter to NGB
- two 3rd Party Statements

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. National Guard Regulation 600-200 (Enlisted Personnel Management) establishes standards, policies, and procedures for the management of the ARNG and the Army National Guard of the United States enlisted Soldiers in the functional areas of, to include enlisted separations. Paragraph 6-35 (Separation/Discharge from State ARNG and/or Reserve of the Army) provides reason, applicability, codes and board requirements for administrative separation or discharge from the Reserve of the Army, the State ARNG only, or both, to include subparagraph 6-35i(2), conviction by criminal court. If the sole basis for discharge is conviction of a criminal offense, counseling and rehabilitative efforts are not required and a reentry eligibility code of RE-3 is applicable.

e. Army Regulation 135-178 (Enlisted Administrative Separations) prescribes policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of ARNG, Army National Guard of the United States, and U.S. Army Reserve enlisted Soldiers who are not serving in an active status.

(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 3, Section IV (Additional Provisions Concerning Soldiers Confined by Civilian Authorities), states if separation proceedings under this chapter have been initiated against a Soldier confined by civilian authorities, the case may be processed in the absence of the respondent. When the Soldier has a right to and requests a hearing before an administrative board, the Soldier will be notified that the board may be conducted in their absence.

(5) Chapter 12 (Unsatisfactory Participation in the Ready Reserve) states a Soldier is subject to discharge for unsatisfactory participation when it is determined the Soldier is unqualified for further military service because, to include, separation action may be taken when the Soldier is absent in the hands of civilian authorities. 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. In such cases, separation for unsatisfactory participation with an honorable characterization will be approved by the separation authority.

(6) Chapter 13 (Secretarial Plenary Authority) states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interests of the Army. Separations under this chapter are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. The service of Soldiers separated under this chapter will be characterized as honorable or under honorable conditions.

8. SUMMARY OF FACT(S):

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

b. The applicant's AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the Army National Guard. The applicant's AMHRR does contain a NGB Form 22, and a NGB Form 22a from the ARNG. The NGB Form 22a reflects the correction of the applicant's characterization of service to Honorable, a NGB Form 56, and correction of their reentry eligibility code to RE-1. However, item 23 (Authority and Reason) of their NGB Form 22 was not corrected and currently reflects "Conviction by Criminal Court."

c. National Guard Regulation 600-200 (Enlisted Personnel Management) establishes standards, policies, and procedures for the management of the ARNG and the Army National Guard of the United States enlisted Soldiers in the functional areas of, to include enlisted separations. Paragraph 6-35 (Separation/Discharge from State ARNG and/or Reserve of the Army) provides reason, applicability, codes and board requirements for administrative separation or discharge from the Reserve of the Army, the State ARNG only, or both, to include subparagraph 6-35i(2), conviction by criminal court.

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 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? **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): The applicant contends the reason for the discharge was due to being wrongfully incarcerated for 11 years. They were fully exonerated and cleared of all charges that kept them from attending all training with the ARNG. The Board determined that this contention was valid and voted to upgrade the narrative reason for separation due to the applicant's full exoneration and clearance of all charges.

c. The Board determined the discharge is inequitable based on the applicant's wrongful incarceration for 11 years, in which the applicant was fully exonerated and cleared of all charges, outweighing the applicant's basis for separation of wrongful incarceration. Therefore, the Board voted to recommend relief with issuance of a new NGB Form 22a, with a change to the narrative reason for separation to Secretarial Authority. The Board's recommendation was forwarded to the Chief, National Guard Bureau, California Military Department, to the Adjutant General, State of California, under the provisions of 10 USC § 1553, for final approval.

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d. Rationale for Decision:

(1) The Board determined the discharge is proper and equitable as the applicant has a Characterization of Honorable; therefore, no further relief is available.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same rationale, thus the reason for discharge is no longer appropriate.

(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 NGB Form 22a: Yes
- b. Change Characterization to: No Change
- c. Change Reason: Secretarial Authority
- d. Change RE Code to: No Change
- e. Change Authority to: NGR 600-200

Authenticating Official:

4/18/2025

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