

1. Applicant's Name:

- a. **Application Date:** 19 November 2020
- b. **Date Received:** 30 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 their characterization of service from the U.S. Army Reserve (USAR).

(2) The applicant seeks relief stating they were discharged with an Other Than Honorable Conditions character of service because of a mix up of being discharged from their unit into the Individual Ready Reserve (IRR). They were under the impression that they did not have to report to monthly drills because they completed their 6 years of active reserve duty and was supposed to be transferred to the IRR.

b. Board Type and Decision: In a records review conducted on 12 July 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: Unsatisfactory Participation / Army Regulation 135-178, Chapter 13 / Under Other Than Honorable Conditions

b. Date of Discharge: 16 September 2013

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 5 November 2012

(2) **Basis for Separation:** accrued greater than nine periods of unsatisfactory participation within a 1 year period, and/or failed to attend Extended Combat Training, and failed to provide a valid excuse for their absence.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** NA

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 4 September 2013

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 February 2007 / 8 years

b. Age at Enlistment / Education / GT Score: 18 / NIF / 98

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42A1O, Human Resources Specialist / 6 years, 7 months, and 7 days

d. Prior Service / Characterizations: NA

e. Overseas Service / Combat Service: NA

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) The Certificate and Acknowledgment USAR Service Requirements and Methods of Fulfillment, dated 10 February 2007, the applicant acknowledge their understating that as a member of the USAR, they must participate satisfactory during the entire period of their enlistment, reenlistment, immediate reenlistment, transfer, assignment, or reassignment in accordance with the rules and regulations now in effect, or which may hereafter be placed in effect, by the proper authority. As a member of a Selected Reserve Troop Program Unit (TPU) their satisfactory participation is determined by the following –

(a) They will serve as a member of a TPU for the entire period specified in the terms of their service agreement unless otherwise reassigned or separated by proper authority.

(b) They will be required to attend all scheduled unit training assemblies (at least 48 per year) unless they are excused by proper authority. If they accrue nine or more unexcused absences during a continuous 365-day period, they will be declared an unsatisfactory participant.

(c) They must keep their commander advised of their current mailing address, where they will receive official correspondence, ad they must reply to and comply with all official orders and correspondence that they may receive.

(2) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects on 28 September 2007; the applicant was released from active duty training after completing their initial active duty training and being award a military occupational specialty. Item 24 (Character of Service) is shown as Uncharacterized.

(3) Three memorandums, Headquarters & Headquarters Company, 310th Sustainment Command Expeditionary, subject: Letter of Instruction - - Unexcused Absence, dated 15 February 2012, 12 September 2012, and 21 October 2012, reflects the applicant was notified of their absences from scheduled unit training assemblies. The applicant accrued 23 unexcused absences within a 1-year period.

(4) A photographic copy of certified letters, dated 16 February 2012 and 24 October 2012, reflects a status of Return to Sender/unclaimed. [Note: the applicant's Unsatisfactory Participation Letters were addressed to their last known address and as shown as their address on their current DA Form 5016 (Chronological Statement of Retirement Points).]

(5) A memorandum, Headquarters, Headquarters Company, 310th Sustainment Command (Expeditionary), subject: Notification of Separation Proceedings under Army

Regulation 135-178, Chapter 13 (Unsatisfactory Participation), [Applicant], dated 5 November 2012, the applicant's company commander attempted to notify the applicant of their intent to initiate actions to separate them from the USAR for Unsatisfactory Participation under the provisions of Army Regulation 135-178, Chapter 13. The reason for the proposed action reflects the applicant has accrued nine or more unexcused absences from scheduled inactive duty training during a 1-year period and failed to provide a valid excuse for their absence. The company commander recommended the applicant receive an Under Other Than Honorable characterization of service. The enclosed memorandums, subject: Election of Rights, and Request for Conditional Waiver – Separation under Army Regulation 135-178, Chapter 13; reflects no entries from the applicant acknowledging receipt of notification.

(6) An Affidavit of Service by Mail dated 6 November 2012, reflects the applicant's unit administrator states they mailed the Notification of Separation memorandum via certified mail, return receipt requested, to the applicant's last known address giving to their unit. A photographic copy of the certified letter reflects a status of Return to Sender/Unclaimed. [Note: the certified letter was addressed to their last known address and as shown as their address on their current DA Form 5016 (Chronological Statement of Retirement Points).]

(7) A memorandum, Headquarters & Headquarters Company, 310th Sustainment Command Expeditionary, subject: Letter of Instruction - - Unexcused Absence, dated 8 November 2012, reflects the applicant was notified of their absences from scheduled unit training assemblies. The applicant accrued 27 unexcused absences within a 1-year period.

(8) A memorandum, Headquarters & Headquarters Company, 310th Sustainment Command Expeditionary, subject: Commander's Report for Separation under Army Regulation 135-178, Chapter 13, dated 31 January 2013, the applicant's company commander submitted a request to separate them from the USAR prior to their expiration of their military service and their service be characterized as Under Other Than Honorable Conditions. The company commander states –

(a) The applicant, to date has accrued greater than 9 periods of unsatisfactory participation, and the command allowed the applicant's section to attempt the opportunity to contact the applicant in an effort to recover them. The efforts have proven unsuccessful. At this time the commander feels that it is in the best interest of the USAR to separate the applicant from military service with the recommendation of Under Other Than Honorable Conditions.

(b) The applicant enlisted on 10 February 2007 for a period of 8 years, with a date of contractual or statutory military obligation that will expire on 9 February 2015. The applicant has accumulated a total of 2 qualifying years.

(9) A memorandum, Headquarters & Headquarters Company, 310th Sustainment Command Expeditionary, subject: Letter of Instruction - - Unexcused Absence, dated 1 August 2013, reflects the applicant was notified of their absences from scheduled unit training assemblies. The applicant accrued 14 unexcused absences within a 1-year period. A photographic copy of the certified letter reflects a status of Return to Sender/Not Deliverable as Addressed/Unable to Forward. [Note: the certified letter was addressed to their last known address and as shown as their address on their current DA Form 5016 (Chronological Statement of Retirement Points).]

(10) A memorandum, Headquarters, 310th Expeditionary Sustainment Command, subject: Proposed Involuntary Separation under Army Regulation 135-178, Chapter 13, Unsatisfactory Participation, [Applicant], dated 4 September 2013, reflects the separation authority, carefully reviewed the matters presented against the applicant alleging unsatisfactory

participation. The separation authority found sufficient evidence to verify the allegations of unsatisfactory participation and directed the applicant be separated with an issuance of an Under Other Than Honorable Conditions discharge and reduced in rank/grade from specialist/E-4 to private/E-1.

(11) Headquarters, 88th Regional Support Command Orders 13-253-00053, dated 10 September 2013, reduced the applicant in rank/grade from private first class/E-3 to private/E-1, effective 4 September 2013 and discharged them from the USAR with the type of charge of Under Other Than Honorable Conditions, effective 16 September 2013, under the authority of Army Regulation 135-178.

(12) A DA Form 5016 (Chronological Statement of Retirement Points) dated 24 May 2024, reflects the applicant's last known address and –

- from 10 February 2008 – 9 February 2009, the applicant was credit with 16 Inactive Duty Points (8 days of unit drills)
- from 10 February 2009 – 9 February 2010, the applicant was credit with 13 Inactive Duty Points (6.5 days of unit drills)
- from 10 February 2010 – 9 February 2011, the applicant was credit with 71 Inactive Duty Points (35.5 days of unit drills)
- from 10 February 2011 – 9 February 2012, the applicant was credit with 4 Inactive Duty Points (2 days of unit drills)
- from 10 February 2012 – 9 February 2013, the applicant was credit with 23 Inactive Duty Points (11.5 days of unit drills)
- from 10 February 2013 – 16 September 2013, the applicant was credit with 0 Inactive Duty Points (0 days of unit drills)
- Total of 2 years and 1 day of Qualifying for Retirement

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)
- Two 3rd Party Letter of Recommendation

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) defines ARNG of the United States and USAR service obligations. It prescribed policies and procedures governing the various types of service obligations and participation requirements. Chapter 4 (Absences) governed absences from Ready Reserve training. Unsatisfactory participation stated a Soldier is an unsatisfactory

participant when nine or more unexcused absences from scheduled inactive duty training occur during a 1-year period. Paragraph 4-15 (Documentation of Unexcused Absences) stated a prescribed letter of instructions – unexcused absence will be delivered to the Soldier, delivery will be either in person or by U.S. mail. When certified mail is used, a copy of the notice and either a post office receipt confirming delivery or the returned unopened envelope showing the notice was not delivered. Mail sent to the mailing address on file as provided by the Soldier, which is refused, unclaimed, or otherwise not delivered may not be used as defense against unexcused absences when notices were correctly addressed to the address on file provided by the Soldier.

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 ARNG of the United States 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. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to private/E-1.

(4) Chapter 13 (Unsatisfactory Participation in the Ready Reserve) stated a Soldier is subject to discharge for unsatisfactory participation when it is determined that the Soldier is unqualified for further military service because the Soldier is an unsatisfactory participant and attempts to have the Soldier respond or comply with orders or correspondence. 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.

(5) Paragraph 13-1 (Basis) stated, a Soldier is subject to discharge for unsatisfactory participation when it is determined that the Soldier is unqualified for further military service because: the Soldier is an unsatisfactory participant as prescribed in Army Regulation 135-91, chapter 4; and attempts to have the Soldier respond or comply with orders or correspondence have resulted in the Soldier's refusal to comply with order or correspondence; or a notice sent by certified mail was refused, unclaimed, or otherwise undeliverable; or verification that the Soldier has failed to notify the command of a change of address and reasonable attempts to contact the Soldier have failed.

(6) Paragraph 13-3 (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. In such cases, separation for unsatisfactory participation with an Honorable characterization will be approved by the separation authority.

f. Army Regulation 135-180 (Retirement for Non-Regular Service) dated 1 August 1987, implemented statutory authorities governing the granting of retired pay to Soldiers and former reserve component Soldiers. Paragraph 2-10 (Computation of Service) stated one point for each authorized participation in drills or period of instruction which conform to the requirements prescribed by the Secretary of the Army.

f. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before Expiration Term of Service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers. Chapter 15 (Secretarial Plenary Authority) 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.

g. Army Regulation 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents.

a. Paragraph 5-1 (When to Prepare the DD Form 214) states that a DD Form 214 will be prepared for Reserve Component Soldiers completing active duty that results in the award of a Military Occupational Specialty, even when the active duty period was less than 90 days (for example, completion of the advanced individual training component of ARNGUS Alternate Training Program or USAR Split Training Program).

b. Paragraph 5-6x(1) states: when a Reserve Component Soldier successfully completes initial active duty training the character of service is Honorable unless directed otherwise by the separation approval authority."

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 declared an Unsatisfactory Participant and was involuntary separation from the USAR.

c. Army Regulation 135-178, chapter 13 establishes policy and prescribes procedures for separation members for unsatisfactory participation. 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. A review of the applicant's Army Military Human Resource Records reflects no documentation a transfer order to the USAR IRR nor did the applicant provide any documentation.

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? **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 they were discharged with an Other Than Honorable Conditions character of service because of a mix up of being discharged from their unit into the IRR. The applicant was under the impression that the applicant did not have to report to monthly drills because they completed 6 years of active reserve duty and was supposed to be transferred to the IRR. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support the assertion that the applicant was supposed to be moved into the IRR. Therefore, a discharge upgrade is not warranted at this time.

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c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant was not found to hold an in-service behavioral health condition that would potentially outweigh the applicant's unsatisfactory participation. The Board also considered the applicant's contention regarding being moved to the IRR but found that the totality of the available evidence did not merit a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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. Therefore, the applicant's Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge.

(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:

3/31/2025

X

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

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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