

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 21 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 Under Other than Honorable Conditions. The applicant requests an upgrade to Honorable and to change to their narrative reason, along with the separation and reentry codes.

b. The applicant seeks relief contending, they enlisted in the Army when they were only 17 years old. They were not mature enough, nor were they wise enough to see how the military could have had such a great impact on their life. They are now 22 and a single parent of two children (ages two and six months), seeking to make a huge turn around in not just their career but their personal life as well. Reenlisting would allow them to provide stability they need for themselves and their family.

c. **Board Type and Decision:** In a records review conducted on 08 March 2024, the board carefully considered the applicant's statement, supporting documents, the frequency and nature of misconduct, and published Department of Defense guidance for liberal consideration of discharge upgrade request. By a 5-0 vote, the board determined the discharge is inequitable based on liberal consideration. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to Uncharacterized. The board voted not to change the applicant's accompanying SPD code, and RE code.

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 9 September 2016

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** Pursuant to the applicant's request for voluntary discharge provision of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** 8 September 2016

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

(6) **Separation Decision Date / Characterization:** 9 September 2016 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 19 October 2015 / 6 years (missing from the record)
- b. **Age at Enlistment / Education / GT Score:** 17 / High School Diploma / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 / None / None
- 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:**

(1) On 22 July 2015, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; on 19 October 2015, at the age of 17 (with parental consent) they enlisted in the Regular Army for 6 years as a PVT, although, the DD Form 4/3 (Enlistment/Reenlistment Document) is missing from the record.

(2) Three Personnel Action documents provide the following status changes:

Date	Duty Status From	Duty Status To
5 January 2016	Present For Duty (PDY)	Absent Without Leave (AWOL)
6 February 2016	AWOL	Dropped From Rolls (DFR)
16 August 2016	DFR	PDY

(3) On 5 January 2016, the applicant was flagged for Suspension of Favorable Personnel Actions (FLAG), for adverse action (AA).

(4) On 6 February 2016, the applicant was charged in violation of Article 85, UCMJ, for desertion from on or about 23 February 2007; charges were preferred.

(5) The same day, the commander reported the applicant as a wanted deserter/absentee, completed an investigation, notified authorities, and sent letters to their next of kin, when the applicant was reported AWOL (5 January 2016) and DFR (11 February 2016), to urge the applicant to return to military control. The Army Reserve Command released the applicant from training under the provisions of AR 630-10.

(6) On 16 August 2016, the applicant surrendered to their military control unit (Fort Sill).

(7) On 17 August 2016, the applicant was charged in violation of Article 86, UCMJ, for having been absent without leave (AWOL) from on or about 6 January – 16 August 2016; charges were preferred.

(8) On 1 September 2016, in the processing of the applicant's AWOL, they completed a returnee statement and report, indicating they did not know they were AWOL, and answered the following questions below:

- Q: What caused you to go AWOL? Answer: I wasn't aware that I was AWOL.

- Q: What steps did you take to resolve your problem(s) before going AWOL? Answer: I signed Chapter 11 papers, but it never got to brigade, and I wasn't aware of that.
- Q: Did you discuss your problem(s) with your officers or NCOs before going AWOL? Answer: Yes.
- Q: Did you see the chaplain or Red Cross before going AWOL? Answer: No.
- Q: In your opinion what could the Army have done to prevent you from going AWOL (other than discharge)? Answer: Let me know what was going on with my paperwork.

(9) On the same day, after consulting with counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulations 635-200, Chapter 10, discharge in lieu of trial by court-martial. In their request, they affirmed no one had subjected them to coercion, counsel advised them of the implications of their request, and the applicant further acknowledged they were guilty of the charge against them or a lesser one. Although understanding they may be discharged Under Other than Honorable Conditions, the applicant requested a General (Under Honorable Conditions) characterization of service and elected not to submit a statement on their behalf.

(10) On 6 September 2016, the Personnel Control Facility (PCF) commander recommended approval of the applicant's voluntary separation request, with a characterization of service of Under Other than Honorable Conditions and forwarded to the separation authority.

(11) On 9 September 2016, the appropriate separation authority approved their voluntary discharge request and characterized their service as Under Other than Honorable Conditions. Separation orders were issued.

(12) A DD Form 214 (Certificate of Release or Discharge from Active Duty) provides:

- Authority: AR 635-200, Chapter 10
- Narrative Reason: In Lieu of Trial by Court-Martial
- SPD Code: KFS
- Reentry Code: RE-4
- Service Characterization: Under Other than Honorable Conditions
- Total NET Active Service this Period:
- Remarks: The applicant has not completed first full term of service.
- Lost Time: Under 10 USC 972: 6 January – 15 August 2016
- Signature: Unable to E-Sign

i. Lost Time / Mode of Return: 290 days / (6 January – 15 August 2016)

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge)

6. POST SERVICE ACCOMPLISHMENTS: The applicant is a parent of two children ages two and six months [at the time of submission].

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) 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) Chapter 10, Discharge in Lieu of Trial by Court Martial is applicable to members who committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable. After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions. The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel.
- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

(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 "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.

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) 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.

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

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

g. Manual for Courts-Martial (2012 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military laws is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces.

(1) Article 85 (desertion) states in subparagraph, the maximum punishment consists of dishonorable discharge, forfeiture of all pay and allowances and confinement for two years.

(2) Article 86 (absence without leave) states in subparagraph being absent without leave for more than 30 days, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year.

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 and to change to their narrative reason, separation code and reentry code. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available evidence provides the applicant enlisted in the USAR's Delayed Entry Program for 88 days and at the age of 17 (with parental consent) they enlisted in the Regular Army for 6 years [although missing from the record] as a PVT. They served on continuous active duty for 87 days in an entry level status (ELS) at Fort Jackson prior to having been AWOL; their charge of desertion was preferred. The applicant surrendered to the military control unit (Fort Sill) 232 days later of excess leave, the charge of AWOL was preferred. After consulting with defense counsel, the applicant requested to be voluntarily discharged in lieu of trial by court-martial, electing not to submit a statement on their behalf. They were separated with an Under Other than Honorable Conditions characterization of service.

c. The record is void a mental status evaluation and the applicant declined a physical examination prior to their separation, although, it is not required for voluntary discharge request.

d. Army Regulation 635-200 states Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a soldier who is discharge 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. 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 improper.

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):

(1) The applicant contends, they enlisted in the Army when they were only 17 years old. They were not mature enough, nor wise enough to see how the military could have had such a great impact on their life. They are now 22 and a single parent of two children (ages two and six months), seeking to make a huge turn around in not just their career but their personal life as well. Reenlisting would allow them to provide stability they need for themselves and their family. The board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record. In

this case, the board determined the characterization was improper because the applicant's length of service was not long enough to be properly assessed – the misconduct of AWOL was committed during initial entry training. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to Uncharacterized. No other relief to the narrative reason or RE-code are warranted.

(2) The applicant contends they were not aware they were AWOL; the applicant signed Chapter 11 documents and was unaware they never made them to brigade. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted as outlined above in 9b (1).

c. The board determined the characterization is inequitable based on the Department of Defense guidance on liberal consideration. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to Uncharacterized. 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 to change the applicant's characterization of service to Uncharacterized based on the Department of Defense guidance on liberal consideration. Thus, the prior characterization is no longer appropriate.

(2) The board voted not to change the applicant's narrative 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: Yes
- b. Change Characterization to: Uncharacterized
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

3/27/2024



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