

1. Applicant's Name:

- a. **Application Date:** 2 April 2021
- b. **Date Received:** 2 April 2021
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, the applicant commissioned on 13 August 2012 as a second lieutenant in the Military Intelligence Corps. Upon arrival to the unit, the applicant was informed that it would be impossible for the applicant to attend their military occupational specialty producing school on schedule. Specifically, due to budget concerns related to force reduction and government shutdown. An entire year had passed, and the applicant still did not receive orders for the intelligence officers' basic course. The applicant expressed their concern with the command; however, the applicant was again informed that funding was unavailable due to sequestration restrictions and the layoff of non-essential government personnel. After several uncertain yet patient years, the applicant elected to resign their commission. The character of their discharge was unforeseen, in fact, it had an extremely adverse effect on their life; however, the applicant overcame it. The discharge is erroneous and in need of correction.

c. **Board Type and Decision:** In a records review conducted on 18 October 2024, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Resignation from the ARNG / NGR 635-100 / NA / General (Under Honorable Conditions)

b. **Date of Discharge:** 8 January 2018

c. Separation Facts:

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

(2) **Basis for Separation:** NIF

(3) **Legal Consultation Date:** NIF

(4) **GOSCA Recommendation Date:** NIF

(5) Army Human Resources Command Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. **Date / Period of Appointment:** 13 August 2012 / NIF

b. **Age at Appointment / Education:** 26 / bachelor's degree

c. **Highest Grade Achieved / MOS / Total Service:** O-2 / None / 7 years, 1 month, and 27 days

d. **Prior Service / Characterizations:** ARNG, 12 November 2010 - 12 August 2012 / HD

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

f. **Awards and Decorations:** None

g. **Performance Ratings:** NIF

h. **Disciplinary Action(s) / Evidentiary Record:**

(1) National Guard Bureau (NGB) Letter to the applicant, undated, shows the applicant was separated from the Army National Guard of the United States (ARNGUS) on 8 January 2018 under the authority of National Guard Regulation (NGR) 635-100, paragraph 5a, with general discharge.

(2) Orders 008-004, 8 January 2018, shows the applicant was separated from the ARNG on 8 January 2018.

(3) NGB Form 22 (Report of Separation and Record of Service), shows the applicant was separated on 8 January 2018 under the authority of NGR 635-100, Resignation from the ARNG with a general (under honorable conditions) character of service. The NGB Form 22 was not authenticated with the applicant's electronic signature.

i. **Lost Time / Mode of Return:** None

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Two DD Forms 293; two Certificate of Commendations; and four character references.

6. POST SERVICE ACCOMPLISHMENTS: The applicant enrolled in a master's program at Purdue University and graduated with honors in Psychology and a concentration in applied behavior analysis. During this period, the applicant was repeatedly elected to their community board at the City and County of Honolulu. In addition, the applicant was confirmed unanimously as the

chair of the district. The applicant received two commendations, one for outstanding service to the people of Hawaii.

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) 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 600-8-24 (Officer Transfers and Discharges) sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(2) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation; Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.

e. Army Regulation 635-100 (Termination of Appointment and Withdrawal of Federal Recognition) prescribes the policies, criteria, and procedures governing the separation of commissioned officers of the Army National Guard. Paragraph 5a (Termination of State Appointment), states unless contrary to State law and regulations, the appointment of an ARNG officer should be terminated for resignation. If termination of appointment is contrary to State law and regulations, the Chief, NGB, will be notified in advance and Federal recognition will be withdrawn. Paragraph 5a (3) states for Resignation: An officer may tender a resignation through channels to the State adjutant general. If accepted, the State adjutant general will publish orders separating the officer from their ARNG appointment and furnished copies to the Chief, NGB. The resignation may also be concurrent from the ARNG in Reserve of the Army for officers without a remaining service obligation.

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 AMHRR, the issues and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR is void of the specific facts and circumstances concerning the events which led to the applicant's discharge from the ARNG. The applicant's AMHRR does

contain a properly constituted NGB Form 22, which was not authenticated with the applicant's electronic signature. The applicant's NGB Form 22, shows the applicant served 7 years, 1 month, and 27 days and was separated under the provisions of NGR 635-100 with a characterization of service of General (Under Honorable Conditions).

c. The applicant contends, in effect, the applicant commissioned on 13 August 2012 as a second lieutenant in the Military Intelligence Corps. Upon arrival to the unit, the applicant was informed that it would be impossible for the applicant to attend their military occupational specialty producing school on schedule. Specifically, due to budget concerns related to force reduction and government shutdown. An entire year had passed, and the applicant still did not receive orders for the intelligence officers' basic course. The applicant expressed their concern with the command; however, the applicant was again informed that funding was unavailable due to sequestration restrictions and the layoff of non-essential government personnel. After several uncertain yet patient years, the applicant elected to resign their commission. The character of their discharge was unforeseen, in fact, it had an extremely adverse effect on their life; however, the applicant overcame it. The discharge is erroneous and in need of correction.

(1) The AMHRR contains:

(a) NGB Letter to the applicant, undated, shows the applicant was separated from the ARNGUS on 8 January 2018 under the authority of NGR 635-100, paragraph 5a, with a general discharge.

(b) Orders 008-004, 8 January 2018, shows the applicant was separated from the ARNG on 8 January 2018.

(2) The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

d. The applicant contends they enrolled in a master's program at Purdue University and graduated with honors in Psychology and a concentration in applied behavior analysis. During this period, the applicant was repeatedly elected to their community board at the City and County of Honolulu. In addition, the applicant was confirmed unanimously as the chair of the district. The applicant received two commendations, one for outstanding service to the people of Hawaii. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

e. The third party statements provided with the application reflects the applicant's compassion for others, and evident willingness to assist in any situation or event to the best of the applicant's ability. For many years the applicant has assisted the community in Hawaii in various positions. The applicant is someone that does not just talk leadership but exemplifies it and deserves an honorable discharge.

f. 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 Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnosis: Adjustment Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that an Adjustment Disorder developing in response to a separation process does not mitigate the misconduct leading to the separation process, e.g., positive UA for cocaine and threatening to harm separation board members.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the ADRB's application of liberal consideration, the board concurred with the opinion of the Board's Medical Advisor, a voting member, that the applicant's serious offenses (positive UA for cocaine and homicidal threats toward separation board members) are not outweighed by the applicant's Adjustment Disorder.

b. Response to Contention(s):

(1) The applicant contends, in effect, the applicant commissioned on 13 August 2012 as a second lieutenant in the Military Intelligence Corps. Upon arrival to the unit, the applicant was informed that it would be impossible for the applicant to attend their military occupational specialty producing school on schedule. Specifically, due to budget concerns related to force reduction and government shutdown. An entire year had passed, and the applicant still did not receive orders for the intelligence officers' basic course. The applicant expressed their concern with the command; however, the applicant was again informed that funding was unavailable due to sequestration restrictions and the layoff of non-essential government personnel. After several uncertain yet patient years, the applicant elected to resign their commission. The character of their discharge was unforeseen, in fact, it had an extremely adverse effect on their life; however, the applicant overcame it. The discharge is erroneous and in need of correction.

The board considered this contention, however medical records reveal the applicant had "problems with height/weight and passing APFT" which initially interfered with Officer Basic Course (OBC) attendance. He eventually passed and attended OBC, however the applicant failed the drug test and the applicant's security clearance was revoked.

(2) The applicant contends they enrolled in a master's program at Purdue University and graduated with honors in Psychology and a concentration in applied behavior analysis. During this period, the applicant was repeatedly elected to their community board at the City and County of Honolulu. In addition, the applicant was confirmed unanimously as the chair of

the district. and conduct during the period of service under review, is considered during board proceedings. The board considered and acknowledged the applicant's outstanding post-service conduct however, there is no law or regulation which provides an unfavorable discharge must be upgraded based solely on the passage of time or good conduct in civilian life subsequent to leaving the service. The board determined the discharge was proper and equitable and voted not to change it due to the serious misconduct (positive UA for cocaine and homicidal threats toward separation board members) – basis of separation.

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 of all the evidence before the board, the applicant's Adjustment Disorder did not excuse or mitigate the basis for separation (positive UA for cocaine and homicidal threats toward separation board members). 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.

(2) The board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, and the reason the applicant was discharged was both proper and equitable

(3) As the applicant was an ARNG Officer, there is no reentry code supplied upon discharge, honorable or otherwise.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210008762

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 Authority to: No Change**

Authenticating Official:

11/15/2024

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

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