

1. Applicant's Name:

- a. **Application Date:** 2 January 2021
- b. **Date Received:** 8 February 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 Under Other than Honorable Conditions. The applicant requests an upgrade to General (Under Honorable Conditions).

b. The applicant seeks relief contending, they served Honorably for 3 years and 4 months in the U.S. Army and requested a Chapter 10 separation in lieu of trial by court-martial because they did not wish to go before a jury with a high potential of bias. They have been awarded their Army Good Conduct Medal and a Certificate of Achievement in support of the 2018 Pacific Regional Trials. They were not charged by Customs and Border Protection (CBP) or the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) during any portion of the investigation conducted by CBP because they had not broken any laws.

c. **Board Type and Decision:** In a records review conducted on 13 March 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10

b. **Date of Discharge:** 24 December 2020

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 under provision of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

(3) **Recommended Characterization:** NIF

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

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

(6) **Separation Decision Date / Characterization:** 11 December 2020 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 15 August 2017 / 5 years

- b. Age at Enlistment / Education / GT Score:** 18 / High School Diploma / 110
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 31B10 Military Police / 2 years, 11 months.
- d. Prior Service / Characterizations:** NA
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** AGCM, NDSM, GWOTSM, SMB w/CB, COA
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) On 16 February 2017, with parental consent, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; on 15 August 2017, they enlisted in the Regular Army for 5 years as a PVT.

(2) The Enlisted Record Brief provides on 15 August 2019, the applicant promoted to SPC. They served as Military Police in Schofield Barracks, Hawaii for nearly 3 years. On 21 January 2020, they were flagged, a Suspend Favorable Personnel Actions (FLAG), for awaiting reclassification (MA).

(3) On 11 December 2020, notwithstanding the applicant's voluntary request for discharge IAW AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial, and the chain of command endorsements missing from the record, the separation authority approved the request for discharge, with an Under Other than Honorable Conditions characterization of service and a reduction to the lowest enlisted grade.

(4) On 17 December 2020, their separation orders were issued. A DD Form 214 (Certificate of Release of Discharge from Active Duty) reflects the applicant was discharged accordingly on 24 December 2020, with 3 years, 10 months, and 10 days of service; they have not completed their first full term of service.

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

- 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); ATF Rule 2005-4, Definitions (Firearm); DD Form 214 (Certificate of Release or Discharge from Active Duty); Army Certificate of Achievement; Development of Environmentally Benign Pyrotechnic Delays PowerPoint

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

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

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

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to General (Under Honorable Conditions). A review of the record provides administrative irregularity in the proper retention of records, specifically the AMHRR is void of partial separation proceedings, the applicant's voluntary separation request IAW AR635-200, Chapter 10, and whether they elected to speak with counsel; based on this we are unable to provide specific facts and circumstances surrounding them voluntarily requesting to be discharged in Lieu of Trial by Court-Martial.

(1) The available evidence provides the applicant enlisted with parental consent at the age of 18, served nearly 3 years as Military Police and promoted to SPC. Their awards include an Army Good Conduct Medal, Certificate of Achievement, and Sharpshooter Marksmanship Badge w/Carbine Star. In January 2020, they were flagged, a Suspend Favorable Personnel Actions, for stabilization awaiting to reclassify their MOS (MA). Notwithstanding the lack of evidence, the separation authority approved the applicant's request for discharge In Lieu of Trial by Court-Martial, with an Under Other than Honorable Conditions characterization of service and reduced to the lowest enlisted grade.

(2) Due to the lack of evidence in the AMHRR, the specific facts and circumstances surrounding the applicant requesting to be voluntarily discharged, are unknown. The applicant completed 3 years, 4 months, and 10 days of their 5-year contractual obligation.

(3) The AMHRR is void of a medical and/or mental health examination; although, not required for a voluntary discharge request, this can be requested by the Soldier.

b. 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.

c. 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 requests an upgrade to General (Under Honorable Conditions). The board considered this contention and noted that this action is a procedural step which is part of a normal process, when an alternative forum is chosen and there was no evidence presented to the board to convince the board of any mitigating circumstances.

(2) The applicant contends Honorable service for 3 years and 4 months in the U.S. Army and they have been awarded their Army Good Conduct Medal and a Certificate of Achievement in support of the 2018 Pacific Regional Trials. They requested a Chapter 10 separation in lieu of trial by court-martial because they did not wish to go before a jury with a high potential of bias. They were not charged by Customs and Border Protection (CBP) or the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) during any portion of the investigation conducted by CBP because they had not broken any laws. The board considered this contention and determined that a change to the applicant's characterization of service is not warranted at this time because there were no mitigating factors for the board to consider.

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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 of all the evidence before the board, the applicant did not have any mitigating factors for the board to consider.

(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: No Change

3/20/2024

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Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

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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