

1. Applicant's Name:

- a. **Application Date:** 17 May 2021
- b. **Date Received:** 19 May 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 and a narrative reason change.

The applicant states in effect, their PTSD was not considered prior to their discharge. They witnessed others that they served with have their PTSD and alcoholism considered upon their discharge. There were also service members that had their substance abuse history considered, they were in ASAP and seen by behavioral health prior to their discharge.

b. **Board Type and Decision:** In a records review conducted on 11 December 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:** In Lieu of Trial by Court Martial / AR 635-200, Chapter 10 / KFS / RE- 4 / Under Honorable Conditions, General.

b. **Date of Discharge:** 1 February 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** N/A

(2) **Basis for Separation:** Pursuant to the applicant's request for voluntary discharge under provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** 12 January 2012

(5) **Administrative Separation Board:** N/A

(6) **Separation Decision Date / Characterization:** 18 January 2012 / General, under honorable conditions.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 1 December 2009 / 3 years

b. Age at Enlistment / Education / GT Score: 24 / GED / 109

c. Highest Grade Achieved / MOS / Total Service: E-5 / 19D10 Cavalry Scout / 6 years, 11 months, 28 days.

d. Prior Service / Characterizations: ARNG; 20030529 – 20050203 / Honorable
RA; 20050204 – 20091130 / Continuous Honorable

e. Overseas Service / Combat Service: Germany, South Korea / Iraq; 20060113 – 20070228

f. Awards and Decorations: ICM-2CS, ARCOM, AAM-4, USN UNIT COMMENDATION, NDSM, GWTSM, KDSM, NCOPDR, ASR, OSR-3

g. Performance Ratings: NIF

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides that the applicant reenlisted in the Army at the pay grade of E-4 for 3 years on 1 December 2009; second reenlistment.

(2) A DD Form 458 (Charge Sheet) shows that on 9 November 2011 the applicant was charged with violating Articles 92, 120, 128 and 134 of the Uniform Code of Military Justice (UCMJ).

- On 24 June 2011: Failure to obey a lawful order by walking away from military police officer.
- On 24 June 2011: Failure to obey a lawful order by refusing to sit down.
- On 24 June 2011: Drunk and disorderly.
- On 16 December 2010: Intentionally expose in indecent manner their penis in a public place.
- On 16 December 2010: Unlawfully strike [PFC] in the face with a closed fist.
- On 16 December 2010: Drunk and disorderly.

(3) On 12 January 2012 the applicant consulted with counsel and voluntarily requested a discharge in lieu of trial by court-martial.

(4) On 18 January 2012 the appropriate authority approved the applicant's request with a General, under honorable conditions discharge. The Court-Martial charges and specifications were withdrawn and dismissed at the effective date of discharge.

i. Lost Time / Mode of Return: None.

j. Behavioral Health Condition(s): PTSD and Other Mental Health.

(1) Applicant provided: 146 pages of Progress Notes, Report of Mental Status Evaluation document, and a Mental Health Treatment memorandum.

(2) AMHRR Listed:

5. APPLICANT-PROVIDED EVIDENCE: A DD Form 293 (Discharge Review) application, Mental Health treatment memorandum dated 4 November 2011, Report of Mental Status Evaluation dated 4 August 2011, resume, educational transcripts, four Jefferson Community and Technical College completed studies certificates, Certificate of Achievement dated 6 May 2019, Post Traumatic Growth Group certificate of completion dated 5 May 2016, Genesis House Program certificate of completion dated 20 May 2016, Cognitive Behavioral Therapy Program certificate of completion dated 27 June 2014, Interlinks Man in the Maze certificate of recognition dated 18 May 2016, a Degree Progress Audit that indicates the applicant is pursuing a Bachelor of Science degree and medical records (Progress Notes) in support of their petition.

6. POST SERVICE ACCOMPLISHMENTS: The applicant completed treatment programs for their mental health and personal development, and they pursued higher education. They are pursuing a Bachelor of Science degree and have obtained four technical certificates: Automotive Air Conditioning Mechanic, Brake Repairer, Front End Mechanic, and Manual Transmission/ Drive Train Technician.

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.

(a) 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.

(b) 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. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. It provides the ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

- Chapter 1-7c (5) Soldiers who fails to participate adequately in or respond to successfully to rehabilitation will be processed for administrative separation.
- Soldiers with subsequent alcohol or drug related incident or misconduct at any time during the 12 month period following successful completion of the ASAP or during the 12 month period following removal for any reason, will be processed for separation as a rehabilitation failure.

h. Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued there under, 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 law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces.

- Article 92 (Violation or failure to obey a general or regulation) states punishment consists of a dishonorable discharge, or a bad conduct discharge, forfeiture of all pay and allowances and confinement for 2 years.
- Article 128 (Simple Assault) states punishment consists of 3 months of confinement and forfeiture of 2/3 pay and allowances for 3 months.
- Article 120 (Indecent Act) states punishment consists of a dishonorable discharge, or a bad conduct discharge, forfeiture of all pay and allowances and confinement for 5 years.
- Article 134 (Drunk and Disorderly) states punishment consists of 3 months of confinement and forfeiture of 2/3 pay and allowances for 3 months.

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 DD Form 214 provides that the applicant received a General, under honorable condition characterization of service instead of an Under Other than Honorable (UOTH) characterization of service which is

normally considered appropriate for a soldier who voluntarily requests discharge in lieu of trial by court-martial.

b. Based on the available evidence, the applicant joined the Army at the age of 19, the served in the Army National Guard prior to enlisting in the regular Army. The applicant deployed to Iraq, advanced to the rank of Sergeant, and reenlisted in the Army twice. During their second reenlistment period and while stationed overseas in South Korea they were charged with violating four articles of the Uniform Code of Military Justice (UCMJ). The applicant consulted with counsel, and voluntarily requested to be discharged in lieu of trial by court martial.

c. A Review of the record provides administrative irregularity occurred in the proper retention of official records, specifically, the AMHRR is void of reports, and investigation documents relating to their offenses. Notwithstanding the missing documentation, the AMHRR does contain a charge sheet. The applicant signed a properly constituted DD Form 214, that shows they were discharged under the provisions of Army Regulation 635-200, Chapter 10 with a general, under honorable conditions characterization of service on 1 February 2012.

d. Army Regulation 635-200 states a 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 discharged 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? **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 diagnoses/experiences: PTSD. [Note- Adjustment DO with mixed emotional features, Adjustment DO, unspecified and Adjustment DO with anxiety are subsumed under diagnosis of PTSD.].

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for PTSD (50%SC) establishes nexus with active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that, based on the available information, no decision regarding medical mitigation can be made without the basis for separation. However, if the basis is failure to obey a lawful order x2, drunk and disorderly x2, intentionally exposing his penis in public and punching someone in the face, then the applicant's diagnosis of PTSD would mitigate some of his misconduct. As there is an association between

PTSD and problems with oppositional behaviors and self-medication with alcohol, the offenses of failing to obey orders and engaging in drunk and disorderly conduct would be mitigated. The offense of publicly displaying one's penis and punching someone in the face are not mitigated given that PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opinion, the board determined that the available evidence did not support a conclusion that the applicant's PTSD outweighed the medically unmitigated misconduct (intentionally exposing his penis in public and punching someone in the face).

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable and a narrative reason change. The board considered the considered this contention and determined that a change to the applicant's current characterization of service is not currently warranted because the misconduct of publicly displaying one's genital and punching someone in the face is not mitigated because PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(2) The applicant contends their PTSD and other mental health were not considered prior to their discharge. The board considered this contention and determined that a discharge upgrade is not warranted because the applicant's PTSD does not outweigh the medically unmitigated offense of the applicant intentionally exposing their genitals in public and punching someone in the face.

c. The board determined that the discharge is, at this time, proper and equitable, considering 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 PTSD did not excuse or mitigate the offenses of intentionally exposing their genitals in public and punching someone in the face. 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 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210009550

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:

3/19/2025

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

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs