

**1. Applicant's Name:**

- a. **Application Date:** 29 October 2020
- b. **Date Received:** 15 December 2020
- 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 Honorable.

b. The applicant seeks relief contending, this was their first time getting in trouble. They were an outstanding soldier with a clean record up to this incident. They had issues with their commander's leadership techniques compared to their previous commander. The applicant was not much of a drinker and allowed their drinking to get out of hand, lost their emotions by confronting their commander in the commander's office and attacked them. There were no physical injuries to either one of them. They regret very much what happened, letting their one-time use of alcohol take control and caused them to ruin their military career. The applicant loved being a Soldier and serving their country. If given the choice today, they would take the court-martial punishment and still be in the Army. They received an Honorable characterization of service for their prior service.

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 / KFS / RE-4 / Under Other than Honorable Conditions

b. **Date of Discharge:** 29 August 2017

**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 provisions 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:** 18 August 2017 / Under Other than Honorable Conditions

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 6 April 2016 / 3 years, 18 weeks
- b. **Age at Enlistment / Education / GT Score:** 21 / High School Diploma / 113
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 25Q10 MULTICH Trans OP/MNT / 1 year, 1 month
- d. **Prior Service / Characterizations:** ARNG (13 June 2013 – 5 April 2016) / HON
- e. **Overseas Service / Combat Service:** Korea / None (29 August 2016 – 28 August 2017)
- f. **Awards and Decorations:** AAM, NDSM, GWTSM, KDSM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 6 April 2016, the applicant enlisted in the Regular Army for 3 years and 18 weeks as a SPC, with 2 years, 9 months, and 23 days (ARNG) prior service. The Enlisted Record Brief provides the applicant served in Korea for 12 months and was awarded the Army Achievement Medal and Korea Defense Service Medal.

(2) On 27 July 2017, after consulting with counsel, the applicant voluntarily requested to be discharged, IAW Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial. In their request, they affirmed no one had subjected them to coercion, and counsel had advised them of the implications of their request. The applicant further acknowledged they were guilty of the charge against them or a lesser one; although, they elected to submit a statement on their behalf, there is no evidence of such in the record.

(3) On 18 August 2017, the appropriate separation authority approved their voluntary discharge request and characterized their service as Under Other than Honorable Conditions, with a reduction to the lowest enlisted grade.

(4) On 22 August 2017, they were issued separation orders. A DD Form 214 (Certificate of Release of Discharge from Active Duty) provides

- Authority: Army Regulation 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: 1 year, 1 month, 6 days
- Remarks: Continuous Honorable Active Service: 13 June 2013 – 5 April 2016; Soldier has not completed first full term of service.
- Lost Time: Under USC 972: 2 May – 18 August 2017
- Signature: Not available to sign.

- i. **Lost Time / Mode of Return:** 109 days (2 May – 18 August 2017) / NIF

**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); NGB-22 (National Guard Bureau Report of Separation and Record of Service)

**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 discharge was authorized, an under other than honorable conditions discharge was normally 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 his/her 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.

**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. A review of the record provides administrative irregularity in the proper retention of records, specifically, the AMHRR is void of

the Charge Sheet, Confinement Order, and any investigative report(s). Based on the missing documents, the specific facts and circumstances surrounding the applicant voluntarily requesting to be discharged in lieu of trial by court-martial, is unknown.

**b.** The available evidence provides the applicant enlisted in the Regular Army for 3 years and 18 months as a SPC, with 2 years, 9 months, and 23 days of prior service. They served in Korea for 12 months and was awarded an AAM and KDSM. The applicant served for 1 year and 6 days prior to their indiscipline. Notwithstanding the lack of evidence, after consulting with counsel, the applicant requested to be voluntarily discharged in lieu of trial by court-martial and elected to submit a statement on their behalf, however, the record is void of the document(s). The separation authority approved the discharge with an Under Other than Honorable Conditions and reduced the applicant to the lowest enlisted grade.

**(1)** The record is void of a medical and/or mental status examination, although, not required for a voluntary discharge request, this can be requested by the Soldier.

**(2)** They completed 1 year, 1 month, and 7 days of their 3 year, 18 week contractual obligation prior to their discharge.

**c.** Army Regulation, 635-200 states a Chapter 10 is 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 soldier 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. A medical and mental examination was not required for a voluntary request ILO trial by court-martial but could have been requested by the service member. The records are void of the evidence that showed whether they were requested.

**d.** Published Department of Defense guidance indicates the guidance is not intended to interfere or impeded on the Board's statutory independence. The board will determine the relative weight of the action that led to the discharge and whether its 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, 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 does not have a potentially mitigating diagnoses/experiences: the applicant did not assert a condition or experience and there are no in- or post-service diagnoses.

**(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 Honorable. The board considered this contention and noted that the applicant elected for separation via an administrative process under the provisions of Chapter 10, AR 635-200, in lieu of trial by court-martial and the convening authority approved that request. Applicant was the impetus to the separation action; therefore, no upgrade is warranted.

(2) The applicant contends this was their first time getting in trouble. They were an outstanding soldier with a clean record up to this incident. They had issues with their commander's leadership techniques compared to their previous commander. The applicant was not much of a drinker and allowed their drinking to get out of hand, lost their emotions by confronting their commander in the commander's office and attacked them. There were no physical injuries to either one of them. They regret very much what happened, letting their one-time use of alcohol take control and caused them to ruin their military career. The applicant loved being a Soldier and serving their country. If given the choice today, they would take the court-martial punishment and still be in the Army. They received an Honorable characterization of service for their prior service. The board considered this contention and acknowledged the applicant's prior period of honorable service and determined that the command acted within the provisions of Chapter 10, AR 635-200 in processing this action. The applicant voluntarily elected for separation in lieu of trial by court-martial and the convening authority approved that request. The applicant's available AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command and the applicant did not provide any evidence to the board.

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, there were no mitigating factors for the board to consider. The applicant voluntarily elected for separation in lieu of trial by court-martial. 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.

**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:**

3/20/2024

X

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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