

**1. Applicant's Name:**

- a. **Application Date:** 29 March 2021
- b. **Date Received:** 31 March 2021
- c. **Counsel:** Yes

**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, through counsel, an upgrade to honorable and a narrative reason change.

The applicant's counsel seeks relief contending, in effect, the applicant had difficulty getting along with the immediate chain of command and the chain of command was skeptical of the applicant's behavioral health issues despite the diagnoses from medical professionals. As a result of the breakdown in the professional relationship between the applicant and the command, the applicant ultimately faced UCMJ action in early 2007. The applicant opted to submit a request for a discharge in lieu of court-martial. Current policies represent a substantial enhancement to the rights afforded the applicant and there is substantial doubt the applicant would have received the same discharge id relevant current policies and procedures were available at the time of the applicant's discharge. While it is impossible to determine if the chain of command handled the applicant's separation in accordance with relevant regulations and procedures because of the missing paperwork from the AMHRR, the applicant's medical records demonstrate the applicant was suffering from behavioral health issues which impacted the applicant's ability to serve. The applicant's counsel contends the applicant was not allowed to refill prescriptions or attend additional treatment. The applicant was unjustly mistreated in the months preceding the separation which caused undue prejudice unto to the applicant. The discharge unjustly stigmatizes and harms the applicant.

**b. 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 26 March 2007

**c. Separation Facts:**

**(1) Date DD Form 458 (Charge Sheet):** NIF

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

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

**(4) Recommended Characterization:** NIF

**(5) Separation Decision Date / Characterization:** NIF

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 30 July 2004 / 8 years (USAR)

**b. Age at Enlistment / Education / GT Score:** 19 / GED / NIF

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 25U10, Signal Support Specialist / 2 years, 7 months, 26 days

**d. Prior Service / Characterizations:** NIF

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

**f. Awards and Decorations:** NDSM, GWOTSM, ASR, AFRM-M Device

**g. Performance Ratings:** NA

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

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

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

**(1) Applicant provided:** The applicant's counsel provides medical records pertaining to the applicant's mental health diagnoses.

**(2) AMHRR Listed:** NIF

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293, Counsel's Brief, DD Form 214, letter of support-2, medical records (180 total pages)

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the 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) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(4) Paragraph 3-7c states 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.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions is normally 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. (See chap 3, sec II).

(7) Paragraph 10b stipulates 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. 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.

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

The applicant requests, through counsel, an upgrade to honorable and narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's service AMHRR is void of the complete facts and circumstances concerning the events which led to his discharge from the Army. The applicant's record does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty). The applicant's DD Form 214 indicated the applicant was discharged under the provisions of AR 635-200, paragraph 10, by reason of In Lieu of Trial by Court-Martial, with a characterization of service of Under Other Than Honorable Conditions.

The applicant's counsel requests the applicant's narrative reason for the discharge be changed. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was separated under the provisions of Chapter 10, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial By Court-Martial." Army Regulation 635-5, Separation Documents governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28. The regulation stipulates no deviation is authorized. There is no provision for any other reason.

The applicant's counsel contends the applicant had difficulty getting along with the immediate chain of command and the chain of command was skeptical of the applicant's behavioral health issues despite the diagnoses from medical professionals. As a result of the breakdown in the professional relationship between the applicant and the command, the applicant ultimately faced UCMJ action in early 2007. The applicant opted to submit a request for a discharge in lieu of court-martial.

The applicant's counsel contends current policies represent a substantial enhancement to the rights afforded the applicant and there is substantial doubt the applicant would have received the same discharge if relevant current policies and procedures were available at the time of the applicant's discharge.

The applicant's counsel contends while it is impossible to determine if the chain of command handled the applicant's separation in accordance with relevant regulations and procedures because of the missing paperwork from the AMHRR, the applicant's medical records demonstrate the applicant was suffering from behavioral health issues which impacted the applicant's ability to serve.

The applicant's counsel contends the applicant was not allowed to refill prescriptions or attend additional treatment. The applicant was unjustly mistreated in the months preceding the separation which caused undue prejudice unto to the applicant. The discharge unjustly stigmatizes and harms the applicant.

## 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: Adjustment Disorders and Generalized Anxiety Disorder (GAD).

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

(3) Does the condition or experience actually excuse or mitigate the discharge? **Unknown.** The Board's Medical Advisor applied liberal consideration and opined that without the basis for separation, mitigation cannot be determined.

(4) Does the condition or experience outweigh the discharge? **Unknown.** Based on liberally considering all the evidence before the Board, the ADRB could not determine if the condition outweighed the discharge, as the Board could not determine the basis for separation.

**b. Response to Contention(s):**

(1) The applicant's counsel contends the applicant had difficulty getting along with the immediate chain of command and the chain of command was skeptical of the applicant's behavioral health issues despite the diagnoses from medical professionals. As a result of the breakdown in the professional relationship between the applicant and the command, the applicant ultimately faced UCMJ action in early 2007. The applicant opted to submit a request for a discharge in lieu of court-martial. The board considered this contention and determined that because the applicant did not provide a copy of the separation packet or documentation, the board could not determine the basis for separation.

(2) The applicant's counsel contends current policies represent a substantial enhancement to the rights afforded the applicant and there is substantial doubt the applicant would have received the same discharge if relevant current policies and procedures were available at the time of the applicant's discharge. The board considered this contention and did not find any evidence to prove the command acted in an arbitrary or capricious manner.

(3) The applicant's counsel contends while it is impossible to determine if the chain of command handled the applicant's separation in accordance with relevant regulations and procedures because of the missing paperwork from the AMHRR, the applicant's medical records demonstrate the applicant was suffering from behavioral health issues which impacted the applicant's ability to serve. The board considered this contention and determined that the command acted within the provisions of Chapter 10, AR 635-200 in processing the applicant's action. The applicant voluntarily elected for separation in lieu of trial by court-martial and the convening authority approved the request.

(4) The applicant's counsel contends the applicant was not allowed to refill prescriptions or attend additional treatment. The applicant was unjustly mistreated in the months preceding the separation which caused undue prejudice unto the applicant. The discharge unjustly stigmatizes and harms the applicant. The board considered this contention and determined that there is sufficient evidence in the applicant's medical records that reveal the applicant's medication was filled and dispensed.

c. The board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contentions 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 panel, the panel members determined an upgrade to the current separation is not warranted based on lack of medical mitigation and the lack of separation documents in the applicant's file. Additionally, 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 the request. 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.

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210010830

(2) The board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, 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:

10/29/2024

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