

1. Applicant's Name:

- a. **Application Date:** 21 April 2021
- b. **Date Received:** 21 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade of their U.S. Army Reserve (USAR) characterization of service to general (under honorable conditions).

(2) The applicant seeks relief stating they believe their record is unjust, at the time of their discharge, they were 22 years old, and they had just lost their mother. They had a lot of emotional issues they were dealing with, and they felt that they could no longer continue their military service as they wanted to spend more time with the only family they had left. To cope with the emotional exhaustion, they were feeling they smoked marijuana. They aren't saying their action was justified, but at the time of this event, they were on the brink of suicidal thoughts and pretty much had given up on life.

(3) After leaving the military they were able to connect more with their family and have worked to improve their mental state. They believe that they should not be punished for their situation of getting an Under Other Than Honorable Conditions character of service that this is not accurate to their character, it gives the presumption that they are a bad person without any context. They would like their record corrected to a General (Under Honorable Conditions).

b. Board Type and Decision: In a records review conducted on 27 September 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: NIF / Army Regulation 135-178 / NIF / Under Other Than Honorable Conditions

b. Date of Discharge: 27 February 2020

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) is void of their case files for approved separation.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 July 2015 / 8 years (USAR)

b. Age at Enlistment / Education / GT Score: 17 / HS Graduate / 89

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92M10, Mortuary Affairs Specialist / 4 years, 7 months, 27 days (USAR)

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, 89th Combat Sustainment Support Battalion, subject: Recommendation for the proposed Separation under Army Regulation 135-178, Chapter 11 (Misconduct), of [Applicant], dated 9 August 2019, reflects the applicant's battalion commander recommends the applicant be separated from the USAR and their service be described as General (Under Honorable Conditions). The battalion commander commented the applicant tested positive for Tetrahydrocannabinol (THC) on 5 May 2019 and currently has 16 unexcused absences. The applicant stated that they smoked marijuana to cope with the death of their mother. They were aware that their actions could result in separation from the USAR. They want to be separated from the USAR so that they can focus on their civilian career and raising their younger siblings, who reside in Africa. Retaining this Soldier will result in continued drug use and put their fellow Soldiers at risk. The applicant should be separated and receive a General (Under Honorable Conditions) discharge from the USAR.

(2) The Headquarters, 99th Readiness Division (USAR) Orders 20-058-00011, dated 27 February 2020, reflects the applicant is discharged from the USAR with an effective date of 27 February 2020, with the type of discharge as Under Other Than Honorable Conditions.

(3) The applicant's DA Form 5016 (Chronological Statement of Retirement Points) dated 13 July 2024, in their Soldier Management Services – Web Portal contains reflects –

- from 2 July 2018 – 1 July 2019, the applicant has 16 Inactive Duty Points (equivalent to 4 days of Battle Assemblies)
- from 2 July 2019 – 27 February 2020, the applicant has 6 Inactive Duty Points (equivalent to 3 days of Battle Assemblies)

i. Lost Time / Mode of Return: NIF

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE: None submitted with application.

- **POST SERVICE ACCOMPLISHMENTS:** None submitted with application.

6. STATUTORY, REGULATORY AND POLICY REFERENCE(s):

a. Title 10, U.S. Code, Section 1553, (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 U.S. Code, Section 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 (DoD) 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; Title 10 U.S. Code; Section 1553, DoD Directive 1332.41, and DoD Instruction 1332.28.

d. Army Regulation 135-178 (Enlisted Administrative Separations) set policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for

the orderly administrative separation of ARNG of the United States and USAR enlisted Soldiers for a variety of reasons.

(1) An honorable characterization 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. When a Soldier is discharged before expiration of the service obligation for a reason for which an honorable characterization is discretionary, the following considerations apply, to include –

(a) An honorable characterization may be awarded when disqualifying entries in the Soldier's military record are outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service.

(b) It is a pattern of behavior and not an isolated instance which should be considered the governing factor in determining the character of service.

(c) Unless otherwise ineligible, a Soldier may receive an honorable characterization of service if he or she has, during his or her current enlistment, or any extension thereof, received a personal decoration.

(2) A General discharge is if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

(3) A Under Other Than Honorable Conditions Discharge, service may, but is not required to be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, homosexual conduct, unsatisfactory participation, or security reasons. The Adjutant General will direct reduction in grade to private/E-1 when the Soldier is discharged under other than honorable conditions.

(4) Chapter 11 (Misconduct) stated a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances –

- minor disciplinary infractions
- a pattern of misconduct
- commission of a serious offense
- abuse of illegal drugs or alcohol
- civilian conviction

(5) Paragraph 11-8 (Characterization of Service) stated characterization of service will normally be under other than honorable conditions, but characterization as general (under honorable conditions) may be warranted.

e. Army Regulation 135-180 (Retirement for Non-Regular Service) dated 28 May 2015, implemented statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the Army National Guard, Army National Guard of the United States or the USAR. Paragraph 4-3 (Computation of Service) stated one point for each authorized participation in drills or periods of instruction which conform to the requirements prescribed by the Secretary of the Army.

f. Army Regulation 600-8-19 (Enlisted Promotions and Reduction) dated 25 May 2017 prescribed the enlisted promotions and reductions function of the military personnel system. Paragraph 10-15 (Approved for Discharge from the Service Under Other Than Honorable Conditions) stated when the separation authority determines that a Soldier is to be discharged from the Service under other than honorable conditions, the Soldier will be reduced to the lowest enlisted grade. Further board action is not required for this reduction.

g. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before Expiration Term of Service or fulfillment of active-duty obligation to meet the needs of the Army and its Soldiers.

7. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DOD Instruction 1332.28.

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation from the USAR. Notwithstanding the absence of records, their discharge order from the USAR provides the applicant was discharged with a character of service of under other than honorable conditions under the provisions of Army Regulation 135-178. They completed 4 years, 7 months, and 27 days of their 8-year contractual USAR obligation and did not complete their first full term of service.

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.

d. The applicant's AMHRR does not reflect documentation of a mental health diagnosis, nor did the applicant provide evidence of a mental health diagnosis of during their military service.

8. 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 the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service 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 contends they believe their record is unjust, at the time of their discharge, they were 22 years old, and they had just lost their mother. They had a lot of emotional issues they were dealing with, and they felt that they could no longer continue their military service as they wanted to spend more time with the only family they had left. The Board considered this contention and determined that the applicant's youth and immaturity did not outweigh the seriousness of the applicant's positive test for Tetrahydrocannabinol (THC) and 16 unexcused absences.

(2) The applicant contends to cope with the emotional exhaustion they were feeling they smoked marijuana. They aren't saying their action was justified, but at the time of this event, they were on the brink of suicidal thoughts and pretty much had given up on life. The Board considered this contention and determined that the applicant's assertion they coped with the emotional exhaustion they were feeling they smoked marijuana does not mitigate the applicant's positive test for THC and 16 unexcused absences as the Army affords many avenues to Soldier's including seeking assistance.

(3) The applicant contends they believe that they should not be punished for their situation of getting an Under Other Than Honorable Conditions character of service that this is not accurate to their character, it gives the presumption that they are a bad person without any context. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner. Therefore, a discharge upgrade is not warranted.

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 was not found to hold an in-service behavioral health condition that would mitigate or excuse the discharge. The Board noted that the applicant had 16 unexcused absences which is excessive. Typically, a chain of command will start the separation process a Soldier reaches nine (9) unexcused absences. The Board considered the applicant's contention regarding they were 22 years old, and they had just lost their mother and found that the totality of the applicant's record does not warrant a discharge upgrade. 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. Therefore, the applicant's Under Other than Honorable discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to an Honorable discharge.

(2) As there were no Reasons/SPD Codes/RE-codes listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

(3) As there is no RE-code listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for this item.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210010865

9. BOARD ACTION DIRECTED:

- a. Issue a New Separation Order: No Change
- b. Change Characterization to: No Change
- c. Change Authority to: No Change

Authenticating Official:

10/1/2024

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