

1. Applicant's Name:

- a. **Application Date:** 16 December 2020
- b. **Date Received:** 28 December 2020
- 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, change their rank/grade back to private first class/E-3, re-entry into Active Duty, and are requesting Department of Veterans Affairs (VA) benefits.

(2) The applicant seeks relief stating their discharge is inequitable because it was based on their failure to ask more questions regarding their transfer to a U.S. Army Reserve (USAR) unit from Missouri to Maine for 6 months for their work. They were unable to find USAR unit near Maine and was told they would be assigned to the Inactive Ready Reserve. While they were in Maine their USAR unit in Missouri discharged them with an under other than honorable conditions characterization of service. They feel they followed the instructions of their first sergeant and unit administrator when they sought assistance in their attempt to transfer to a USAR unit in Maine. They are not certain how their discharge was their fault, they were only a private first class, new to their unit, and they followed the instruction of their chain of command.

b. Board Type and Decision:

(1) 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.

(2) The issues regarding the applicant's rank/grade, reentry into Active Duty, and request for VA benefits are not within the purview of this Board. These issues should be addressed by the Army Board of Correction of Military Records (ABCMR). A DD Form 149 is enclosed for the applicant's use.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** NIF / Army Regulation 135-178 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 7 June 2007

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of their case files for approved separation. On 19 August 2021 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files), as of this date there has been no response.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 13 June 2005 / 8 years (USAR)

b. Age at Enlistment / Education / GT Score: 19 / College Graduate / 120

c. Highest Grade Achieved / MOS / Total Service: E-3 / 37F10 PYOPS / 1 year, 11 months, 26 days (USAR)

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: ASR

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was released from active duty for training after completing their initial training on 15 December 2005.

(2) The Headquarters, Headquarters, U.S. Army Civil Affairs and Psychological Operations Command Orders 07-157-00016, dated 6 June 2007, reduced the applicant in rank/grade from private two/E-2 to private/E-1 effective 1 June 2007 and discharged the applicant from the U.S. Army Reserve with an effective date of 7 June 2007, with the type of discharge as Under Other Than Honorable Conditions.

(3) A DA Form 5016 (Chronological Statement of Retirement Points) dated 30 August 2024, reflects –

- from 6 July 2005 – 12 June 2006, the applicant was credited with 7 Inactive Duty Point (equivalent to 3.5 days of unit drills)
- from 13 June 2006 – 7 June 2007, the applicant was credited with 0 Inactive Duty Point (equivalent to 0 days of unit drills)
- Total of 1 year of Qualifying for Retirement

i. Lost Time / Mode of Return: NIF

j. Behavioral Health Condition(s): NIF

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- U.S. Army Human Resources Command Orders C-07-513905
- Headquarters, U.S. Army Training Center and Fort Jackson Order 215-296
- Personnel Qualification Record
- Chronological Statement of Retirement Points

6. POST SERVICE ACCOMPLISHMENTS: None

7. 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 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures), effective 1 March 2005, defined the USAR service obligations and prescribed policies and procedures governing the various types of service obligations and participation requirements. Paragraph 4-18 (Change of Address) stated enlisted Soldiers who move to an area too distant to continue participating with their unit will be reassigned. Those who cannot be reassigned and those who do not give notice of relocation will be granted a 90-day leave of absence. During a leave of absence, the Soldier remains assigned to the unit. The Soldier is given credit for constructive attendance at training assemblies without pay until the leave of absence expires, reassignment, discharge, or return to the unit. Paragraph 4-24 (Failure to Obtain Assignment) stated when Soldiers are not assigned or enlisted in another unit, on the 95th day after the effective date of the leave of absence, the Soldier may be reassigned/transferred to the Individual Ready Reserve.

e. 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) Service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status. Entry level status is defined as, upon enlistment, a Soldier qualifies for entry level status during the first 180 days of continuous active military service. A member of a Reserve component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in a Reserve component. Entry level status for such a member of a Reserve component terminates 180 days after beginning training if the Soldier is ordered to active-duty training for one continuous period of 180 days or more.

f. Army Regulation 135-180 (Retirement for Non-Regular Service) dated 1 August 1987, implemented statutory authorities governing the granting of retired pay to Soldiers and former Reserve components Soldiers. Paragraph 2-10 (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.

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.

8. 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. Due to the lack of evidence, the specific facts and circumstances surrounding the misconduct that led to their discharged under the provision on Army Regulation 135-178 are unknown. 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. They completed 1 year, 11 months, and 26 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.

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.** There are no potentially mitigatable behavioral health (BH) conditions in either Armed Forces Health Longitudinal Technology Application (AHLTA) or Joint Longitudinal Viewer (JLV).

(2) Did the condition exist, or experience occur during military service? **N/A.** The Board's Medical Advisor found there are no potentially mitigating BH conditions in AHLTA or JLV.

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.** The Board's Medical Advisor applied liberal consideration and opined that there are no potentially mitigating BH conditions in either AHLTA or JLV.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends their discharge is inequitable because it was based on their failure to ask more questions regarding their transfer to a U.S. Army Reserve (USAR) unit from Missouri to Maine for 6 months for their work. 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.

(2) They are not certain how their discharge was their fault, they were only a private first class, new to their unit, and they followed the instruction of their chain of command. 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. 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 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 considered the applicant's contention regarding their discharge is inequitable because it was based on their failure to ask more questions regarding their transfer to a U.S. Army Reserve (USAR) unit from Missouri to Maine and found that the totality of the applicant's record does not warrant a discharge upgrade. Additionally, Board members believed the applicant should have called the chain of command when the applicant could not find an available unit to drill with while working in Maine. 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.

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AR20210010871

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. 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
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs