

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 11 December 2020
- b. **Date Received:** 21 December 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is an under other than honorable conditions. The applicant requests a change to the characterization of their service to uncharacterized, a change of their separation code and reentry code.

b. The applicant seeks relief stating they would like to change their characterization of service to "uncharacterized" for the reason of an entry level separation.

c. **Board Type and Decision:** In a records review conducted on 9 February 2024, and by a 5-0 vote, after carefully examining the applicant's record of service during the period of enlistment under review and all other evidence presented, the Board determined that the reason for the applicant's separation and the character of service the applicant received should be changed based on clemency, the Article 86, UCMJ for AWOL served its intended purpose, the punishment was imposed over nine years ago, and IAW AR 635-200 a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status. Accordingly, the Board voted to grant relief by upgrading the applicant's characterization of service to Uncharacterized, with corresponding narrative reason and SPD code of Entry Level Performance and Conduct, JGA. The Board members determined the reentry code was proper and equitable and voted not to change it. 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 / Army Regulation 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 11 July 2014

c. Separation Facts:

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 5 June 2014, the applicant was charged with one Specification in Violating Article 86, UCMJ, for being Absent Without Leave (AWOL) from on or about 27 January 2014 until on or about 26 May 2014.

(2) **Legal Consultation Date:** 5 June 2014

(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:** Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 2 July 20014 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 4 November 2013 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 98
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 / NA / 4 months, 9 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DD Form 616 (Report of Return of Absentee) dated 26 May 2014 provides the applicant was apprehended by civil authorities on 26 May 2014 in San Bernardino, CA and transferred to a U.S. Army Personnel Control Facility (Fort Sill, OK).

(2) A DD Form 458 (Charge Sheet), dated 5 June 2014, provides the applicant was charged with violation of Article 86, UCMJ, for having been absent without leave (AWOL) on or about 27 January 2014 to on or about 26 May 2014.

(3) On 5 June 2014, after consulting with counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200, chapter 10, discharge 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 and they elected not to submit a statement on their behalf.

(4) On 5 June 2014, the defense counsel endorsed the applicant's voluntary request for discharge acknowledging they were counseled on the possible effects of an under other than honorable discharge.

(5) A memorandum, Headquarters, U.S. Army Garrison, Fort Sill, OK, subject: Request for Discharge in Lieu of Trial by Courts-Martial, undated, provides the Personnel Control Facility (PCF) commander recommended approval of the applicant's voluntary separation request, with a characterization of service of under other than honorable conditions and forwarded to the separation authority.

(6) A memorandum, Headquarters, U.S. Army Garrison, Fort Sill, OK, subject: Request for Discharge in Lieu of Trial by Courts-Martial [Applicant], dated 2 July 2014, provides the separation authority approved the applicant's request for voluntary discharge with a characterization of under other than honorable conditions. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 11 July 2014. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 4 months, 9 days [129 days]
- item 12i (Effective Date of Pay Grade) – 4 November 2013
- item 18 (Remarks) – Member has not completed first full term of service
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 26 (Separation Code) – KFS [In Lieu of Trial by Court-Martial]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial
- item 29 (Dates of Time Lost During This Period) – 20140127-20140525

i. **Lost Time / Mode of Return:** 4 months, 13 days (AWOL, 27 January 2014 – 25 May 2014) / Apprehended by Civil Authorities

j. **Behavioral Health Condition(s):** None

5. **APPLICANT-PROVIDED EVIDENCE:** None submitted in support of their petition.

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

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, Title 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), 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 (Active Duty Enlisted Administrative Separations), 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when: (1) Characterization

under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case. (2) The Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training (IET), has been awarded a Military Occupational Specialty (MOS), and has reported for duty at a follow-on unit of assignment.

(5) Chapter 10 (Discharge in Lieu of Trial by Court-Martial) stated a Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice and the Manual or Courts-Martial, 2012, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The Soldier's written request will include an acknowledgment that he/she understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge.

(6) Paragraph 10-8 (Types of Discharge, Characterization of Service) stated 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. When characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status, service will be uncharacterized.

(7) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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.

(8) Glossary defines entry-level status for Regular Army Soldiers is the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

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 Department of Defense Instructions 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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. Manual for Courts-Martial (2012 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, 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 86 (AWOL) states in subparagraph being absence without leave for more than 30 days, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

h. Army Regulation 630-10 (Absence, Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings) provides policies and procedures for reporting unauthorized absentees and deserters, the administering of absent without leave (AWOL) personnel and deserters, returning absentees and deserters to military control and the surrendering of military personnel to civilian law enforcement authorities. When a soldier returns from an absence that is or appears to be unauthorized, the unit commander informally investigates whether disciplinary action should be taken and if the soldier be charged with time lost.

8. SUMMARY OF FACT(S):

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

b. The applicant was absent without leave, after completing 85 days of active duty, during their entry level status, the evidence in their Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge, absent without leave from on or about 27 January 2014 until on or about 25 May 2014. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

c. The Separation Program Designator (SPD) Codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes). to

track types of separations. The SPD code specified by Army Regulation for a discharge under Chapter 10, is "KFS."

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? **No**. The Board's Medical Advisor, reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a 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): The applicant contends they would like to change their characterization of service to "uncharacterized" for the reason of an entry level separation. The Board considered this contention and found it valid.

c. After carefully examining the applicant's record of service during the period of enlistment under review and all other evidence presented, the Board determined that the reason for the applicant's separation and the character of service the applicant received should be changed based on clemency, the Article 86, UCMJ for AWOL served its intended purpose, the punishment was imposed over nine years ago, and IAW AR 635-200 a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status. Accordingly, the Board voted to grant relief by upgrading the applicant's characterization of service to Uncharacterized, with corresponding narrative reason and SPD code of Entry Level Performance and Conduct, JGA. The Board members determined the reentry code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Uncharacterized based on clemency, the Article 86, UCMJ for AWOL served its intended

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purpose, the punishment was imposed over nine years ago, and IAW AR 635-200 a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

(2) The Board voted to change the reason for discharge to Entry Level Performance and Conduct under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JGA.

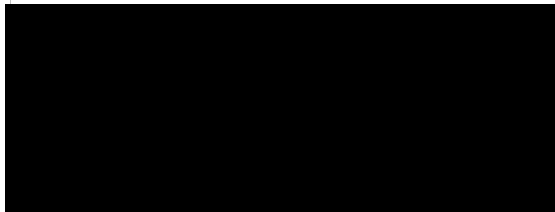
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Uncharacterized
- c. **Change Reason / SPD Code to:** Entry Level Performance and Conduct/JGA
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

3/5/2024



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