

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210011136****1. Applicant's Name:** [REDACTED]**a. Application Date:** 18 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 general (under honorable conditions). The applicant requests an upgrade of their Army National Guard (ARNG) character of service to honorable.

(2) The applicant seeks relief contending due to their injuries as stated in medical documents, made it difficult for them to pass the Army Physical Fitness Test (APFT) due to weight gain from their injuries.

b. Board Type and Decision: In a records review conducted on 18 September 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service and positive character statements from the applicant's chain of command outweighing the applicant's failure to pass the APFT basis for separation. Therefore, the Board voted to recommend relief with issuance of a new NGB Form 22a, with an upgrade of the characterization of service to Honorable and the separation authority to NGR 600-200, paragraph 6-8a. The Board's recommendation was forwarded to the Chief, National Guard Bureau, Georgia Military Department, to the Adjutant General, State of Georgia, under the provisions of 10 USC § 1553, for final approval.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Unsatisfactory Performance / National Guard Regulation 600-200, paragraph 6-35f / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 2 May 2014

c. Separation Facts: The applicant's case separation file is void from the Army Military Human Resource Record (AMHRR). On 14 September 2021 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files), the applicant's response consisted of their National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service).

4. SERVICE DETAILS:

a. Date / Period of Enlistment: NIF

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

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42R1O, Army Band Member / 11 years, 5 months, 11 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: ARCOM, AAM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: A National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service) reflects the applicant was separated from the ARNG on 2 May 2014. The NGB Form 22 shows in –

- item 10a (Net Service This Period) – 11 years, 5 months, 11 days
- item 23 (Authority and Reason) – National Guard Regulation 600-200, paragraph 6-35f
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 27 (Reenlistment Eligibility) – RE-3

i. Lost Time / Mode of Return: None

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)
- Medical Document, View Patient Visit with a date of service of 6 May 2008
- 3rd Party Character Reference
- NGB Form 22

6. POST SERVICE ACCOMPLISHMENTS: None submitted with 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) 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 and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 135-178 (Enlisted Administrative Separations) effective 18 April 2014 set policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States and U.S. Army Reserve enlisted Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance. Chapter 9 (Unsatisfactory Performance) stated a Soldier may be discharged when it is determined is unqualified for further military service by reason of unsatisfactory performance. Initiation of discharge proceedings is required for Soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness Test unless the responsible commander chooses to impose a bar to reenlistment. The service of Soldiers discharged because of unsatisfactory performance will be characterized as honorable or general (under honorable conditions).

e. National Guard Regulation 600-200 (Enlisted Personnel Management) establishes standards, policies, and procedures for the management of the Army National Guard and the Army National Guard of the United States enlisted Soldiers in the functional areas of – to include enlisted separations.

(1) An Honorable discharge 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 another 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 consideration apply – where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s) a Soldier will not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by court-martial or actions under the UCMJ Article 15 conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable characterization of service 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 it is a pattern of behavior and not an isolated instance that should be considered the governing factor in determining the character of service unless otherwise ineligible, a Soldier may receive an honorable characterization of service if they have, during their current enlistment, or any extension thereof, received a personal decoration

(2) A General (Under Honorable Conditions) is if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as general, 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 is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Paragraph 6-35f stated to refer to Army Regulation 135-178, chapter 9 for Unsatisfactory Performance discharge. Counseling and rehabilitation are required. Administrative separation board procedures are required. Initiation of discharge proceedings are required for Soldiers without medical limitations who have two consecutive failures of the APFT unless the responsible commander imposed a bar to reenlistment.

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 DoD Instruction 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):

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 applicant's case files for approved separation from the ARNG nor does it contain medical documentation regarding the applicant meeting or not meeting medical fitness standards. The applicant's NGB Form 22 indicates their discharge under the provisions of National Guard Regulation 600-200 for unsatisfactory performance, with a character of service of general (under honorable conditions). They completed 11 years, 5 months, and 11 days of total service; however, their AMHRR does not contain their reenlistment documents.

c. Published DoD 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? **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/experiences: Back Injury secondary to MVA.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the back injury due to MVA occurred during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is insufficient evidence to support discharge upgrade. Applicant-provided medical document dated 6 May 2008 documents that applicant was in a MVA the week before which resulted in a mild head injury, back spasms, and muscle sprain. STRs indicate applicant was placed on a temporary, duty limiting profile with an expiration date of 6 Feb 2012; date profile was instituted is not documented. There is no evidence in applicant's STRs of any additional profiles or permanent profiles. A PHA dated 8 July 2013 indicates the applicant answered "NO" to questions about recurrent back or neck pain, numbness, tingling. The examining physician noted that the applicant had been in a MVA on 30 Apr 2008 which resulted in a visit to the ED. Applicant had no sequelae from this accident and was determined to have a PULHES of 111111. Additionally, the accident occurred in 2008 yet the applicant was separated from the ARNG in 2014. Applicant contends that applicant's 2008 MVA resulted in back injury which caused applicant to

fail the APFT. However, there is no documentation in applicant's available records indicating when the APFT which resulted in applicant's separation was conducted but, most likely, it was conducted in 2013 to 2014 given applicant's separation date. This is 6-7 years after applicant's motor vehicle accident. If said accident had resulted in injuries of such severity that they caused the applicant to fail an APFT in 2013/2014, one would expect more military medical documentation and/or the existence of a permanent medical profile related to applicant's injuries. Finally, applicant denied experiencing recurrent back pain in applicant's 2013 PHA. Based on all these factors, the advisor feels that there is insufficient evidence to support applicant's request for discharge upgrade.

(4) Does the condition or experience outweigh the discharge? **No.** The Board considered all evidence presented and determined the condition did not outweigh the basis for separation. However, the Board considered the applicant's length and quality of service, positive character statements, and no other misconduct in the file warranted a discharge upgrade.

b. Response to Contention(s): The applicant contends due to their injuries as stated in medical documents, made it difficult for them to pass the APFT due to weight gain from their injuries.

The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service and positive character statements from the applicant's chain of command outweighing the applicant's failure to pass the APFT basis for separation.

c. The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service and positive character statements from the applicant's chain of command outweighing the applicant's failure to pass the APFT basis for separation. Therefore, the Board voted to recommend relief with issuance of a new NGB Form 22a, with an upgrade of the characterization of service to Honorable, the separation authority to NGR 600-200, paragraph 6-8a. The Board's recommendation was forwarded to the Chief, National Guard Bureau, Georgia Military Department, to the Adjutant General, State of Georgia, under the provisions of 10 USC § 1553, for final approval. However, the applicant may request a personal appearance hearing to address further 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 to change the applicant's characterization of service to Honorable because the applicant's length and quality of service and positive character statements from the applicant's chain of command outweighed the applicant's failure to pass the APFT. Thus, the prior characterization is no longer appropriate. This recommendation was forwarded to the NGB for approval.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

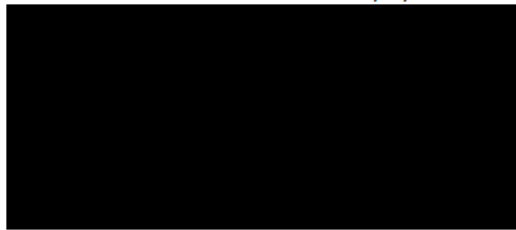
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New NGB Form 22a: Yes
- b. Change Characterization to: Honorable
- c. Change Reason: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

1/16/2025



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