

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 19 January 2021
- b. **Date Received:** 2 February 2021
- 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 Under Other than Honorable Conditions. The applicant requests an upgrade to General (Under Honorable Conditions).

b. The applicant seeks relief contending, their irrational behavior was due to their spouse cheating on them while they were away at work. They asked SFC for help, however, was told nothing could be done concerning their spouse. They were young and married to a person who they thought they loved and heartbroken and made a rational decision to go home which they will forever regret. They are only asking for an upgrade to the discharge in order for them to move on in life without this on their record. It was hard enough for them to come home on a four day pass with everything going on at the time. They remember coming back to Fort Bragg, one day late and getting handcuffed by the 1SGT, then had the company line up in formation, with the applicant on their knees, they spit on the applicant's face. They will never forget that day, being a young adult and being treated like an animal for not knowing what to do concerning their spouse moving in another person in their home where they paid all of the bills. They had to leave and go home but was lost.

c. **Board Type and Decision:** In a records review conducted on 13 March 2024, and by a 5-0 vote, the board determined that the discharge was inequitable based on the applicant in-service factors (length of service and severe family matters) which mitigate the applicant's misconduct (AWOL). Accordingly, the board voted to grant relief in the form of an upgrade of the characterization of service to General Under Honorable Conditions.

**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 April 2012

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** Pursuant to the applicant's request for voluntary discharge provision of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

(3) **Recommended Characterization:** NIF

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

(5) **Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 19 April 2012 / Under Other than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 18 November 2009 / 4 years

**b. Age at Enlistment / Education / GT Score:** 18 / High School Diploma / 87

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 91R1P Parachute Rigger / 2 years, 3 months, 19 days.

**d. Prior Service / Characterizations:** None

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

**f. Awards and Decorations:** GWOTSM, ASR, PB, PRB

**g. Performance Ratings:** NA

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

**(1)** On 13 August 2009, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; on 18 November 2009, they enlisted in the Regular Army for 4 years as a PVT.

**(2)** The Enlisted Record Brief provides on 18 November 2010, they promoted to PFC and on 7 February 2012, the applicant was flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

**(3)** Three Personnel Action documents provide the following status changes:

Date	Duty Status From	Duty Status To
22 February 2012	Present for Duty (PDY)	Absent Without Leave (AWOL)
23 March 2012	AWOL	Dropped From Rolls (DFR)
12 April 2012	DFR	PDY

**(4)** On 22 March 2012, the commander reported the applicant as a wanted deserter/absentee, completed an investigation, notified authorities, and sent letter(s) to their next of kin, when the applicant was reported AWOL (22 February) and DFR (23 March), to urge the applicant to return to military control.

**(a)** On 9 April 2012, the applicant surrendered to civilian authorities at their home of record (HOR) and returned to their military control unit (Fort Bragg).

**(b)** On 13 April 2012, the applicant was placed in pretrial confinement (PTC) in violation of Articles 85 (Desertion) and 86, UCMJ (AWOL).

**(c)** While confined, the applicant completed a medical history and health examination, providing the applicant was qualified for service; the Provider noted frequent headaches and occasional lower back pain, their recommendation was to follow up with neurology within 60 days for traumatic brain injury (TBI) screening as the applicant has had multiple mild concussions; treat as needed at local clinic, noting no back pain at the time of

exam.

(d) On 16 April 2012, the Executive Officer of the Provost Marshal Office (PMO), provides authorization to the County Jail to confine the applicant for 15 days (12 – 26 April 2012, although, a scrivener's error shows 12-30 April 2012).

(5) On 19 April 2012, aside from the applicant's voluntary discharge request IAW AR 635-200, Chapter 10, in lieu of trial by court-martial, missing from the record, the chain of command recommended approval and the separation authority directed the applicant be discharged with an Under Other than Honorable Conditions characterization of service and reduced to the lowest enlisted grade.

(6) On 26 April 2012, their separation orders were issued. The same day, A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly with 2 years, 3 months, and 19 days. The applicant has not completed their first full term of service and they was unable to sign.

i. **Lost Time / Mode of Return:** 50 days; AWOL, (22 February – 11 April 2012) / Surrendered to Civil Authorities

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293 (Application for the Review of Discharge)

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with this 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) 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) Chapter 10, Discharge in Lieu of Trial by Court Martial is applicable to members who committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable. After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions. The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel.
- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

(5) Chapter 15 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.

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 "JKK" 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 DODI 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.

**g.** Manual for Courts-Martial (2008 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 laws is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces.

**(1)** Article 85 (desertion) states in subparagraph, the maximum punishment consists of dishonorable discharge, forfeiture of all pay and allowances and confinement for two years.

**(2)** Article 86 (absence without leave) states in subparagraph being absent without leave for more than 30 days and terminated by apprehension, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

**h.** Army Regulation 631-10 (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 charge with time lost.

**(1)** Classification of an absence is dependent upon such factors as the following:

- Order and instructions, written/oral, the Soldier received before/during absence.
- Age, military experience, and general intelligence of the Soldier
- Number and type of contact the Soldier had with the military absent
- Complete or incomplete results of a court-martial decision if any

**(2)** An absence immediately following authorized leave is classified as AWOL. Should the absence subsequently be reclassified, the soldiers leave is corrected to reflect the reclassified absence, except if the absence is caused by the following:

- Mental incapacity
- Detention by civilian authorities
- Early departure of a mobile unit due to operational commitments

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

**a.** The applicant requests an upgrade to General (Under Honorable Conditions). A review of the record provides there was administrative irregularity in the proper retention of official military records, specifically, the nonjudicial punishment proceedings, their voluntary discharge request, and whether the applicant elected to submit a statement on their behalf or if they elected to

consult with defense counsel.

**b.** The available evidence provides the applicant enlisted in the RA, promoted to PFC, and served without indiscipline for 2 years, 2 months, and 20 days. They were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA), for having been AWOL for 50 days. They surrendered to civilian authorities and was returned to military control. Upon authorization from the PMO, the applicant served 15 days of detention, in the County Jail. Notwithstanding the missing record, the chain of command recommended approval of the applicant's voluntary discharge request and the separation authority directed their discharged, with an Under Other than Honorable Conditions characterization of service, reducing them to the lowest enlisted grade.

**(1)** The applicant completed a medical history/examination while confined and was found qualified for service, with a recommendation was to follow up with neurology within 60 days for traumatic brain injury (TBI) screening as the applicant has had multiple mild concussions; treat as needed at local clinic, noting no back pain at the time of exam. There is no record of a mental status examination, although, not required for a voluntary discharge request, this can be requested by the Soldier.

**(2)** They completed 2 years, 3 months, and 19 days of their 4 year contractual obligation prior to the misconduct which led to their discharge.

**c.** Army Regulation 635-200 states 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 discharge 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.

**d.** 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)** 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 diagnosis: The applicant had a possible mTBI or concussion, but cleared by neurology 3 months prior to AWOL.

**(2)** Did the condition exist, or experience occur during military service? **Yes.** The applicant had a possible mTBI or concussion but cleared by neurology 3 months prior to AWOL.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the mTBI/concussion was not active at the time of the misconduct.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the board's application of liberal consideration, the board concurred with the opinion of the Board's Medical Advisor, a voting member, that the available evidence did not support a conclusion that the applicant's mTBI/concussion outweighed the basis of separation – AWOL.

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

(1) The applicant requests an upgrade to General (Under Honorable Conditions). The board considered this contention during proceedings and voted to grant relief based on the applicant in service factors (length of service and severe family matters) which mitigate the misconduct (AWOL).

(2) The applicant contends, their irrational behavior was due to their spouse cheating on them while they were away at work. They asked SFC for help, however, was told nothing could be done concerning their spouse. They were young and married to a person who they thought they loved and heartbroken and made a rational decision to go home which they will forever regret. They are only asking for an upgrade to the discharge in order for them to move on in life without this on their record. It was hard enough for them to come home on a four day pass with everything going on at the time. They remember coming back to Fort Bragg, one day late and getting handcuffed by the 1SGT, then had the company line up in formation, with the applicant on their knees, they spit on the applicant's face. They will never forget that day, being a young adult and being treated like an animal for not knowing what to do concerning their spouse moving in another person in their home where they paid all of the bills. They had to leave and go home but was lost. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the information outlined above in paragraph 9b (1).

c. The board determined that the characterization of service is inequitable based on the applicant in service factors of length of service and severe family matters which mitigated the applicant's AWOL. Accordingly, the board voted to grant relief in the form of an upgrade to the characterization of service to General Under Honorable Conditions. The board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

**d. Rationale for Decision:**

(1) The board voted to change the applicant's characterization of service to General Under Honorable Conditions because the applicant's length of service and severe family matters mitigated the misconduct. Thus, the prior characterization is no longer appropriate.

(2) The board voted to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, 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: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

**Authenticating Official:**

3/19/2024



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