

1. Applicant's Name:

- a. **Application Date:** 1 December 2020
- b. **Date Received:** 8 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 Under Other than Honorable Conditions. The applicant requests an upgrade to Honorable, a change to their narrative reason, as well as changing their separation and reenlistment codes.

b. **Counsel states.** The applicant seeks relief contending, they were wrongfully discharged from the U.S. Army, due to their ex-spouse's criminal act on Fort Eustis, VA. The ex-spouse stole and used a former co-workers' Military Star credit Card, while telling the applicant that the ex-spouse's brother had loaned them money by loading monies on a card; the ex-spouse would never allow them to see the card. The ex-spouse was found guilty of the crimes they committed; however, all of the charges were dismissed. Instead, the applicant was found guilty of the ex-spouse's crimes and issued a less than Honorable discharge and had to vacate their military service career. The applicant immediately started divorce proceedings but had to wait a year due to their young child, where the applicant was awarded full custody. Having full custody of their child, the applicant desires to be reinstated to provide benefits for their child. Their military lawyer, Captain, recommended a Chapter 10 request, to prevent the applicant from going to court because the military fully supports spouses, not the Soldiers. The applicant was not given the opportunity to talk to their chain of command. Also, the Fort Eustis Commander, General, departed the base less than 20 days after their hearing.

c. **Board Type and Decision:** In a records review conducted on 24 April 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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 / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other than Honorable Conditions

b. **Date of Discharge:** 16 August 2019

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 under provision of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(3) **Recommended Characterization:** NIF

(4) Legal Consultation Date: 31 May 2019

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 12 July 2019 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 April 2017 / 3 years, 19 weeks

b. Age at Enlistment / Education / GT Score: 21 / High School Diploma / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M10 00 Motor Transport Op / 2 years, 3 months, 23 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 24 April 2017, the applicant enlisted in the Regular Army for 3 years and 19 weeks as a PV2. The Enlisted Record Brief provides they promoted up to SPC (1 November 2018). On 27 December 2018, they were flagged, Suspend Favorable Personnel Actions (FLAG), for law enforcement investigation (MA).

(2) On 19 December 2018, Security Forces Investigations was notified by AAFES Loss Prevention of credit card fraud. An AAFES employee had stolen another employees' Military Star credit card and money from a purse in the employee break room at the Fort Eustis Express. Loss Prevention Officer stated there was video surveillance which captured the theft and of several purchases at the Fort Eustis Express, Fort Eustis Post Exchange and the Norfolk NEX from 12 – 14 December 2018. The purchases totaled \$4,857.95 on the credit card belonging to the victim. The suspect was identified as the applicant's spouse [then] by video surveillance and the spouse's supervisor at the Fort Eustis Express.

(a) On 20 December 2018, Detectives advised the spouse of their legal rights which they waived and provided both a verbal and sworn written statement. The spouse admitted to stealing the credit card and the money and using the credit card to make \$4,857.95 of purchases. The spouse stated all the items they purchased, except the fast food and beverages, were still at their residence. The spouse also stated their spouse, identified as the applicant, had full knowledge of the stolen credit card, and assisted with purchasing items. The spouse was processed and released on their own recognizance, with a mandatory court appearance on 25 February 2019.

(b) The victim waived their rights and provided a statement, providing on 10 December 2018, they noticed approximately \$12 missing from their wallet but was not

too worried. Then on 12 December 2018, after getting off work, noticed \$10 in cash was missing but their card were all messed up. They looked over the cards they usually use and they were there so the victim did not think any card were stolen, only cash. They informed their manager to let the others know. On 15 December 2018, they received an email from their Starcard statement, which they had not used the card in years (which is why it is under their former last name) and it said they had a balance of over \$4,000.00. They immediately called their store manager and told them what happened. The charges were from 12 – 15 December 2018. After speaking with the manager, they called Starcard and reported their card stolen and the card was cancelled and a replacement sent to them. Their card had a zero balance until now. They was so upset about the cash and the whole time someone was charging nonstop on their card. The applicant hopes they are made to pay the money back as they did not use it. They further expressed how someone could do this and right before Christmas, is pathetic. They have four kids and did not even spend a fourth of that amount on them who they work hard for.

(c) The Express Manager waived their rights and provided a statement, received a text from the victim, informing them the victim's military Starcard had been used without authorization and forwarded screenshots of their Starcard statement. They used the information to view the security cameras and the spouse is seen using the victim's card to make a purchase. They notified AAFES Safety and Security.

(d) The spouse waived their rights and provided a statement, providing the following answers to Fort Eustis Loss Prevention Office:

- Q: "How long have you worked for AAFES?" A: "Since 28 November 2018."
- Q: "At which facility do you work and what are your regular work hours?" A: "I work at the Eustis Express."
- Q: "What are your job duties?" A: "Cash people out and ring people up."
- Q: "What is your cashier number?" A: "[redacted]"
- Q: "Are you aware of another Express Associate that had some cash and her Starcard stolen from her purse that was in her Locker on 12th Dec 2018?" A: "No."
- Q: "Are you aware that there are Security Cameras in the Express?" A: "Yes."
- Q: "Please explain to me why on 12 December 2018, while at your register, you were observed via camera scanning a pack of gum (\$1.39) and then using your phone to manually input the associate's stolen Starcard number from your personal phone. You then signed for the purchase and put the gum back on the shelf. Were you testing it see if it would work?" A: "Yes."
- Q: "Please explain how you came into possession of the associate's stolen Starcard?" A: "I found it on the floor, by the coats in the break room."
- Q: "Why did you not turn it in to management at that time?" A: "Because I didn't want to."
- Q: "That same day you used the stolen Starcard at the Eustis Main Exchange for \$59.80 and later that day at the Norfolk NEX you used it twice. Once for \$1.99 and the other for \$1,609.32, totaling \$1,672.25, is that correct?" A: "Yes, it is."
- Q: "On 14 December 2018 you used the stolen Starcard again five times that day. All five times were at the Fort Eustis Express, once for \$6.77,

- once for \$5.87, once for \$1.59, once for \$1.78 and once for \$1.25 totaling \$17.26. Is that correct?" A: "Yes, it is."
- Q: "Who else did you allow to use this card?" A: "Nobody."
 - Q: "Are you aware that there are security cameras at the NEX?" A: "Yes, I am."
 - Q: "On most of the occasions that you conducted these fraudulent transactions, your husband was with you when you used the stolen card. He also presented merchandise for himself that you paid for with the card. Since you do not have a Starcard yourself, what did your husband say when you used a Starcard to pay for all of this merchandise?" A: "[The applicant] said, Where did you get the card from? I told [them] friend. And when the friend said it wasn't hers, and [the applicant] knew it was stolen, [the applicant] told me, Don't get caught."
 - Q: "You were observed on the Security Cameras at all locations conducting all these transactions. The NEX, Fort Eustis Express, Eustis Popeye's and Eustis Main Exchange. Did you not have any fear of being caught?" A: "Yes, I did."
 - Q: "Then why did you continue using the card?" A: "I didn't really think they would find out that soon."
 - Q: "What happened to all the merchandise you fraudulently purchased? Who was it all for?" A: "Family, [spouse], myself and my baby."
 - Q: "Cash was also taken from the same associate's wallet on 10th and 12th of Dec. 12th being the day you stole the Starcard. Did you take money from that associate's wallet?" A: "No."
 - Q: "What made you decide to fraudulently use this associate's Starcard?" A: "I wanted to use it for Christmas gifts."
 - Q: "Have you used any other associate's/customer's credit card(s) fraudulently?" A: "No, I haven't."
 - Q: "Have you ever taken any money from the register for your own personal use?" A: "No, I have not."
 - Q: "Do you know of any other Express associates taking money from the register for their own personal use?" A: "No."
 - Q: "Have you ever consumed food or drink while on the job, for which you did not render payment?" A: "One time I had a Tornado and a drink that I ate first. But another associate told me, You can't do that. You have to pay for it first. So, I paid for it."
 - Q: "Do you know of any other associates who are eating or drinking without paying for the merchandise?" A: "No."
 - Q: "The total dollar amount that you fraudulently charged comes to \$4,857.95. Added onto that is an \$80.00 (1) year credit monitoring fee, bringing the new total up to \$4,937.95. Are you willing reimburse AAFES for the total amount of these fraudulent charges, and the credit monitoring fee?" A: "Yes, I am."
 - Q: "Is there anything else you would care to add to this statement at this time?" A: "I am sorry, and I want to pay the money back. I don't want to get my husband in trouble. I'll take the blame for it. If they want to let me go, they can."
 - Q: "Is there anything else that you care to add to your statement?" A: "No."

(e) The spouse waived their rights and provided a statement to Detective, which provides they took a work associate's card and spent it at a couple places. Their spouse [the applicant] was with them and did know about the stolen card and they both

made purchases in a big dollar amount and they took money from the victim's wallet, as well, and theirs was missing too. They do not know if someone took it or they misplaced it. They admit to everything and they are sorry. It was Christmas time and they became greedy. They will be glad to repay everything but does not want their spouse [the applicant] to lose their job. They had a seven week old and do not want to lose their child for a dumb mistake they made. Once again, they took the card, made the purchases with the card, and will pay back the whole amount to clear their name.

- Q: "When did you take the card?" A: "About a week ago, maybe on a Monday or Tuesday."
- Q: "Where did you get the card from?" A: "My job, the Express, out of a coworker's purse, that was in the locker."
- Q: "Why did you take the card out of your coworker purse?" A: "I took the card because I wanted to see if it would work."
- Q: "Can you describe what the card you took looks like?" A: "Military Starcard, blue card, with the statue of Liberty."
- Q: "What was the first thing you did with the card?" A: "Bought a pack of gum to see if it would work, then I put it back."
- Q: "What did you do after you found out it worked?" A: "Went places such as the Main Exchange and NEX and bought items."
- Q: "Can you describe all the purchases you remember making?" A: "Purse, clothes, soundbar, Alexa, shoes, and laptop. From the NEX at perfume, purse, and items from Main Exchange and Popeyes. Express they bought food and drinks."
- Q: "How much did you end up spending in total?" A: "\$4,000.000 and change. Don't know the amount."
- Q: "You said your spouse [the applicant] knew, when did they find out?" A: "The day I got the card, he said not to get caught and I think put it back."
- Q: "You said that your husband was with you at a couple of the places you were shopping at, what did you buy on those days?" A: "Purses, clothes, soundbar, Alexa, shoes, laptop, food, and sanitary items and more I can't remember."
- Q: "Did [the applicant] know you were buying the items using the stolen card?" A: "Yes, [they] did know."
- Q: "Where are all the items at now?" A: "At my house."
- Q: "Did you buy anything online?" A: "No."
- Q: "Did you know who the card belong to?" A: "A coworker but I don't remember her name. She was Caucasian."
- Q: "Did the coworker know her card was stolen?" A: "The manager told everyone something was missing."
- Q: "What did you do after the manager told everyone something was missing?" A: "Nothing, just went back to work."
- Q: "Where is the card now?" A: "Went to Langley and threw it in a trashcan in the food court and threw it away last week."
- Q: "Did you sell any of the items or give them away?" A: "No, I didn't."
- Q: "Why did you keep spending after you knew the manager knew the card was missing?" A: "Because I didn't think about the consequences and was trying to get more items."
- Q: "Where in your house are the items located?" A: "In a closet in the living room and the soundbar is hooked up to the tv in the same room."
- Q: "Did [the applicant] know when you got rid of the card?" A: "Yes, [they] knew."

- Q: "When you were shopping with [the applicant], did [they] hand you items to buy?" A: "Yes, when we was putting it on the register to give the cashier and I think [the applicant] gave me wipes. Can't remember the rest."
- Q: "While walking around the store, did [the applicant] give you items to buy?" A: "Yes, wipes and I put items in [the applicant's] cart to buy."
- Q: "Do you have any of the items in [the applicant's] car?" A: "No, I don't."
- Q: "Did you take a photo of the card?" A: "Yes but deleted it."
- Q: "Do you give me permission to look at your phone to make sure its deleted?" A: "Yes."
- Q: "Do you have anything else to add to this statement?" A: "I'm sorry and I won't do it again. Please forgive me."
- A: "Do you have anything else to add to this statement?" A: "No."

(f) The same day, Security Forces Investigations, received authorization to conduct a search warrant of the applicant and the spouse's residence and resulted in seizure of 93 items that were verified by UPC codes, serial numbers, and by the spouse, who was present and led Detectives to the whereabouts of all the items. The applicant was advised of their legal rights which they invoked and their interview was subsequently terminated. Both the applicant and the spouse's DNA was collected.

(g) The applicant was placed under custody and charged with larceny of private/government property (Article 121, UCMJ); conspiracy (Article 81, UCMJ); possession of stolen property (Article 134, UCMJ) credit card fraud (Article 121, UCMJ); accessory after the fact (Article 78, UCMJ); they were released to their unit.

(h) On 17 January 2019, Special Assistant United States Attorney, opined probable cause existed to believe the applicant committed the offenses of larceny, conspiracy to commit larceny, and receipt of stolen property. Moreover, they opined no probable cause existed to believe the applicant committed the offense of accessory after the fact.

(3) On 23 April 2019, they were flagged for adverse action. On 1 May 2019, an Army Criminal Investigation Division (CID) final report provides the applicant contacted the Military Police and reported their spouse was destroying the applicant's personal property. Three MPs were dispatched, made contact with the applicant, and the investigation revealed that the applicant and spouse were involved in a verbal altercation over personal matters, which did not turn physical. The applicant was transported to the MP station where they were released to their unit (SFC) and assigned a temporary barracks room.

(a) At 0426 the same day, three MPs were dispatched to the residence in reference to a possible assault. The officer arrived and spoke with the spouse who reported a verbal altercation over personal matters, which turned physical when the applicant entered the residence through the back door, grabbed the spouse from behind with both hands and arms around the waist, which did not result in any injuries to the spouse. The applicant was not at the scene upon the officer's arrival. The applicant was brought to the MP station by their SSG and SGT and searched, apprehended, and was advised of their legal rights, which the applicant waived. They provided a written sworn statement denying the offense. Both the applicant and spouse declined medical attention. The applicant was released to their unit.

(b) The spouse waived their rights and provided a statement stating the applicant came through the back door with their key and said, "Where's my card?" The spouse stated they did not have it and the applicant grabbed them up while they was on the phone with their brother. The applicant tried to grab it and the spouse hung up with their brother and called the police. At that time, the applicant ran out the back door and jumped over the gate and left.

- Q: "Where on your body did [the applicant] grab you?" A: "At my waist like a bear hug."
- Q: "Did [the applicant] punch or slap you?" A: "[They] tried to slap me until I called the police and they ran."
- Q: "Do you require medical assistance?" A: "No, I don't. I am feeling lightheaded and body hurt where they grabbed me."
- Q: "Is there anything else that you would like to add to your statement?" A: "No."

(c) The applicant was placed under custody and charged with verbal domestic. The applicant waived their rights and provided a statement stating at or around 0300-0400, they was picked up by their platoon sergeant (SFC) at the PMO. Afterwards they was escorted to the barracks where they stayed in their room. They could not fall asleep, so they proceeded to the track to take a lap. Afterwards, they went to their room and fell asleep until time for PT. The follow up questions asked by the investigator was captured; however, the scanned copy is too faint to make out the question/answers. They was released to their chain of command.

(4) On 2 August 2019, their separation orders were issued. A DD Form 214 (Certificate of Release of Discharge from Active Duty) reflects the applicant was discharged accordingly on 16 August 2019, with 2 years, 4 months, and 8 days of total service. The applicant did not complete their first full term of service.

i. **Lost Time / Mode of Return:** None

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE:

a. Two DD Form 293s (Application for the Review of Discharge); Self-Authored Statement; DD Form 214 (Certificate of Release or Discharge from Active Duty)

b. On 15 May 2019, a Preliminary Hearing for General Court-Martial took place and SPC [redacted] provided witness testimony stating on 10 May 2019, SPC observed a telephone conversation between the Defense Counsel (CPT) and the ex-spouse. The ex-spouse stated they told the applicant the card was their brothers' and the applicant did not know the ex-spouse had stolen the card. The ex-spouse stated that their brother had loaned the ex-spouse money in the past. The ex-spouse stated when they spouse with law enforcement, the ex-spouse was trying to communicate the fact that the applicant did not know the card was stolen; however, law enforcement was trying to force the ex-spouse to say the applicant knew the card was stolen. The ex-spouse thought the charges were dropped because the ex-spouse returned all of the items

obtained using the stolen card. Additionally, the ex-spouse stated that they was spoken to by the Trial Counsel (CPT) about transitional compensation, but that counsel did not encourage them, just explained what it was, and the ex-spouse declined to speak with a victim witness liaison about its availability.

c. Two Support Statements provide the following:

(1) On 8 September 2020, Major, retired with twenty years of service and currently working as an Army Civilian, over ten years. They are writing to solicit a relook and leniency on the dismissal/separation action against the applicant. They have known the applicant for over ten years and have tracked and monitored their growth and development into a responsible individual. When the applicant made the decision to join the US Army, they offered themselves to mentor the applicant as they navigated this career choice. The applicant successfully completed basic training, advance individual training, completed all of their profession, and the military education requirements for promotion to sergeant. Prior to joining the US Army, the applicant had never been in trouble with local law enforcement nor a disciplinary problem, while in public school. There were no counseling statements presented that would have supported the charges brought forward to suggest/recommend separation from the US Army. This young Soldier was not afforded the opportunity to go through remedial/corrective training to prove the US Army did not make a mistake in bringing them on to active duty. They are soliciting a review and consideration of granting the applicant the opportunity to return to active duty or grant them an Honorable discharge.

(2) On 30 November 2020, the applicant's grandmother provided a statement indicating the applicant's mother died in 2018 and they grew up with an absentee father. Their grandmother has always been in the applicant's life from the birthing room until the present, now along with their two year old child, where the applicant has full custody. The applicant has always been a loving, caring, kindhearted individual, who has never been in any trouble with the law, at the age of nearly 25 [then]. Loving and trusting in the applicant's now, ex-spouse, being their first relationship ever, they was not aware of the ex-spouse's negative past and neglect/disrespect for the military and law enforcement. In addition, the applicant was not conscious of the impact of a spouse's negative behavior and how it affected a Soldier. The ex-spouse had a habit of stealing individuals' credit cards, plead guilty and received a lesser charge or no punishment at all. Their crime, while married to the applicant was, "Stealing someone's credit card, while living and working on Fort Eustis, VA and using it in the stores on base." The ex-spouse plead guilty and was not charged. The military does not have a strong support for male Soldiers against a negative spouse. The, "Dr. Phil TV Show," did a segment on this very issue. This is the applicant's first experience/offense with the law. In addition, the US Army has invested time and money in the applicant's career and given their clean record, they have proven their loyalty to the military service. I know that he would continue to be an asset to the United States of America. The grandmother requests the applicant be reinstated so they can continue to be an asset Army, to prove their worthiness of an Honorable discharge.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has full custody of their two year old.

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 had 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.

(a) 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.

(b) 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.

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 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.

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 Honorable, a change to their narrative reason, as well as changing their separation and reenlistment codes. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available evidence provides the applicant enlisted in the Regular Army for 3 years and 19 weeks as a PV2. They promoted to SPC and served for 1 year, 8 months, and 4 days without indiscipline. They were flagged, Suspend Favorable Personnel Actions (FLAG), for law enforcement investigation (MA).

c. The applicant's ex-spouse stole their former coworker's Military Star card from out of the coworker's purse, in the employee's breakroom and wrongfully purchased nearly \$5,000.00 worth of merchandise from various stores on base (NEX, Express, and Main Exchange). The ex-spouse was brought under investigation by the Loss Prevention Office, read their rights and questioned. They admitted guilt and implicated the applicant having been aware. The applicant was placed under custody and charged with larceny of private/government property; conspiracy; possession of stolen property;

credit card fraud; accessory after the fact; they were released to their unit. The applicant was placed under custody and charged with verbal domestic after having been placed in the barracks for 72 hours after a verbal altercation with their ex-spouse over personal matters. They waived their rights and provided a statement denying the offense.

(1) In the applicant's preliminary hearing for general court-martial, witness testimony (SPC) observed a telephone conversation between the defense counsel (CPT) and the ex-spouse. The ex-spouse stated they told the applicant the card was their brothers' and they did not know the ex-spouse had stolen the card. The ex-spouse stated that their brother had loaned the ex-spouse money in the past. The ex-spouse stated when they were interviewed by law enforcement, they were trying to communicate the fact that the applicant did not know the card was stolen; however, law enforcement was trying to force the ex-spouse to say the applicant knew the card was stolen. The ex-spouse thought the charges were dropped because they returned all of the items obtained using the stolen card. Additionally, the ex-spouse stated that they were spoken to by the Trial Counsel (CPT) about transitional compensation, but that counsel did not encourage them, just explained what it was, and the ex-spouse declined to speak with a victim witness liaison about its availability.

(2) After consulting with defense counsel, the applicant requested to be voluntarily discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, admitting guilt to the offense, or a lesser included offense, understanding their service could be characterized as Under Other than Honorable Conditions, which would have a significant effect on their eligibility for veterans' benefits.

(3) A medical and mental examination was not required for the voluntary discharge in lieu of trial by court-martial but could have been requested by the Soldier. They served 2 years, 3 months, and 23 days of their 3 years, 19 week contractual obligation.

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 DoD guidance indicates 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 the applicant had no mitigating behavioral health diagnoses. The applicant

provided no documents or testimony of an in-service condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge?
N/A

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

b. Response to Contention(s):

(1) The applicant, through counsel contends, they were wrongfully discharged from the U.S. Army due to their ex-spouse's criminal act on base (stealing a former coworker's Military Star Card). The Board considered this contention and found no arbitrary or capricious acts by the chain of command. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contentions that the discharge was improper or inequitable.

(2) The applicant, through counsel contends, their good character of service, earning an Army Achievement Medal, and keeping a clean record while serving. The applicant wants to be made whole. The Board considered this contention and the applicant's two years of service and the numerous awards received by the applicant and determined that these factors did not outweigh the applicant's request for voluntary discharge under provision of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(3) The applicant's grandmother contends this is the applicant's first experience/offense with the law and they were unaware of their now ex-spouse's negative past and their neglect/disrespect for the military and law enforcement. The grandmother contends, the applicant was not conscious of the impact a spouse's negative behavior can have on a Soldier. The Board considered this contention and the applicant's two years of service and the numerous awards received by the applicant and determined that these factors did not outweigh the applicant's request for voluntary discharge under provision of AR 635-200, Chapter 10, in lieu of trial by court-martial.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contentions 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 of being wrongfully discharged from the U.S. Army due to their ex-spouse's criminal act on base for stealing a former coworker's Military Star Card and found the totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative

due process. Therefore, the applicant's Under Other than Honorable discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to an Honorable discharge.

(2) The Board voted not 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:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

7/13/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board