

1. Applicant's Name: [REDACTED]**a. Application Date:** 29 May 2021**b. Date Received:** 3 June 2021**c. Counsel:****2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant Requests: The current characterization of service for the period under review is Under Other Than Honorable Conditions. The applicant requests an upgrade to honorable.

b. Applicant Contention(s) / Issue(s): The applicant requests relief contending, in effect, a discharge upgrade should be granted because the event leading to administrative discharge from the Army was an isolated incident and an upgrade to honorable was earned for the over 10 years of good service to include combat tours. The applicant contends the applicant's other than honorable characterization of service was the results of the applicant testifying under oath to unethical command performance requirements and inadequate command initiated medical and psychiatric support. And the applicant contends inadequate medical treatment for combat injuries, TBI and PTSD led to the incident and an unauthorized characterization of service.

c. Board Type and Decision: In a records review conducted on 18 February 2026, and by a 3-0 vote, the Board granted the request upon finding the separation was inequitable, because the characterization of service was too harsh based on the applicant's length and quality of service, to include combat service, and the circumstances surrounding the discharge as an isolated incident of possession of C4 explosives while boarding a plane and as a result it is inequitable. 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. Please see **Board Discussion and Determination** section for more detail regarding the Board's decision. Board member names are 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: 7 August 2012

c. Separation Facts: the applicant stole ammunition, explosives, and pyrotechnics from the United States Army and was derelict of duties related to the same. The applicant was in federal custody for six days because of possessing C-4 explosives while trying to board a plane and at the applicant's home was several thousand rounds of ammunition several different types of pyrotechnics.

(1) Date Charges Preferred / DD Form 458 (Charge Sheet): NIF / NIF (the Request for Discharge In Lieu of Court-Martial state the preferred charges against the applicant was seven specifications of violation of Article 121 and three specifications of violation of Article 92.

(2) Legal Consultation Date: 14 March 2012

(3) Basis for Separation: Pursuant to the applicant's voluntary request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) CDR / Intermediate CDR Recommended Characterization: Under Other Than Honorable Conditions / General (Under Honorable Conditions)

(5) Separation Approval Decision Date / Characterization: 17 July 2012 / Under Other Than Honorable Conditions and reduction to Private (E-1)

4. SERVICE DETAILS:

a. Date / Period of Enlistment/Reenlistment Under Review: 16 October 2007 6 years

b. Age at Enlistment / Education / GT Score: 26 / some college / NIF

c. Highest Grade Achieved / MOS / Total Service: E-7 / 18C4V, Special Forces Engineer Sergeant / 9 years, 5 months, 28 days

d. Prior Service / Characterizations: RA / 12 November 1999 – 9 January 2003 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (7 August 2010 – 29 March 2011; 9 July 2009 – 30 January 2010; 18 May 2008 – 13 December 2008)

f. Awards and Decorations: BS-3, ARCOM-V, ARCOM, PH, AAM-3, AGCM-2, NDSM, ACM-2CS, GWOTSM, NCOPD-3, ASR, NATO MDL

g. Performance Ratings: NCO Evaluation Report, 1 May 2010 – 30 April 2011 / Among the Best

h. Disciplinary Action(s) / Evidentiary Record:

(1) DA Form 1059 (Service School Academic Evaluation Report) dated 27 October 2011, indicates the applicant achieved course standards for Special Forces Engineer Sergeant Senior Leaders Course (SLC) with superior ratings in oral communication, leadership skills and contribution to group work and graduated the course.

(2) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 9 January 2003 indicates the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-40, paragraph 4-24B(4), with a narrative reason of Disability, Existed Prior to Service, PEB. The DD Form 214 was authenticated with the applicant's signature.

(3) Headquarters, U.S. Army Garrison, Fort Bragg, NC, Orders Numbers 214-0254 dated 1 August 2012, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 7 August 2012 from the Regular Army.

(4) The applicant's DD Form 214 for the period ending 7 August 2012, indicates the applicant had completed the first full term of service. The applicant was discharged under the authority of AR 635-200, Chapter 10, with a narrative reason of In Lieu of Trial by Court-Martial. The DD Form 214 was authenticated with the applicant's electronic signature.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s): The following documents have been provided to the ARBA Medical Advisor, if applicable. See **“Board Discussion and Determination”** for Medical Advisor Details.

(1) Applicant provided: Department of Veterans Affairs Disability Rating Decision dated 29 May 2021, indicates the applicant received a 100 percent combined service-connected rating including calculations of 50 percent service-connected for migraine headaches (evaluated as migraine headaches as a residual of TBI) and 70 percent service-connected for PTSD to include residual of TBI associated with this rating.

(2) AMHRR provided: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); DD Form 214 for the period ending 7 August 2012; 9 pages Self-Authored Statement; ARCOM with Valor Narrative Summary; Orders Number 164-001 dated 13 June 2011 awarding the Purple Heart; VA Summary of Benefits letter; 15 Letters of Support.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of the 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. Office, Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder), 3 September 2014, directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

c. Office, Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017 issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal

consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

d. Office, Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations), 25 July 2018 issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

(1) This guidance does not mandate relief but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, DRBs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

(2) Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

e. 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; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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:

- 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.
- 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.
- 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. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation. It states:

(a) 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.

(b) 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.

(c) 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.

(2) 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 discharge was authorized, an under other than honorable conditions discharge was normally 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 documents will accompany the request for discharge:

- A copy of a 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 his/her 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.

(c) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(d) Paragraph 10-8b stipulates 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.

(3) 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. If Secretarial Authority is granted normally correct the record to show the following:

- Separation Authority: Army Regulation 635-200, Chapter 15
- Separation Code: JFF
- Reenlistment Code: RE1
- Narrative Reason for Separation: Secretarial Plenary Authority
- Character of Service: Honorable

(4) 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 Trial by Court-Martial.

8. SUMMARY OF FACT(S): Standard of Review. 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. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. In consultation with legal counsel, the applicant voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the 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 applicant stole ammunition, explosives, and pyrotechnics from the United States Army and was derelict of duties related to the same. The applicant was in federal custody for six days because of possessing C-4 explosives while trying to board a plane and at the applicant's home was several thousand rounds of ammunition several different types of pyrotechnics. The applicant's service record is void of DD Form 458 (Charge Sheet), however, the Request for Discharge In Lieu of Court-Martial signed by the applicant on 14 March 2012, states the preferred charges against the applicant was seven specifications of violation of Article 121 and three specifications of violation of Article 92. On 17 July 2012, the separation authority approved the discharge request and directed the issuance of an Under Other Than Honorable Conditions characterization of service and reduction to Private (E-1).

d. The applicant contends an upgrade should be granted because the event leading to administrative discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5 / Army Regulation 600-8-24, paragraph 1-23, state certain circumstances allow a single act of conduct or duty performance to serve as the basis for service characterization.

e. The applicant contends an upgrade to honorable was earned for the over 10 years of good service to include combat tours. The Board evaluated the applicant's service accomplishments and overall quality of service in accordance with DODI 1332.28.

f. The applicant contends the applicant's other than honorable characterization of service was the results of the applicant testifying under oath and stating unethical command performance requirements and inadequate command initiated medical and psychiatric support. However, the applicant provided no supporting evidence beyond their statement. The AMHRR includes no evidence the applicant sought assistance or reported the harassment.

g. The applicant contends inadequate medical treatment for combat injuries, TBI and PTSD led to the incident and an unauthorized characterization of service. The applicant contends being diagnosed with combat injuries, TBI and PTSD by the VA. The applicant provided several medical documents indicating a diagnosis. A mental status evaluation (MSE) / behavioral health evaluation (BHE) is not required in the processing of Chapter 10, In Lieu of Trial by Court-Martial, there the applicant's AMHRR does not have diagnosis indicated on an MSE.

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, a voting member, 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. Prior Decisions Cited: **N/A**

c. Response to Contentions:

(1) Contention 1: An upgrade should be granted because the event leading to administrative discharge from the Army was an isolated incident. The Board recognizes and appreciates the applicant's service, considered this contention during board proceedings along with the totality of the applicant's service record, and determined that the applicant's length and quality of service, to include combat service, outweighed the applicant's one-time incident of boarding a plane with C4 explosives and relief was warranted.

(2) Contention 2: An upgrade to honorable was earned for the over 10 years of good service to include combat tours. The Board determined that this contention was valid and voted to upgrade the characterization of service due to an isolated incident of boarding a plane with C4 explosives and relief was warranted.

(3) Contention 3: The other than honorable characterization of service was the result of the applicant testifying under oath and stating unethical command performance requirements and inadequate command initiated medical and psychiatric support.

The Board considered this contention but determined that the contention is not a matter upon which the Army Discharge Review Board grants a change in discharge. The issue raises no matter of fact, law, procedure, or discretion related to the discharge process, nor is it associated with the discharge when it was issued.

(4) Contention 4: Inadequate medical treatment for combat injuries, TBI and PTSD led to the incident and an unauthorized characterization of service.

While Board acknowledges the applicant's assertion of the condition or experience, from the records and available evidence the Board could not determine whether there was any in-service medical condition, nor whether or not any in-service medical condition outweighed the basis for separation, since the facts and circumstances surrounding the discharge are not known due to the absence of the separation file.

d. The Board determined to grant the request upon finding the separation was inequitable, because the characterization of service was too harsh based on the applicant's length and quality of service, to include combat service, and the circumstances surrounding the discharge as an isolated incident of possession of C4 explosives while boarding a plane and as a result it is inequitable. 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 it. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

e. Rationale for Decision:

(1) Published Department of Defense guidance indicates the guidance is not intended to interfere or impede on the Board's statutory independence. The Board determines the relative weight of the action that was the basis for the discharge and whether it supports relief or not. In reaching its determination, the Board considers the application, available records and any supporting documents included with the application.

(2) The Board voted to change the applicant's characterization of service to General (Under Honorable Conditions), because the applicant's one time misconduct of boarding a plane with C4 explosives was mitigated by the applicant's length and quality of service to include combat. Thus, the prior characterization is no longer appropriate.

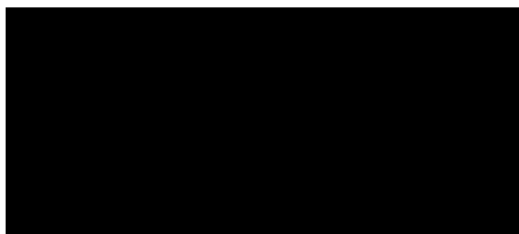
(3) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

(4) 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: 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:



Legend:

AWOL – Absent Without Leave
 AMHRR – Army Military Human
 Resource Record
 BCD – Bad Conduct Discharge
 BH – Behavioral Health
 CG – Company Grade Article 15
 CID – Criminal Investigation
 Division
 ELS – Entry Level Status
 FG – Field Grade Article 15
 FTR – Failure to Report

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