

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

- a. **Application Date:** 28 June 2021
- b. **Date Received:** 30 June 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 Bad Conduct. The applicant requests an upgrade to General, under honorable conditions and a narrative reason change.

b. The applicant states in effect, change is requested due to time; they served time in prison and had a Bad Conduct discharge on their record for 10 years. Though deserved, they are asking the board for mercy and consideration of their spouse and children. Their life has changed greatly, and they are seeking a career in law enforcement to support their family and serve their community. The bad conduct discharge has greatly affected their life, career, and stability to provide for their family. They cannot gain employment in the career they are seeking to sustain their household. They are asking the board to consider the fact that they have not been in any trouble with the law since their discharge.

c. **Board Type and Decision:** In a records review conducted on 26 January 2024, and by a 4-1 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service and Post Service Accomplishments. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Under other than Honorable Conditions.

*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:** Court-Martial, Other / AR 635-200, Ch 3/ JJD / RE-4 / Bad Conduct

b. **Date of Discharge:** 22 March 2013

**c. Separation Facts:**

(1) **Pursuant to Special Court-Martial empowered to adjudge a Bad-Conduct Discharge:** Special Court-Martial order number 6; 19 October 2011 the applicant was found guilty of violating Article 85 of the UCMJ.

(2) **Adjudged Sentence:** Forfeiture \$733.00 of pay for seven months, seven months confinement and to be discharged from the service with a Bad Conduct discharge.

(3) **Date / Sentence Approved:** 19 October 2011 / Forfeiture of \$733.00 pay per month for six months, 180 days confinement and a Bad-Conduct Discharge is approved and, except for that part of the sentence extending to a Bad-Conduct Discharge, will be executed. The applicant was credited with 87 days of confinement towards their sentence to confinement.

**(4) Appellate Reviews:** The record of trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

**(5) Date Sentence of BCD Ordered Executed:** 21 February 2013

#### 4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 17 September 2008 / 3 years 18 weeks
- b. **Age at Enlistment / Education / GT Score:** 17 / GED / 99
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 11C10 Indirect Fire Infantryman/  
2 years, 2 months, 2 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** N/A
- h. **Disciplinary Action(s) / Evidentiary Record:**

**(1)** An Enlistment/ Reenlistment Document provides the applicant enlisted in the United States Army Reserve at the rank of E-1 with an active-duty obligation of 3 years and 18 weeks on 5 September 2008.

- ERB provides the applicant advanced to the rank of E-2 when their active duty obligation began.

**(2)** A Deserter/Absentee Wanted by The Armed Forces document signed 22 July 2009 provides the applicant was stationed at Fort Stewart, Georgia and was absent without leave (AWOL) on 17 June 2009; their status changed to deserter on 17 July 2009. The commanding officer investigated the status of the applicants whereabouts, which included notifying the applicants next of kin to urge their voluntary return to military control.

**(3)** A Report of Return of Absentee document signed 17 December 2010 provides that the applicant was apprehended and arrested by civilian authorities in York, Pennsylvania and returned to military control.

**(4)** On 15 August 2011, the applicant was apprehended and arrested by civilian authorities in Hyattsville, Maryland. They were in deserter status after being AWOL on 14 February 2011 from Fort Stewart, Georgia.

**(5)** A Special Court-Martial Order document provides the applicant pled guilty and was found guilty of violating two specifications of Article 85 of the UCMJ on 19 October 2011. They were absent from their unit located at Fort Stewart, Georgia and remained absent in desertion until they were apprehended on two separate occasions: 17 June 2009 – 17 December 2010 and 14 February 2011 – 15 August 2011. Punishment consisted of forfeiture of \$733 pay for six

months, 180 days confinement and a bad conduct discharge. The applicant was credited 87 days of confinement.

(6) A Personnel Action Document provides that the applicant's duty status changed from present for duty (PDY) to confined by military authorities on 19 October 2011.

- The applicant's duty status changed from confined by military authorities to PDY on 20 December 2011; completed confinement sentence.

(7) Orders, 299-502 provides the applicant reported to the United States Army Regional Correctional Facility at Joint Base Lewis-McChord, Washington on 3 November 2011 for confinement.

(8) A Special Court-Martial Order document dated 21 February 2013 provides the applicant completed the confinement portion of their sentence their Bad Conduct discharge was executed after being affirmed.

(9) A Certificate of Release or Discharge from Active-Duty document provides the applicant was discharged on 22 March 2013 with a total NET active service of 2 years, 2 months, and 2 days.

i. **Lost Time / Mode of Return:** 20090617 – 20101216 / Apprehended by civil authorities; 20110214 – 20110814 / Apprehended by civil authorities

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

(1) **Applicant provided:** N/A

(2) **AMHRR Listed:** N/A

**5. APPLICANT-PROVIDED EVIDENCE:** : A DD Form 293 (Discharge Review) application and 4 letters of recommendation in support of their application:

- A letter of support from the applicant's spouse provides the applicant is an active member in the worship group at their church and they serve as youth teacher for teens and young adults. They started a dump truck company to better provide for their family and they want to pursue a career in law enforcement. After the applicant went AWOL the first time they were bullied once they were returned to their unit, they had no friends or family support.
- A letter of support from a family friend describes the applicant as a non-selfish person that goes above and beyond to provide assistance to help anyone, they will stop whatever they are doing, give up their family time, and their well-being to help others.
- A letter of support describes the applicant as a contributing member to society, they started their own business which provided job opportunities for others.
- A letter of support from the applicant's friend provides they met the applicant when they started attending church, they describe the applicant as an honest person and a hard worker that is polite, respectable, dependable, and selfless; never hesitating to help others in need.

**6. POST SERVICE ACCOMPLISHMENTS:** They have not been in trouble with the law since their discharge, they started their own business which provided job opportunities for others. They are seeking a career in law enforcement to serve their community.

**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 provides the authorized types of characterization of service or description of separation.

**(1)** An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

**(2)** A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

**(3)** An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

**(4)** A Bad Conduct discharge will be given to a soldier only after an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

**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 "JDD" as the appropriate code to assign enlisted soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 3, Court-Martial (other).

**f.** Army Regulation 630-10 (Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings) provides policies and procedures for reporting unauthorized absentees and deserters, the administering of absent without leave (AWOL) personnel and deserters, returning absentees and deserters to military control and the surrendering of military personnel to civilian law enforcement authorities.

**(1)** Paragraph 4-4c, states classification of an absence is dependent upon such factors as the following:

- Orders and instructions, written and oral, the soldier received before and during the absence

- Age, military experience, and general intelligence of the soldier
- Number and type of contact the soldier had with the military while absent

**g.** 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.
- RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**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. The applicant's DD Form 214 provides the applicant received a bad conduct discharge which is considered appropriate for a soldier found guilty by a special court martial.

**b.** Based on the available evidence the applicant enlisted in the army at the age of 17, they completed 10 months, and 17 days of their contractual obligation before they were absent from their unit. The applicant was in deserter status twice throughout their time in service; they were AWOL for 18 months the first time from Fort Stewart, Georgia and for 6 months in 2011; each absence ended in apprehension by civil authorities.

**c.** The applicant's AMHRR provides the applicant was found guilty by a special court-martial; the sentence was approved by the convening authority. A properly constituted DD Form 214 provides the applicant was discharged under the provisions of AR 635-200, Chapter 3, court-martial (other), with a bad conduct characterization of service on 22 March 2013.

**d.** The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency to moderate the severity of the punishment imposed.

**e.** Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In

reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

#### 9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **No**. The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating Behavioral Health diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

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

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

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

b. Response to Contention(s): None

c. The Board determined that the characterization of service was inequitable based on the applicant's length of service and Post Service Accomplishments. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Under other than Honorable Conditions.

d. Rationale for Decision:

(1) The Board voted to grant relief by upgrading the applicant's characterization of service to Under other than Honorable Conditions. The Board found the reason and accompanying SPD code proper and equitable and there were no behavioral health diagnoses which mitigated the misconduct to warrant relief for the current reason and SPD code. The board found the characterization of service inequitable and decided to grant clemency because the discharge served its purpose. The applicant has not had any infractions with the law since their discharge. The Board considered the applicant's multiple post-service accomplishments and letters of support. The applicant owns a dump truck company, serves as a leader in the community, provides jobs for others, and desires to pursue a career in law enforcement. The Board considered the applicant's letters of support attesting to their good character and support to the community. The Board found the current characterization of the discharge too harsh for a two-time AWOL with no other misconduct in the file, thus making the current characterization for discharge improper.

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

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

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214 / Separation Order:** Yes
- b. **Change Characterization to:** Under other than Honorable
- c. **Change Reason / SPD code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 623-200

**Authenticating Official:**

2/2/2024



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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  
Affa