

1. Applicant's Name:

- a. **Application Date:** 24 July 2021
- b. **Date Received:** 9 August 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues: The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable, and a narrative reason change.

(1) The applicant states in effect, they strongly believe their discharge was unfair. They served their country honorably for nearly ten years. When they were deployed their spouse requested a divorce, the request led to an agreement regarding custody of their children. Their spouse contacted their unit and made false allegations, they returned stateside and did not see their children for eight months. The prosecution attorney for the Army grossly violated their rights and was removed from their case, a new attorney was assigned, and the case was restarted. After hearing the process was restarting, in addition to the mental abuse at work and all the nasty and underhanded treatments they were receiving they felt forced to sign a Chapter 10 in order to see their children. They were told after six months they could rejoin the military; they were not under the impression that they would be reduced to E-1, lose all their leave days, receive a reentry code 4, and receive an other than honorable discharge. They were extremely stressed out, full of anxiety, alone and felt that the unit and their spouse were trying to force them to commit suicide. They had never seen anything so unfair or wrong being done within the military.

(2) They did not sign the Chapter 10 with a sound mind or in good judgement. They were under duress, had severe stress poor eating and sleeping. Once their Chapter 10 was approved, their immediate chain of command told them they were demoted to E-1. They were told they had to be demoted before they left the building, everything on their uniform was sewn on, they asked if they could take their top off and place it on the desk, they were told "the rank went on your chest, and it will come off your chest". Their rank was cut and jerked off their uniform while they stood at attention, they were assaulted with a deadly weapon.

(3) They lost so much over the entire ordeal, and it is difficult for them to stay motivated while continuing forward. Everything they worked for was gone quickly over unsubstantiated allegations. It is hard for them to be a provider without having a job or income due to their bad discharge and no VA benefits despite sustaining multiple injuries throughout their career. They were not charged at the end of everything, they humbly request an honorable discharge so that they can receive VA benefits and possibly reenlist in the Army.

b. Board Type and Decision: In a records review conducted on 06 December 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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210016762

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court Martial / AR 635-200, Chapter 10 / KFS / RE- 4 / UOTHC

b. Date of Discharge: 19 March 2021

c. Separation Facts:

(1) Date of Notification of Intent to Separate: N/A

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

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 June 2019 / 6 years

b. Age at Enlistment / Education / GT Score: 28 / Associate Degree / 119

c. Highest Grade Achieved / MOS / Total Service: E-6 / 68S3P P5 Preventive Medicine Specialist / 9 years, 9 months.

d. Prior Service / Characterizations: RA; 20110620 – 20190617 / Continuous Honorable

e. Overseas Service / Combat Service: Cuba, Germany / Afghanistan; 20180610 – 20190301, 20200714 – 20200911

f. Awards and Decorations: BSM, ARCOM-2, AAM-4, AAM-CD, AGCM-3, NDSM, GWTEM, GWTSM, OSR-3, NATOMDL-2

g. Performance Ratings: 20150401 – 20160212; Highly Qualified
20160213 – 20170511; NIF
20170512 – 20180412; Most Qualified
20180413 – 20190412; Highly Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides the applicant reenlisted in the United States Army for the fourth time at the pay grade of E-6 with an active duty obligation of 6 years on 18 June 2019.

(2) An Enlisted Record Brief (ERB) provides the applicant received a rank reduction to Private (E-1) on 10 March 2021.

(3) A Certificate of Release or Discharge from Active Duty (DD Form 214) provides on 19 March 2021 the applicant was discharged from the army.

- Authority: AR 635-200, CH 10
- Narrative Reason: In Lieu of Trial By Court-Martial
- Service Characterization: Under Other Than Honorable Conditions
- Remarks: Member has completed first full term of service
- Net Service: 9 years, 9 months.

i. Lost Time / Mode of Return: None.

j. Behavioral Health Condition(s): None.

(1) Applicant provided:

(2) AMHRR Listed:

5. APPLICANT-PROVIDED EVIDENCE: A DD Form 293 (Record Review) application, two DD Form 214, two ERB, a five page statement, North Carolina joint voluntary dismissal court document, two emails, a memorandum for record dated 2 June 2019, a 12 page Defense Motion to Dismiss, 11 medals they received while in the Army, 8 Recommendation for Award documents, 4 NCO Evaluation Reports, 20 Certificates of completion, 11 letters of recommendation/ Character statements, 8 Duty Performance Questionnaires, and two Sworn Statements in support of their application.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when

considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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

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

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

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

(4) Chapter 10, Discharge in Lieu of Trial by Court Martial is applicable to members who committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable. After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions. The following will accompany the request for discharge:

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

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "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, and a narrative reason change. A review of the record provides administrative irregularity in the proper retention of records, specifically the AMHRR is void the applicant's complete separation packet and the applicant's voluntary discharge request and approval. Due to the lack of evidence, we are unable to provide all the specific facts and circumstances surrounding the applicant's court martial proceedings and their voluntary discharge request for separation.

b. A review of the available evidence provides the applicant enlisted in the Army at the age of 20, they advanced to rank of Staff Sergeant, deployed to Afghanistan twice and reenlisted in the Army four times. They served in the Army for 9 years, and 9 months. A properly constituted DD Form 214 authenticated by the applicant's signature indicates they were separated under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, with an Under Other than Honorable Conditions characterization of service. They were reduced to the lowest enlisted grade nine days before they were discharged.

c. Army Regulation 635-200 states Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a soldier who is discharge in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Anxiety Disorder NOS; Adjustment Disorder, unspecified; Depressive Disorder; Intimate Partner Violence (IPV); Chronic Adjustment Disorder (CAD-70%SC).

(2) Did the condition exist, or experience occur during military service? **Yes** The Board's Medical Advisor found Anxiety Disorder NOS, Adjustment Disorder, unspecified, Depressive

Disorder were all diagnosed during active service. IPV was also documented during active service. VA service connection for CAD establishes nexus with military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No**, The Board's Medical Advisor applied liberal consideration and opined that the basis of separation is not known and, consequently, no decision regarding medical mitigation can be made. If, however, it is determined that the basis for separation were various acts of domestic violence, this basis would not be mitigated by the applicant's diagnoses of Anxiety Disorder NOS, Depressive Disorder or Chronic Adjustment Disorder as these conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. Regarding the applicant's history of IPV, while liberal consideration was applied, no mitigation was warranted given that the applicant was the alleged offender in the IPV incidents as per the medical records.

(4) Does the condition or experience outweigh the discharge? **No**. Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's medical diagnoses do not outweigh the applicant's basis of separation (domestic violence against wife and children).

b. Prior Decisions Cited: None.

c. Response to Contention(s):

(1) The applicant contends when they requested a Chapter 10, they did not have a sound mind or good judgement.

The Board considered this contention in their deliberations. However, the Board concurred with the Medical Advisor's opine that applicant's medical conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

(2) The applicant contends that the prosecution attorney for the Army grossly violated their rights and was removed from their case, a new attorney was assigned, and the case was restarted.

The Board considered this contention and no evidence of impropriety was found.

(3) The applicant contends that they served honorably until this event. The Board considered the applicant's 9 years, 9 months of service, including a combat tour in Afghanistan and the numerous awards received by the applicant, however the Board determined that these factors did not outweigh the applicant's misconduct of Intimate Partner Violence (IPV) and domestic violence against wife and children.

(4) The applicant contends that an upgrade would assist them with VA benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

d. 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 contention(s) that the discharge was improper or inequitable.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210016762****e. 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's Anxiety Disorder NOS; Adjustment Disorder, unspecified; Depressive Disorder; and Chronic Adjustment Disorder did not excuse or mitigate the offenses of intimate partner violence and domestic violence against wife and children. 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.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, 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:

1/6/2025

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

Legend:AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource RecordBCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
DivisionELS – Entry Level Status
FG – Field Grade Article 15GD – 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 SpecifiedOAD – 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 MartialSPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs