

1. Applicant's Name: [REDACTED]**a. Application Date:** 19 November 2021**b. Date Received:** 20 December 2021**c. Counsel:** NA**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is an under other than honorable conditions. The applicant requests an upgrade of their character of service to entry-level or general (under honorable conditions) and a change of their reentry code.

(2) The applicant seeks relief stating they are asking for a second chance and would like to get a waiver to enlist in the National Guard. During their Basic Training they overheard two Drill Sergeants making discouraging statements about their experience in the liberation of Kuwait. Those statements made them feel sick and they felt that they made a poor decision to enlist in the infantry. They spoke with the chaplain to try to get their military occupational specialty changed; however, they were told they were locked in. At that point they refused to train and a few days later they were absent without leave and remained gone for 45 days. They were administratively discharged in lieu of court-martial.

(3) Since they were discharged from the Army, they have gone on to do many things which show they have changed their life around and they have a desire to go back into the Army National Guard. They have taken the appropriate steps and actions to demonstrate that they are worthy of being granted the opportunity at having a second chance to in enlist in the military. Who they were, and the actions they committed in 2016 are in no way an accurate reflection of what they have become almost 6 years later. Looking back, they realized the statements made by their drill sergeants were not a reflection of the United States or the military. They realized they were in the wrong for deciding to absent themselves without leave.

(4) They truly hope that based on the supporting documents they have provided, the character references, and this letter; they will be met with grace, forgiveness, and an opportunity to have a second chance to serve.

b. Board Type and Decision: In a records review conducted on 25 October 2024, and by a 5-0 vote, the Board determined the discharge was inequitable, therefore voted to upgrade the applicant's characterization to Uncharacterized with a corresponding SPD code of JGA. No change to the reentry code.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / Army Regulation 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 18 August 2016**c. Separation Facts:**

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20220003934

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): on 11 August 2016 the applicant was charged with violation of Article 86 (Absence Without Leave (AWOL)), in that, on or about 2 June 2016, without authority, absent themselves from their organization, and did remain so absent until on or about 2 August 2016.

(2) Legal Consultation Date: 11 August 2016

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

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 17 August 2016 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 17 May 2016 / 3 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 21 / GED / 109

c. **Highest Grade Achieved / MOS / Total Service:** E-2 / NA / 1 month, 2 days

d. **Prior Service / Characterizations:** NA

e. **Overseas Service / Combat Service:** NA

f. **Awards and Decorations:** NA

g. **Performance Ratings:** NA

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

(1) Three DA Forms 4187 (Personnel Action) dated 2 June 2016 through 3 August 2016, reflects the applicant's unit changed their status to absent without leave on 2 June 2016, dropped from rolls on 2 July 2016; and present for duty on 2 August 2016. The applicant surrendered to military authorities and was returned to military control.

(2) A memorandum, U.S. Army Personnel Control Facility, Fort Sill, OK, subject: AWOL/Deserter Returnee Statement [Applicant], dated 11 August 2016, reflects the applicant answered the following questions –

- What caused you to go AWOL? "I was consciously opposed to being an instrument of war upon arriving and hearing about all the talk of killing
- What steps did you take to resolve your problem(s) before going AWOL? "I asked the chaplain to help me get a failure to adaption discharge and [chaplain] said [chaplain] could not help me"
- Did you discuss your problem(s) with your officers or noncommissioned officers before going AWOL? "Yes"
- Did you see the chaplain or Red Cross before going AWOL? "Yes I saw the chaplain"
- In your opinion what could the Army have done to prevent you from going AWOL (other than discharge)? There is nothing other than discharge me"

(3) A memorandum, U.S. Army Personnel Control Facility, Fort Sill, OK, subject: AWOL/Interview Report Chapter 10/Chapter 14, dated 11 August 2016, reflects the applicant states why they went AWOL "I did not feel comfortable with the concept of taking a life once I got there." The applicant requests/understands their chapter 10 discharge and does not request to remain on active duty.

(4) A DD Form 458 (Charge Sheet) dated 11 August 2016, reflects charges were preferred against the applicant for, on 11 August 2016 the applicant was charged with violation of Article 86 (AWOL), in that, on or about 2 June 2016, without authority, absent themselves from their organization, and did remain so absent until on or about 2 August 2016.

(5) The applicant's memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial, dated 11 August 2016, reflects the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation 635-200, chapter 10. They understood they may request discharge in lieu of trial by court-martial because of the charge and specifications which have been preferred against them under the UCMJ, which authorizes the imposition of a bad conduct or dishonorable discharge.

(a) They are making this request of their own free will and have not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, they acknowledge that they understand the elements of the offenses charged and am guilty of one or more of the specifications against them, or of lesser offenses therein contained, which authorizes the imposition of a bad conduct or dishonorable discharge. Moreover, they hereby state that under no circumstances do they desire further rehabilitation, for they have no desire to perform further military service.

(b) Prior to completing the form, they have been afforded the opportunity to consult with appointed counsel. They understood, that if their request for discharge is accepted, they may be discharged under other than honorable condition. They have been advised and understood the possible effects of an Other Than Honorable Conditions discharge and that as a result of the issuance of such discharge, they will be deprived of many or all Army benefits, that they and that they may be deprived of their rights and benefits as a veteran under both Federal and State law.

(c) They elected not to submit statements on their behalf.

(6) A memorandum, Headquarters, U.S. Army Garrison, Fort Sill, subject: Request for Discharge in Lieu of Trial by Court-Martial, [Applicant], dated 17 August 2016, reflects the separation authority's approval of the applicant's request for a discharge in lieu of trial by court-martial. The commanding general directed the applicant will receive an Under Other Than Honorable Conditions discharge.

(7) A Headquarters, U.S. Army Garrison, Fort Sill Orders 231-13, dated 18 August 2016, reflects the applicant was reduced in rank/grade from private two/E-2 to private/E-1, effective that day.

(8) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 18 August 2016. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 1 months, 2 days
- item 12i (Effective Date of Pay Grade) – 18 August 2016

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20220003934

- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 26 (Separation Code) – KFS [In Lieu of Trial by Court-Martial]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

i. Lost Time / Mode of Return: 2 June 2016 – 1 August 2016 / Surrendered to Military Authorities

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE:

- two DD Forms 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552), with letter
- Certificate of Birth
- General Educational Development Diploma
- Congressional – Privacy Authorization Release Form
- Family picture
- six 3rd Party Character Statement
- Certificate of Licensure
- College Acceptance Letter
- News Article "Paramedic Recalls Responding to Deadly Vehicle Crash"
- Resume
- State Criminal Record Search
- Certificate of Achievement
- Federal Emergency Management Agency Training Certificates
- Community College Transcript

6. POST SERVICE ACCOMPLISHMENTS:

- Licensure as a Massage and Bodywork Therapist
- Associate in Arts

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

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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 (Active Duty Enlisted Administrative Separations), 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) Paragraph 1-13 (Reduction in Grade) stated when a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

(5) Paragraph 3-9 (Uncharacterized Separations) stated an entry-level status separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when characterization under other than honorable conditions is authorized under the reason for separation and warranted by the circumstances of the case.

(6) Chapter 10 (Discharge in Lieu of Trial by Court-Martial) stated a Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual of Courts-Martial, 2012, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The Soldier's written request will include an acknowledgment that he/she understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge.

(7) Paragraph 10-8 (Types of Discharge, Characterization of Service) stated 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. 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 635-8 (Separation Processing and Documents) prescribes policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

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 Department of Defense Instructions 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 –

(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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

h. Manual for Courts-Martial (2016 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following, Article 86 (Absence Without Leave).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of offenses punishable under the UCMJ with a punitive charge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted to the offense, or a lesser included offense, and indicated an understanding a 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. They completed 1 month and 2 days of net active service this period and did not completed their first full term of service of 3 years, 16 weeks.

c. 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.

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? **No.** The Board's Medical Advisor 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: None

c. Response to Contentions:

(1) The applicant contends stating they are asking for a second chance and would like to get a waiver to enlist in the National Guard. The Board acknowledged this contention and the applicant's desire to serve.

(2) The applicant contends stating since they were discharged from the Army, they have gone on to do many things which show they have changed their life around and they have a desire to go back into the Army National Guard. They have taken the appropriate steps and actions to demonstrate that they are worthy of being granted the opportunity at having a second chance to in enlist in the military. The Board considered this contention during proceedings.

d. The Board determined the discharge was inequitable , therefore voted to upgrade the applicant's characterization to Uncharacterized with a corresponding SPD code of JGA. No change to the reentry code. However, the applicant may request a personal appearance hearing to address further 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.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Uncharacterized. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20220003934**

reason for separation. The Board concurred that the applicant did not complete basic entry level training. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable and voted to change the characterization to Uncharacterized.

(2) The Board voted to change the applicant's reason for discharge to Entry Level Conduct and Performance with an accompanying SPD code of JGA.

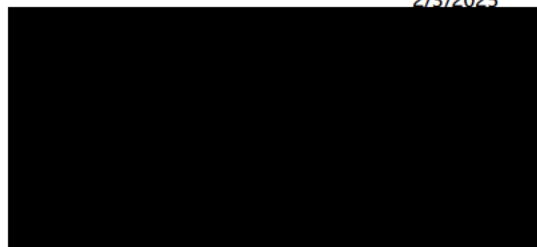
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** Yes
- b. **Change Characterization to:** Uncharacterized
- c. **Change Reason / SPD code to:** Entry Level Conduct and Performance/JGA
- d. **Change RE Code to:** No change
- e. **Change Authority to:** No change

Authenticating Official:

2/3/2025



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
UOTH – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs