

1. Applicant's Name:

- a. **Application Date:** 15 January 2023
- b. **Date Received:** 15 January 2023
- c. **Counsel:** None

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 under other than honorable Conditions. The applicant requests an upgrade to honorable.

(2) The applicant seeks relief stating they joined the U.S. Army Reserve (USAR) in 2014 and after they returned from completing initial active duty for training in 2015, they wanted to enlist for active duty but was denied. So instead, they applied with the Department of Corrections and became a peace officer. Before they left for the Corrections Officer Academy they notified their USAR unit and was granted leave to attend the academy which was 14 hours away. They had trouble finding a USAR unit to transfer to and requested to transfer to the Individual Ready Reserve (IRR). They were under the impression that their request was approved in 2019. Then in 2020, when they inquired about their status in the IRR they were informed they were discharged from the military. No one ever told them that they were not assigned to the IRR.

(3) They are in the process of trying to enlist in the Army for active duty; however, their under other than honorable conditions character of service is hindering their attempt. If they had known they would have been discharged from the USAR with an other than honorable conditions discharge, they would never have become a peace officer and moved 14 hours away from their USAR unit. They just want to be afforded an opportunity to start over.

b. Board Type and Decision: In a records review conducted on 31 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: NIF / Army Regulation 135-178 / Under Other Than Honorable Conditions

b. Date of Discharge: 21 January 2020

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) is void of their case files for approved separation; however, the applicant provided the separation authority memorandum and their discharge order. The information in 3c(1) through (6) were derived from those documents.

(1) Date of Notification of Intent to Separate: NIF

(2) Basis for Separation: Unsatisfactory Participation

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: 6 January 2020 / Under Other Than Honorable Condition

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 10 July 2014 / 6 years (USAR)

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M10, Motor Transport Operator / 5 years, 6 months, 5 days (USAR)

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 3540 (Certificate and Acknowledgment USAR Service Requirements and Methods of Fulfillment), dated 10 July 2014, reflects the applicant acknowledged their understanding of Section VI (Unsatisfactory Participation) that if they fail to participate satisfactorily for any reasons, in all scheduled unit training assemblies, (at least 48 per year) and if they accrue nine or more unexcused absences during any continuous 12-month period, they will be declared an unsatisfactory participant. They will also be subject to separation from the Selected Reserve or the Ready Reserve, as appropriate, either by reassignment or discharge, which may result in a pay grade reduction and an other than honorable characterization of their military service.

(2) A memorandum, Headquarters, 311th Sustainment Command (Expeditionary), subject: Separation under Army Regulation 135-178, Chapter 12, Unsatisfactory Participation, [Applicant], dated 6 January 2020, the separation authority, having reviewed the administrative action and considering the recommendation of the chain of command and their staff, concluded the applicant received nine or more unexcused absences from scheduled unit training assemblies within a 12-month period. The commanding general directed the applicant be separated with a characterization as Under Other Than Honorable Conditions and be reduced in rank/grade to private/E-1.

(3) The Headquarters, 63rd Readiness Division (USAR) Orders 20-014-00007, dated 14 January 2020, reduced the applicant in rank/grade from specialist/E-4 to private/E-1 effective 14 January 2020. The applicant was also discharged from the USAR with the type of discharge as Under Other Than Honorable Conditions, effective 21 January 2020.

i. Lost Time / Mode of Return: NIF

j. Behavioral Health Condition(s): NIF**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Memorandum, Headquarters, 311th Sustainment Command (Expeditionary), subject: Separation under Army Regulation 135-178, Chapter 12, Unsatisfactory Participation, [Applicant]
- Headquarters, 63rd Readiness Division (USAR) Orders 20-014-00007

6. POST SERVICE ACCOMPLISHMENTS: none submitted with application.**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, 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) 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; Title 10 U.S. Code; Section 1553, DoD Directive 1332.41, and DoD Instruction 1332.28.

d. Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures) defines ARNG of the United States and USAR service obligations. It prescribed policies and procedures governing the various types of service obligations and participation requirements. Chapter 4 (Absences) governed absences from Ready Reserve training. Unsatisfactory participation stated a Soldier is an unsatisfactory participant when nine or more unexcused absences from scheduled inactive duty training occur during a 1-year period. Paragraph 4-15 (Documentation of Unexcused Absences) stated a prescribed letter of instructions – unexcused absence will be delivered to the Soldier, delivery will be either in person or by U.S. mail. When certified mail is used, a copy of the notice and either a post office receipt confirming delivery or the returned unopened envelope showing the notice was not delivered. Mail sent to the mailing address on file as provided by the Soldier, which is refused, unclaimed, or otherwise not delivered may not be used as defense against unexcused absences when notices were correctly addressed to the address on file provided by the Soldier.

e. Army Regulation 135-178 (Enlisted Administrative Separations), dated 12 January 2017, set policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of ARNG of the United States and USAR enlisted Soldiers for a variety of reasons.

(1) An honorable characterization 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. When a Soldier is discharged before expiration of the service obligation for a reason for which an honorable characterization is discretionary, the following considerations apply, to include –

(a) An honorable characterization may be awarded when disqualifying entries in the Soldier's military record are outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service.

(b) It is a pattern of behavior and not an isolated instance which should be considered the governing factor in determining the character of service.

(c) Unless otherwise ineligible, a Soldier may receive an honorable characterization of service if he or she has, during his or her current enlistment, or any extension thereof, received a personal decoration.

(2) A General discharge is if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

(3) A Under Other Than Honorable Conditions Discharge, service may, but is not required to be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, homosexual conduct, unsatisfactory participation, or security reasons. The Adjutant General will direct reduction in grade to private/E-1 when the Soldier is discharged under other than honorable conditions.

(4) Chapter 12 (Unsatisfactory Participation in the Ready Reserve) stated a Soldier is subject to discharge for unsatisfactory participation when it is determined that the Soldier is unqualified for further military service because the Soldier is an unsatisfactory participant and attempts to have the Soldier respond or comply with orders or correspondence. Characterization of service normally will be under other than honorable conditions, but characterization as general (under honorable conditions) may be warranted. 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 inappropriate.

(5) Paragraph 13-1 (Basis) stated, a Soldier is subject to discharge for unsatisfactory participation when it is determined that the Soldier is unqualified for further military service because: the Soldier is an unsatisfactory participant as prescribed in Army Regulation 135-91, chapter 4; and attempts to have the Soldier respond or comply with orders or correspondence have resulted in the Soldier's refusal to comply with order or correspondence; or a notice sent by certified mail was refused, unclaimed, or otherwise undeliverable; or verification that the Soldier has failed to notify the command of a change of address and reasonable attempts to contact the Soldier have failed.

(6) Paragraph 13-3 (Characterization of Service) stated characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (Under Honorable Conditions) may be warranted. 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 inappropriate. In such cases, separation for unsatisfactory participation with an Honorable characterization will be approved by the separation authority.

f. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before Expiration Term of Service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers. Chapter 15 (Secretarial Plenary Authority) 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.

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 ARNG 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:

(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.

8. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides the applicant was declared an Unsatisfactory Participant as a result of accruing nine or more unexcused absences within a 1-year period. They completed 5 years, 6 months, and 5 days net USAR service this period; however, they did not complete enlistment contractual obligation of 6 years.

c. Army Regulation 135-178, chapter 13 establishes policy and prescribes procedures for separation members for unsatisfactory participation. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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 [REDACTED] 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. Response to Contention(s):

(1) The applicant contends they requested a transfer to the IRR; however, they were not notified whether or not their request was approved or disapproved. The Board considered this contention and found no corroborating evidence to support the applicant's assertion. 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.

(2) The applicant contends they are in the process of trying to enlist in the Army for active duty; however, the under other than honorable conditions character of service is hindering their attempt. The Board considered this contention and recommended the applicant apply for a personal appearance, as the board found minimal documents in the applicant's file and did not support an upgrade.

(3) The applicant contends they just want to be afforded an opportunity to start over. The Board considered this contention and recommended the applicant apply for a personal appearance, as the board found minimal documents in the applicant's file and did not support an upgrade.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found insufficient evidence of in-service mitigating factors and the applicant does not have a BH condition or compassionate reasons that mitigate the applicant's misconduct (missed multiple USAR Drills). Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. It appears the applicant had 28 Unexcused absences (9 is the required amount to separate). 28 Unexcused absences would be the equivalent of 7 months. It also appears the unit followed the regulation and attempted multiple times to contact the applicant. The applicant provides no evidence (email, text, letter) that they communicated with their unit. The discharge was consistent with the procedural and

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substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. The Board recommends the applicant submit a request for personal appearance to further detail the situation and fill the gaps of documents not in file.

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

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

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

3/5/2024

X

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

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

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