

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 15 May 2023**b. Date Received:** 22 May 2023**c. Counsel:** [REDACTED]**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 general (under honorable conditions). The applicant requests an upgrade to honorable, reimbursement of lost pay, and full military benefits upon retirement at age 60.

(2) The applicant seeks relief stating they felt as though they never received the support from their chain of command. After serving on active duty on 4 years, they enlisted in the U.S. Army Reserve (USAR), where they served for 25 years. In their entire military career, they never obtained any bad or unsatisfactory mark. However, since their assignment to a new USAR unit in January 2023, they accumulated nine unexcused absences, which causes a Soldier to be in an unsatisfactory status and released from the USAR. They attended all battle assemblies and signed in, as they show on their attached Inactive Duty Training (IDT) Attendance Rosters; however, these Attendance Rosters were altered to make it appear as though they never came to the battle assemblies, and they did not receive their pay. They received counseling statements from staff officers who were part of their section, but they were not in their immediate chain of command. This led to the battalion command sergeant major (CSM) removing them from their duty position and assigning another Soldier to this position.

(3) They believe they faced racism, bigotry, and a lack of poor communication between Soldiers in their section and the chain of command. They were advised by their battalion commander to write a rebuttal to the incidents they encountered even though the battalion commander had already submitted an unsatisfactory packet for their release from the USAR. The battalion commander explained to them that they didn't think none of these actions happened in the unit. They then reached out to their Staff Judge Advocate to make a complaint; however, they have not received a response.

(4) They have 29 years of total military service and after 20 years of service they were entitled to a full retirement [at age 60] along with full benefits. They continued to serve after 20 years and their reenlistment contract was indefinite with no obligation of time, as they could retire at any point. After all the dedication, commitment, and sacrifice they have given the U.S. Army, they didn't even get a proper retirement, appreciation of service, or a handshake to say, "Thank you for your service."

**b. Board Type and Decision:**

(1) The issue regarding reimbursement of last pay addressed in the applicant's application letter is not within the purview of this Board. This issue will be addressed by the Army Board of Correction of Military Records (ABCMR). The MRB Board forwarded the applicant's application to ABCMR to adjudicate the pay issue.

(2) In a telephonic personal appearance hearing conducted on 11 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable.

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** NIF / Army Regulation 135-178 / General (Under Honorable Conditions)

**b. Date of Discharge:** 20 June 2014

**c. Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of their case files for approved separation.

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 21 November 2004 / Indefinite (USAR)

**b. Age at Enlistment / Education / GT Score:** 38 / HS Graduate / 86

**c. Highest Grade Achieved / MOS / Total Service:** E-8 / 11Z5O, Infantry Senior Sergeant / 29 years, 2 months, 17 days (USAR)

**d. Prior Service / Characterizations:** DEP, 4 April 1985 – 11 July 1985 / HD  
AD, 12 July 1985 – 15 April 1988 / HD

**e. Overseas Service / Combat Service:** Korea / None

**f. Awards and Decorations:** AAM-2, OSR, AGCM, ASR, AFRM, ARCAM / The applicant's AMHRR does not reflect award of the KDSM however, in accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-20 (KDSM) the applicant is eligible.

**g. Performance Ratings:** December 1991 – November 1992 / Fully Capable  
December 1992 – November 1993 / Fully Capable  
November 1994 – October 1995 / Marginal  
November 1995 – July 2002 / Fully Capable  
October 2003 – September 2004 – Among the Best  
October 2004 – 30 September 2008 / Fully Capable  
1 October 2008 – 30 September 2009 / Among the Best  
1 October 2009 – 5 February 2010 / Among the Best  
5 February 2010 – 6 November 2012 / Fully Capable  
7 November 2012 – 6 November 2013 / Marginal  
7 November 2013 – 20 June 2014 / Fully Capable

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

(1) A DA Form 2166-7 (NCO Evaluation Report), covering the period November 1994 through October 1995, reflects in –

- Part IV (Values/NCO Responsibilities) – the applicant's rater mark "NO" for –

- Places dedication and commitment to the goals and missions of the Army and nation above personal welfare
  - Is committed to and shows a sense of pride in the unit – work as a member of the team
  - Is disciplined and obedient to the spirit and letter of a lawful order
  - Is honest and truthful in word and deed
  - Maintains high standards of personal conduct of and off duty
  - Has the courage of convictions and the ability to overcome fear – stands up for and does, what's right
- 
- Part IV – Bullet Comments – the applicant's rater commented, "frequently AWOL [Absent Without Leave]" and "Recent arrest limited MUTA [Multiple Unit Training Assembly] attendance
  - Part IVd (Leadership) – the applicant's rater marked "Need Improvement (Some)" and commented "Needs to consistently work with sense of urgency" and "Lacks initiative and motivation"
  - Part IVe (Training) – the applicant rater marked "Needs Improvement (Some)" and commented, in part, "Needs to show more concern for training or teaching peers or subordinates"
  - Part IVf (Responsibility & Accountability) – the applicant rater marked "Needs Improvement (Some)" and commented, "Sometimes calls if [applicant] is late or will miss drill" and "Occasionally AWOL from unit MUTA's"
  - Part Va (Rater – Overall Potential) – the applicant's rater marked "Marginal"
  - Part Vc (Senior Rater – Overall Performance) – the applicant's senior rater marked "4 (Fair)"
  - Part Vd (Senior Rater – Overall Potential) – the applicant's senior rater marked "3 (Superior)"
  - Part Ve (Senior Rater Comments) – the applicant's senior rater commented, in part, "SM should reevaluate commitment to unit" and "duty performance would improve if consciences effort made"

(2) A memorandum, U.S. Army Human Resources Command, subject: Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), dated 6 May 2010, reflects the applicant completed the required years of qualifying reserve service and are eligible for retired pay on application at age 60.

(3) A DA Form 2166-8 (NCO Evaluation Report), covering the period 7 November 2012 through 6 November 2013, reflects in –

- Part IVf (Responsibility & Accountability) – the applicant rater marked "Needs Improvement (Some)" and commented, "failed to attend scheduled battle assembly on multiple occasions," "does not take responsibility for unexcused absences," and "does not meet the standard of responsibility and accountability expected of a master sergeant in the U.S. Army"
- Part Va (Rater – Overall Potential) – the applicant's rater marked "Marginal"
- Part Vc (Senior Rater – Overall Performance) – the applicant's senior rater marked "4 (Fair)"
- Part Vd (Senior Rater – Overall Potential) – the applicant's senior rater marked "4 (Fair)"
- Part Ve (Senior Rater Comments) – the applicant's senior rater commented, "failed on multiple occasions to show up for duty or inform chain of command" and "did not show the leadership skills necessary for promotion to positions of greater responsibility"

(4) A DA Form 4856 (Developmental Counseling Form) dated 2 March 2014, reflects the applicant received event-oriented counseling, from their battalion command sergeant major (CSM), for unsatisfactory status packet submitted. The Key Points of Discussion states –

- the packet states that you have acquired nine unexcused absences
- 15 December 2013 I [CSM] personally talked to you about the U's, made you a copy of the packet, to include a memorandum of record stating you were flagged for adverse actions
- 11 – 12 January 2014, you had the opportunity to talk to Lieutenant Colonel S\_\_\_\_ and provide a written rebuttal, reviewing the information provided was not substantial to withhold the packet
- 9 February 2014, I [CSM] verbally informed you that the packet was going forward for processing, due to the pending actions I [CSM] am recommending you be moved from your current assignment to a projected loss
- You will perform your duties in a military manner and still work in the S-3 [Training], I [CSM] am projecting to fill your position in or around April, you will continue to work with and assist as necessary
- (Note: applicant only provide the first page of this form)

(5) The Headquarters, 99th Regional Support Command Orders 14-164-00013, dated 13 June 2014, discharged the applicant from the U.S. Army Reserve with an effective date of 20 June 2014, with the type of discharge as General (Under Honorable Conditions).

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), with letter
- DD Form 214
- Memorandum, U.S. Army Human Resources Command, subject: Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)
- Excerpts of four IDT Attendance Rosters
- DA Form 2166-8
- Applicant's Rebuttal Letter, refuting their account of unexcused absences
- DA Form 4856
- Excerpt of Army Regulation 140-1 (Mission, Organization, and Training)
- Excerpt of text messages
- Headquarters, 99th Regional Support Command Orders 14-164-00013
- Excerpts of Department of Veterans Affairs Medical Record, reflecting the applicant's medical care after their discharge from the USAR

**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) 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.

## **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 29 years, 2 months, 17 days of total military service.

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 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: Depressive DO; Unspecified Trauma and Stressor-Related DO.

(2) Did the condition exist, or experience occur during military service? **No.** The Board's Medical Advisor found neither Depressive DO nor Unspecified Trauma and Stressor Related DO were diagnosed on active duty nor were they service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the applicant has been diagnosed with Depression and Unspecified Trauma and Stressor Related DO (provisional), these diagnoses were made more than 10 years after he left the military and there is no evidence they played a role to his missing multiple assembly drill.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant has any conditions that outweighed the medically unmitigated offenses of missing multiple drill assemblies.

b. Response to Contention(s):

(1) The applicant contends they felt as though they never received the support from their chain of command. The Board considered this contention and found no corroborating evidence of arbitrary or capricious acts by the chain of command.

(2) The applicant contends they attended all battle assemblies and signed in, as they show on their attached IDT Attendance Rosters; however, these Attendance Rosters were altered to make it appear as though they never came to the battle assemblies, and they did not receive their pay. The Board considered this contention and voted to upgrade the applicant based on their length of service.

(3) The applicant contends they believe they faced racism, bigotry, and a lack of poor communication between Soldiers in their section and the chain of command. The Board considered this contention and determined an upgrade was warranted based on length of service.



(4) The applicant contends after all the dedication, commitment, and sacrifice they have given the U.S. Army, they didn't even get a proper retirement, appreciation of service, or a handshake to say, "Thank you for your service." The Board considered this contention and determined an upgrade was warranted.

c. The Board determined the basis of separation was unsatisfactory participation and voted that the discharge was inequitable based on the applicant's length and quality of service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records for retirement eligibility determination.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. 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 reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length, Quality). Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable. Thus, the prior characterization is no longer appropriate.

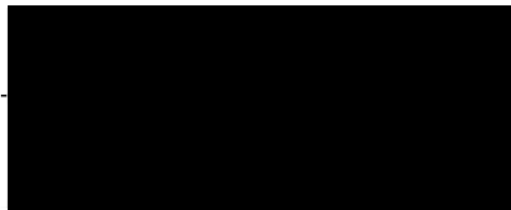
(2) As there were no Reasons/SPD Codes/RE-codes listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

8/16/2024



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

