

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 22 May 2023
- b. **Date Received:** 7 August 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, in effect, reconsideration of their previous Army Discharge Review Board case AR20210008896, dated 24 March 2023, for an upgrade to general (under honorable conditions).

(2) The applicant seeks relief stating due to their living arrangement at the time they were not able to attend battle assemblies because they had no where to stay. They are asking for an upgrade so they can get a new reentry code and reenlist.

b. Board Type and Decision: In a telephonic personal appearance hearing conducted on 5 March 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service, homelessness, and post service accomplishments. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions.

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 18 September 2018

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: 19 November 2014 / 8 years (USAR)

b. Age at Enlistment / Education / GT Score: 38 / AED / NIF

c. Highest Grade Achieved / MOS / Total Service: E-3 / 42A1O, Human Resources Specialist / 3 years, 9 months, 24 days

d. Prior Service / Characterizations: AD, 18 February 2015 – 22 August 2015 / HD
(Concurrent Service)

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DD Form 4 (Enlistment Documents) dated 19 November 2014, reflects the applicant's enlistment in the USAR for a period of 8 years.

(2) A DD Form 214 (Certificate of Release or Discharge from Active Duty), covering the period 18 February 2015 through 22 August 2015, reflects the applicant's period of initial active duty for training with a characterization of service as honorable.

(3) The Headquarters, 77th Sustainment Brigade Orders 17-356-00005, dated 22 December 2017, reassigned the applicant to a unit within their USAR company.

(4) The Headquarters, 99th Regional Support Command Orders 18-254-00021, dated 11 September 2018, reduced the applicant from the rank/grade private first class/E-3 to private/E-1 and discharged them from the USAR with an effective date of 18 September 2018, with the type of discharge as Under Other Than Honorable Conditions.

(5) On 24 March 2023, the Army Review Boards Agency denied the applicant's request to upgrade their character of service to general (under honorable conditions). The Board determined –

(a) There is not any indication or evidence of arbitrary or capricious actions by the command, with over 3 years of service, the applicant was reasonably aware of the requirement to attend battle assemblies and that communication regarding a new residence, transportation requirements is required. The applicant did not present substantial credible evidence to support their contention.

(b) The applicant received an under other than honorable conditions characterization of service. Army Regulation 601-210, chapter 4, stipulates an under other than honorable conditions discharge constitutes a non-waiverable disqualification; thus, the applicant is no longer eligible for reenlistment.

(c) There is no evidence of arbitrary or capricious by the command that the applicant was denied an Administrative Separation Board hearing.

(d) The applicant's discharge was proper and equitable. Despite applying liberal consideration of all evidence before the Board, the applicant did not have a mitigating condition. The applicant's unsatisfactory participation fell below the level of service warranted for an upgrade to honorable.

(6) On 21 September 2020, a Major Personnel Action Inquiry reflects the applicant's involuntary discharge for unsatisfactory participation.

(7) A DA Form 5016 (Chronological Statement of Retirement Points) dated 22 August 2023, reflects –

- from 20 November 2015 – 19 November 2016 the applicant earned 37 Inactive Duty Points [37 divided by 2 equals 18.5 days of battle assemblies (Note: a typical battle assembly is 2 days)]
- from 20 November 2016 – 19 November 2017 the applicant earned 28 Inactive Duty Points [28 divided by 2 equals 14 days of battle assemblies]

- from 20 November 2017 – 18 September 2018 the applicant earned 8 Inactive Duty Points [8 divided by 2 equals 4 days of battle assemblies]

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
- Office of Child Support Enforcement Letter
- Office of Program Accountability Letter
- Occupancy Agreement
- Six 3rd Party Character Statements

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, 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) 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 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) contains Army policy for USAR training and retirement point credit.

(1) Paragraph 1-7 (Service Requirement for a Satisfactory Year of Service for Non-Regular Retirement) states a qualifying year of service for non-regular retired pay is a full year during which a reserve component member is credited with a minimum of 50 retirement points.

(2) Paragraph 2-1 (Criteria for Crediting Retirement Points) states no more than one retirement point may be awarded for any day in which the Soldier is on active duty. Inactive duty training will be either 4 hours in length for one retirement point or 8 hours in length for two retirement points.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) dated 30 September 2016, prescribed eligibility criteria governing the enlistment of persons, with or without prior service, into the Regular Army, the USAR, and the Army National Guard. Paragraph 4-23 stated a person with an other than honorable conditions discharge is nonwaiverable.

g. 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. The applicant's Army Military Human Resource Record (AMHRR) is void of the applicant's separation packet. The applicant's AMHRR does contain a properly constituted discharge order. The order reflects the applicant was discharged under the provisions of Army Regulation 135-178, with a characterization of service of under other than honorable conditions. Soldier Management Service Records indicate the reason for separation was Unsatisfactory Participation. A Soldier is declared an Unsatisfactory Participant as a result of accruing nine or more unexcused absences within a 1-year period. They completed 3 years, 9 months, and 24 days of total military service and did not complete their 8 year USAR service obligation.

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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

- a. The applicant submitted the following additional document(s): N/A
- b. Applicant provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.
- c. Counsel / Witness(es) / Observer(s): N/A

10. 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 the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service 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 due to their living arrangement at the time they were not able to attend battle assemblies because they had nowhere to stay. The Board determined that this contention was valid and voted to upgrade the characterization of service due to the applicant's length of service, homelessness, and post service accomplishments mitigating the applicant's unsatisfactory participation misconduct.

(2) The applicant contends they are asking for an upgrade so they can get a new reentry code and reenlist.

c. The Board determined that the characterization of service was inequitable based on the applicant's length of service, homelessness, and post service accomplishments. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to General, Under Honorable Conditions because the applicant's length of service, homelessness, and post service accomplishments mitigated the applicant's misconduct of unsatisfactory participation. Thus, the prior characterization is no longer appropriate.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230009601

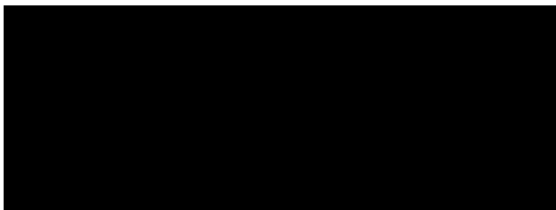
(2) As there were no Reasons/SPD Codes/RE-codes listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Authority to: AR 135-178

Authenticating Official:

3/22/2024



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