

1. Applicant's Name:

- a. **Application Date:** 7 May 2020
- b. **Date Received:** 19 May 2020
- c. **Counsel:** Yes

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

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is Under Other than Honorable Conditions. The applicant requests to change their reentry code.

b. **Counsel states.** No additional details were provided.

c. **Board Type and Decision:** In a Personal Appearance records review conducted on 11 March 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other than Honorable Conditions

b. **Date of Discharge:** 16 April 2010

c. Separation Facts:

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

(2) **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.

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** 25 March 2010

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 30 March 2010 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 18 July 2006 / 3 years, 22 weeks

b. **Age at Enlistment / Education / GT Score:** 18 / GED / 118

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 14J10 Air Defense C4I Tactical Operations Center Enhanced Operator / 3 years, 8 months, 29 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (14 April 2008 – 2 April 2009)

f. Awards and Decorations: ARCOM, NDSM, GWOTSM, ICM-CS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 18 July 2006, the applicant enlisted in the Regular Army for 3 years, 22 weeks as a PVT. On 15 March 2009, in support of Operation Iraqi Freedom (OIF) the applicant was awarded an Army Commendation Medal.

(2) On 11 January 2010, the applicant was extended on active duty for a period of 90 days due to having been under investigation and suspected of manufacturing an explosive device, violating a lawful order, and engaging in conduct prejudicial to good order and discipline.

(3) On 15 March 2010, the applicant was charged for wrongfully and recklessly engaging in conduct, to wit: improperly storing and handling of explosive or hazardous materials in their barracks room, conduct likely to cause death or grievous bodily harm to the Soldiers and their visitors residing in or visiting their building, which conduct was prejudicial to the good order and discipline in the Armed Forces and of a nature to bring discredit upon the Armed Forces between 15 June – 18 November 2009. The charge was preferred.

(4) On 25 March 2010, after consulting with counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200, Chapter 10, Discharge In Lieu of Trial by Court-Martial. In their request, they affirmed no one had subjected them to coercion, and counsel had advised them of the implications of their request, with the understanding their service could be characterized as Under Other than Honorable Conditions, which would have a significant effect on their eligibility for veterans' benefits. The applicant further acknowledged their guilt of the charge against them, or a lesser one. The record provides no evidence of a statement on their behalf.

(a) On the same day, defense counsel endorsed the applicant's voluntary request for discharge acknowledging having counseled them on the possible effects of an Under Other than Honorable Conditions characterization of service.

(b) On 29 March 2010, the company, battalion, and brigade commanders all concurred on approving the applicant's request with an Under Other than Honorable Conditions characterization of service.

(c) On 30 March 2010, the appropriate approval authority approved the separation and directed the applicant be discharged with an Under Other than Honorable Conditions characterization of service.

(5) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharge accordingly on 16 April 2010, with 3 years, 10 months, and 8 days of service. The applicant has completed their first full term of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); Resume

6. POST SERVICE ACCOMPLISHMENTS: The applicant is a senior research and development engineering technician and research and development machinist for a firm. They have earned their associates degree in Mechanical Engineering and bachelor's degree in Christian Leadership.

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

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

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

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

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

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

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

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

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

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

(4) Chapter 10, Discharge in Lieu of Trial by Court Martial is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable.

(a) After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other

than honorable conditions.

(b) The following will accompany the request for discharge:

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

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for 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): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests to change their reentry code. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. A review of the available evidence provides the applicant enlisted in the Regular Army as a PVT, promoted up to SPC, and was awarded an Army Commendation Medal for having been deployed for one year, in support of OIF. They served 2 years, 6 months, and 18 days prior to the indiscipline which led to their discharge. On 5 February 2009, the applicant was flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA). They were extended on active duty for a period of 90 days due to having been under investigation and suspected of manufacturing an explosive device, violating a lawful order, and engaging in conduct prejudicial to good order and discipline.

(1) The applicant was charged with a commission of an offense punishable under the UCMJ with a punitive discharge. After consulting with defense counsel, the applicant requested to be voluntarily discharged IAW AR 635-200, Chapter 10, in lieu of trial by court-martial, admitting guilt to the offense, or a lesser included offense, understanding their service could be characterized as Under Other than Honorable Conditions, which would have a significant effect on their eligibility for veterans' benefits.

(2) A medical and mental examination was not required for the voluntary discharge in lieu of trial by court-martial but could have been requested by the Soldier. They served 2 years, 8 months, and 29 days of their 3 year, 22 week contractual obligation.

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

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

9. 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. **The applicant presented the following additional contention(s):** N/A

c. **Counsel / Witness(es) / Observer(s):** Yes.

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? **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: Chronic PTSD; ADHD, combined type; Dissociative DO NOS; Dysthymic DO.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the diagnoses of Chronic PTSD; ADHD, combined type; Dissociative DO NOS; Dysthymic DO were all made while on active duty.

(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 been diagnosed with Chronic PTSD; ADHD, combined type; Dissociative DO NOS; Dysthymic DO, none of these conditions mitigate the applicant's misconduct as none of these conditions affect one's ability to distinguish right from wrong and act in accordance with the right. Regarding the applicant's Dissociative DO NOS, the medical record indicates that the applicant reported their last dissociative episode was in July 2007 two years prior to the date of his misconduct.

(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's Chronic PTSD; ADHD, combined type; Dissociative DO NOS; Dysthymic DO outweighed the medically unmitigated offenses of wrongfully and recklessly engaging in conduct, to wit: improperly storing and handling of explosive or hazardous materials in their barracks room, conduct likely to cause death or grievous bodily harm to the Soldiers and their visitors residing in or visiting their building, which conduct was prejudicial to the good order and discipline in the Armed Forces and of a nature to bring discredit upon the Armed Forces.

b. Prior Decisions Cited: AR20200007353

c. Response to Contention(s): The applicant, through counsel, contends the situation was a misunderstanding and the applicant was 'tinkering' with 'chemistry' as a hobby. The Board considered this contention and found no corroborating evidence to support the assertion. The Board determined there was no medical mitigation and the magnitude of the misconduct was not outweighed by length, quality of service or combat, therefore the board determined the discharge was proper and equitable.

d. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's Chronic PTSD; ADHD, combined type; Dissociative DO NOS; Dysthymic DO did not outweigh the applicant's medically unmitigated offenses of wrongfully and recklessly engaging in conduct, to wit: improperly storing and handling of explosive or hazardous materials in their barracks room, conduct likely to cause death or grievous bodily harm to the Soldiers and their visitors

residing in or visiting their building, which conduct was prejudicial to the good order and discipline in the Armed Forces and of a nature to bring discredit upon the Armed Forces . The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge.

(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.

11. 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:

3/20/2024

X

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

Legend:

AWOL – Absent Without Leave	CID – Criminal Investigation Division	IADT – Initial Active Duty Training	NOS – Not Otherwise Specified
AMHRR – Army Military Human Resource Record	ELS – Entry Level Status	MP – Military Police	OAD – Ordered to Active Duty
BCD – Bad Conduct Discharge	FG – Field Grade Article 15	MST – Military Sexual Trauma	OBH (I) – Other Behavioral Health (Issues)
BH – Behavioral Health	GD – General Discharge	N/A – Not applicable	OMPF – Official Military Personnel File
CG – Company Grade Article 15	HS – High School Discharge	NCO – Noncommissioned Officer	PTSD – Post-Traumatic Stress Disorder
	HD – Honorable Discharge	NIF – Not in File	

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230010070

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