

1. Applicant's Name: [REDACTED]

a. Application Date: 25 September 2023

b. Date Received: 3 October 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 an under other than honorable conditions. The applicant requests a change of their separation code.

(2) The applicant seeks relief stating they simply made a hasty decision and joined the military too soon. They knew their mother was sick and they should have waited till they passed away before they enlisted. Their mother got sicker while they were at their Advanced Individual Training. They felt the urge to return home to help their mother. Their commander told them no because there was not a Red Cross message. Their 18 year old brain told them they had to leave anyway. They are thankful they did or else they would have been in Iraq when their mother died of cancer. They don't regret being able to spend time with their mother in their last days, but they regret joining the military too soon. They are older and wiser now. They loved every minute of the Army and they truly wish it would have played out differently.

b. **Board Type and Decision:** In a records review conducted on 17 July 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's severe family matters concerning the applicant's mother dying from cancer that outweighed the applicant's AWOL basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions and the Re-entry code to 3. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 11 June 2008

c. **Separation Facts:**

(1) **Dates and Charges Preferred (DD Form 458, Charge Sheet):** On 5 May 2008 the applicant was charged with violation of Article 86 (Absence Without Leave), Uniform Code of Military Justice (UCMJ), – on or about 28 February 2008, without authority, absent themselves from their organization, to wit: Alpha Company, 1st Battalion, 13th Aviation Regiment, locate in Fort Rucker, AL, and did remain so absent until on or about 26 April 2008.

(2) **Legal Consultation Date:** 5 May 2010

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

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 19 May 2008 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 3 July 2007 / 6 years

b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 100

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / NA / 9 months, 8 days.

d. **Prior Service / Characterizations:** None

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

f. **Awards and Decorations:** None

g. **Performance Ratings:** NA

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

(1) Three DA Forms 4187 (Personnel Action) dated 25 February 2008 through 5 May 2008, reflects the applicant's duty status changed from Present for Duty to Absent Without Leave (AWOL) on 25 February 2008; from AWOL to Dropped from the Rolls on 26 March 2008; and from Dropped from the Rolls to Present for Duty on 26 April 2008.

(2) A DD Form 616 (Report of Return of Absentee) dated 26 April 2008 reflects the applicant surrendered to civil authorities at Camp Landing, FL on 26 April 2008. They were returned to military control and transferred to U.S. Army Personnel Control Facility, Fort Knox, KY.

(3) A DD Form 458 (Charge Sheet) dated 5 May 2008, reflects charges referred against the applicant described in previous paragraph 3c(1).

(4) The applicant's memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial, dated 5 May 2008, reflects the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation 635-200, chapter 10. They understand they may request discharge in lieu of trial by court-martial because charges have been preferred against them under the UCMJ, which authorizes the imposition of a Bad Conduct or Dishonorable Discharge. They are making this request of their own free will and have not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, they acknowledge that they are guilty of the charges against them or of lesser-included offenses therein contained which also authorizes the imposition of a Bad Conduct or Dishonorable Discharge. Moreover, they hereby state that under no circumstances do they desire further rehabilitation, for they have no desire to perform further military service.

(a) Prior to completing this form, they have been afforded the opportunity to consult with an appointed defense counsel. They have been fully advised of the nature of their rights under the UCMJ. They understand that if their request for discharge is accepted, they may be discharged under conditions other than honorable. They have been advised and understand the possible effects of an under other than honorable conditions discharge and that, as a result, they will be deprived of many or all Army benefits, that they may be ineligible for many or all benefits as a veteran under both Federal and State law. They also understand that they may expect to encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge.

(b) They have been advised that they may submit any statements they desire in their own behalf. They elected not to submit statements in their behalf.

(5) A memorandum, Headquarters, U.S. Army Personnel Control Facility, U.S. Armor Center and Fort Knox, subject: Request for Discharge in Lieu of Trial by Courts-Martial, the commander states the applicant's conduct has rendered them triable by courts-martial under circumstances which could lead to a bad conduct or dishonorable discharge. Based on their previous record, punishment can be expected to have a minimal rehabilitative effect. They believe a discharge at this time to be in the best interest of all concerned. There does not appear to be any reasonable ground to believe that they is, or was, at the time of their misconduct, mentally defective, deranged or abnormal. Recommend discharge Under Other Than Honorable Conditions.

(6) A DD Form 93 (Record of Emergency Data) dated 2 May 2008 reflects that applicant listed their mother as a person to be notified in case of emergency and also listed them as the beneficiary for death gratuity.

(7) A memorandum, Headquarters, U.S. Army Garrison Command, Fort Knox, subject: Request for Discharge in Lieu of Trial by Courts-Martial, [Applicant], dated 19 May 2008, reflects the separation authority approved the applicant's request for voluntary discharge, and directed their character of service be Under Other Than Honorable Conditions and they be reduced to private/E-1.

(8) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 11 June 2008. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 9 months, 8 days
- item 12i (Effective Date of Pay Grade) – 19 May 2008
- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- item 26 (Separation Code) – KFS [In Lieu of Trial by Court-Martial]
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

i. **Lost Time / Mode of Return:** 61 days (AWOL, 25 February 2008 – 25 April 2008 / Surrendered to Civilian Authorities

j. **Behavioral Health Condition(s):** None

5. **APPLICANT-PROVIDED EVIDENCE:** None submitted with the application
6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the 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. Title 32, Code of Federal Regulations, Section 70.9 (Discharge Review Standards) provides the objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors that aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in discharge. Neither a Discharge Review Board nor the Secretary of the Military Department concerned shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the Discharge Review Board or the Secretary of the Military Department concerned shall give full, fair, and impartial considerations to all applicable factors before reaching a decision. An applicant may not receive less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

d. 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.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 July 2005, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

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

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

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

(4) Paragraph 1-33 (Disposition Through Medical Channels) stated, except in separation actions under chapter 10, disposition through medical channels takes precedence over administrative separation processing. Disability processing is inappropriate in separation actions under chapter 10.

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

(6) Paragraph 10-8 (Types of Discharge, Characterization of Service) stated a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

(7) Paragraph 10-10, Limited use evidence, states due diligence should be exercised to avoid including limited use evidence in a separation action under this chapter, but the inclusion of such evidence will not form the basis for a Soldier to challenge the separation or the characterization of service. If limited use evidence is included in the separation action, the requirement that an honorable discharge be given due to the introduction of limited use evidence does not apply to separations under this chapter. The separation authority will include a statement in the approval of separation under this chapter that the inclusion of any information in the separation packet, which may be considered limited use evidence, was excluded as evidence from and not considered or used against the Soldier on the issue of characterization in accordance with DoDI 1010.01 and AR 600-85.

(8) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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.

f. 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.

g. Army Regulation 601-210 (Regular Army, and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per Department of Defense Instructions 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

h. Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating Article 86 (Absence Without Leave).

8. SUMMARY OF FACT(S):

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

b. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offenses punishable under the UCMJ with a punitive charge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted to the offense, or a lesser included offense, and indicated an understanding a under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance. They completed 9 months, and 8 days of net active service this period and they did not complete their contractual reenlistment service obligation of 6 years

c. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment.

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

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A.**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.**

(4) Does the condition or experience outweigh the discharge? **N/A.**

b. Response to Contention(s):

(1) The applicant contends they simply made a hasty decision and joined the military too soon and felt the urge to return home to help their mother. Their commander told them no because there was not a Red Cross message. Their 18 year old brain told them they had to leave anyway. The Board considered this contention and determined an upgrade was warranted due to the applicant's severe family matters concerning applicant's mother dying from cancer outweighing the applicant's AWOL basis for separation.

(2) The applicant contends stating they are older and wiser now. They loved every minute of the Army and they truly wish it would have played out differently. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's severe family matters concerning applicant's mother dying from cancer outweighing the applicant's AWOL basis for separation.

c. The Board determined that the characterization of service was inequitable based on the applicant's severe family matters concerning applicant's mother dying from cancer outweighing the applicant's AWOL basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions and the Re-entry code to 3. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them. 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. 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 to change the applicant's characterization of service to General, Under Honorable Conditions because the applicant's severe family matters concerning applicant's mother dying from cancer outweigh the applicant's AWOL basis for separation. Thus, the prior characterization is no longer appropriate.

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

(3) The Board voted to change the RE code to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: RE-3
- e. Change Authority to: No Change

Authenticating Official:



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