

1. Applicant's Name: [REDACTED]

- a. Application Date: 13 October 2023
- b. Date Received: 16 October 2023
- c. Counsel: None

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 did not properly annotate the enclosed application requesting a possible discharge upgrade. The Army Discharge Review Board considered the applicant for a possible upgrade as instructed in pertinent part by Department of Defense Instruction 1332.28, which stipulates a request for review from an applicant without an honorable discharge shall be treated as a request for a change to an honorable discharge unless the applicant requests a specific change to another character of discharge. The applicant also requests a separation program designator (SPD) code, reentry (RE) code, and narrative reason change.

The applicant seeks relief contending, in effect, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues were a mitigating factor in the separation.

b. **Board Type and Decision:** During a telephonic personal appearance held on January 27, 2025, the board assessed the case and, through a unanimous 5-0 vote, concluded that the applicant's discharge was inequitable due to their Epilepsy and mild Traumatic Brain Injury (TBI), as well as service-related factors such as length, quality, and combat experience. Consequently, the board decided to grant relief by upgrading the characterization of service to General (Under Honorable Conditions). However, they chose not to alter the applicant's reason for discharge, the accompanying SPD code, or the RE code.

Please see Section 10 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 / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 4 June 2013

c. **Separation Facts:**

(1) **Date DD Form 458 (Charge Sheet):** NIF

(2) **Legal Consultation Date:** On 12 April 2013, the applicant voluntarily requested discharge in lieu of trial by court-martial under AR 635-200, Chapter 10, for charges preferred against the applicant under the Uniform Code of Military Justice and admitted to being guilty of one or more of the charges.

(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: 17 April 2013 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 15 October 2010 / 5 years

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88M10, Motor Transport Operator / 4 years, 3 months, 17 days

d. Prior Service / Characterizations: RA, 18 February 2009 – 14 October 2010 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (15 December 2009 – 15 November 2010), (8 August 2010 – 7 May 2013)

f. Awards and Decorations: PH, AGCM, NDSM, ACM-CS-2-2, GWOTSM, ASR, OSR-2, NATO MDL, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) DD Form 2707-1 (Department of Defense Report of Result of Trial), 13 April 2013, reflects the applicant pled guilty and was found guilty of willfully and wrongfully damaging bumpers, windows, and tires on vehicles by striking them with a metal rod and a foot, the amount of said damage being in the sum of less than \$500, the property of Afghan local nationals between on or about 27 January 2013 and on or about 31 January 2013; on divers occasions between on or about 20 December 2012 and on or about 31 January 2013, caused a breach of the peace by wrongfully throwing .50 caliber casings and linkages, soda cans, and water bottles at vehicles belonging to Afghan local nations; and on divers occasions between on or about 20 December 2012 and on or about 31 January 2013, caused a breach of the peace by using the profane language toward Afghan local nationals.

(2) DA Form 4430 (Department of The Army Report of Result of Trial), reflects in a Trial by special court-martial on 12 April 2013, at Bagram Airfield, Afghanistan, convened by CMCO Number 18, the applicant pled guilty of willfully and wrongfully damaging bumpers, windows, and tires on vehicles by striking them with a metal rod and a foot, the amount of said damage being in the sum of less than \$500, the property of Afghan local nationals between on or about 27 January 2013 and on or about 31 January 2013; on divers occasions between on or about 20 December 2012 and on or about 31 January 2013, caused a breach of the peace by wrongfully throwing .50 caliber casings and linkages, soda cans, and water bottles at vehicles belonging to Afghan local nations; and on divers occasions between on or about 20 December 2012 and on or about 31 January 2013, caused a breach of the peace by using the profane language toward Afghan local nationals. The punishment consisted of confinement for 45 days, and forfeiture of \$1,536 pay per month for two months.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant provides over 200 pages of medical records pertaining to the applicant's mental and physical issues.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Medical documents (220 pages)

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(4) Paragraph 3-7c states 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.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions is normally 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. (See chap 3, sec II).

(7) Paragraph 10b stipulates 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.

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:

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.

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.

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.

The applicant did not properly annotate the enclosed application requesting a possible discharge upgrade. The Army Discharge Review Board considered the applicant for a possible upgrade as instructed in pertinent part by Department of Defense Instruction 1332.28, which stipulates a request for review from an applicant without an honorable discharge shall be treated as a request for a change to an honorable discharge unless the applicant requests a specific change to another character of discharge. The applicant also requests an SPD code, RE code, and a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant requests the narrative reason for the discharge be changed. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was separated under the provisions of Chapter 10, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial By Court-Martial." Army Regulation 635-8, Separation Documents governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28. The regulation stipulates no deviation is authorized. There is no provision for any other reason.

The applicant requests the SPD and RE codes be changed. Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active

duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 10, is "KFS." Army Regulation 635-5, Separation Documents, governs the preparation of the DD Form 214, and dictates the entry of the separation code entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other SPD code to be entered under this regulation. 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.

The applicant contends PTSD, TBI, and other mental health issues were a mitigating factor in the separation. The applicant's AMHRR is void of a mental health diagnosis. The applicant provides over 200 pages of medical records pertaining to the applicant's mental and physical issues.

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):**
- b. The applicant presented the following additional contention(s):**
- c. Counsel:** Mr. Adam Leydig

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: Post concussion Syndrome, Epilepsy, TBI, PTSD related to combat. [Note: Diagnoses of Adjustment DO with depressed mood, Adjustment DO, unspecified and Nightmare DO are subsumed under diagnosis of PTSD.].

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that all of the applicant's BH conditions were diagnosed while he was on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that that the applicant has two conditions which, in conjunction, mitigate his misconduct. These two conditions are Epilepsy and mild TBI. Record review indicates that the applicant's out of character behavior began after he incurred a significant head injury and concussion while deployed due to an IED explosion. This concussion took over two weeks to clear and was characterized by loss and alteration of consciousness, severe headache, poor ability to concentrate, insomnia, nausea, vomiting,

dizziness, tinnitus, and facial twitching. (ANAM testing at the time indicated compromised cognitive function which the tester attributed to factors other than the concussion but which, in fact, may have been due entirely to the concussion). The writer feels that the effects of this concussion in combination with the applicant's already compromised brain function due to his epilepsy, resulted in executive dysfunction manifested by poor impulse control and impaired judgement, both of which led to his misconduct. Had the concussion never occurred, it is more likely than not that the applicant would not have engaged in his atypical, out of character misconduct. The applicant's remaining BH diagnoses, Nightmare DO and PTSD, do not mitigate his misconduct as they are not associated with executive dysfunction and do not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? Yes. After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the board determined that the applicant's Epilepsy and mild TBI, outweighed the basis for separation.

b. Response to Contention(s): The applicant contends PTSD, TBI, and other mental health issues were a mitigating factor in the separation. During the board's proceedings, the contention was taken into account. However, this argument was not addressed as a standalone point as a result of the board granting an upgrade to the applicant's status based on the severity of their epilepsy and mild Traumatic Brain Injury (TBI) being deemed more substantial than the incidents of misconduct.

c. The board concluded that the discharge was inequitable and voted to change the applicant's service to General, Under Honorable Conditions. The board determined that the applicant's epilepsy, mild Traumatic Brain Injury (TBI), and in-service factors (including length, quality, and combat experience) outweighed the misconduct. The board found that the narrative reason for discharge and the reentry eligibility (RE) code were appropriate and equitable, choosing not to modify them. The applicant has exhausted all appeal options available through the Army Discharge Review Board (ADRB); however, they still have the option to apply to the Army Board for Correction of Military Records. It is the applicant's responsibility to provide sufficient evidence or documentation to support their claims 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 mitigated BH diagnoses and in service factors mitigate the misconduct. 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 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.

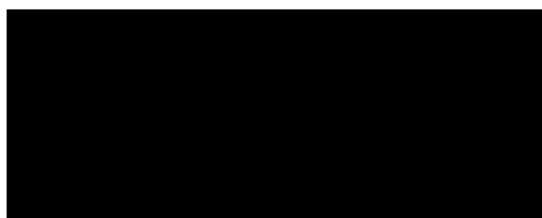
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE
AR20230013716

11. BOARD ACTION DIRECTED:

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

Authenticating Official:

7/21/2025



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