

1. Applicant's Name: [REDACTED]

a. **Application Date:** 10 October 2023

b. **Date Received:** 10 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 general (under honorable conditions). The applicant requests an upgrade of the characterization of their service in the U.S. Army Reserve (USAR) to honorable.

(2) The applicant seeks relief stating they faced personal challenges that severely affected their attendance and performance. They deeply regret their actions. The core of their difficulties stemmed from a deeply personal issue with their ex-spouse, who was also in the military. They discovered their spouse was having an affair with a fellow service member from their unit. The ensuing shame, humiliation, and emotional distress were profound, and they felt completely isolated. Instead of seeking guidance or counseling, they withdrew and failed to meet their obligations.

(3) Since that challenging period in their life, they have been committed to personal and professional growth. They have successfully completed the police academy, served as a deputy sheriff, earned a master's degree in Emergency Management, and is currently pursuing a Doctorate of Philosophy (Ph.D.). In 2020, they joined the Texas Army National Guard and proudly completed a 3-year term with an honorable discharge. They are currently serving with the Department of Homeland Security and has served for the past 6 years.

(4) With all of their accomplishments, the general (under honorable conditions) from their early years of service feels like an anomaly that does not accurately reflect their character or commitment to the country. They believe their subsequent actions and achievements showcase their dedication, resilience, and growth. They kindly request the Board to consider their request for a discharge upgrade based on the totality of their service, the challenges they overcame, and the contributions they have made in their personal and professional life since their discharge.

b. Board Type and Decision: In a records review conducted on 17 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length of service and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 135-178.

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 31 March 2011

c. **Separation Facts:**

(1) Date of Notification of Intent to Separate: 30 November 2010

(2) Basis for Separation: Accrued nine or more unexcused absences from scheduled inactive duty training during a 1-year period.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: NA

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 18 November 2008 / 8 years (USAR)

b. Age at Enlistment / Education / GT Score: 27 / Associate Degree / NIF

c. Highest Grade Achieved / MOS / Total Service: E-3 / 92Y1O, Unit Supply Specialist / 2 years, 4 months, 14 days

d. Prior Service / Characterizations: NA

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Three memorandums, Headquarters, Headquarters Company, 5th Battalion, 159th Aviation Regiment, subject: Letter of Instruction - - Unexcused Absence, dated 19 July 2010, 13 September 2010, and 8 November 2010, reflects the applicant was notified of their absences from scheduled unit training assemblies. The applicant accrued 14 unexcused absences within a 1-year period.

(2) A photographic copy of a certified letter, dated 23 July 2010, reflects a status of Return to Sender/Insufficient Address/Unable to Forward. Two Affidavit of Service by Mail dated 13 September 2010 and 8 November 2010, reflects the applicant's Unit Administrator sworn statement stating they mailed the applicant their Unsatisfactory Participation Letters to the applicant's last known address, that being the last known address given this unit by the applicant.

(3) A memorandum, Headquarters, Headquarters Company, 5th Battalion, 159th Aviation Regiment, subject: Separation under Army Regulation 135-178, Chapter 13, Unsatisfactory Participation, [Applicant], dated 30 November 2010, the applicant's company commander attempted to notify the applicant of their intent to separate them under the provisions of Army Regulation 135-178, Chapter 13, with a recommended characterization of service general under other than honorable conditions for having accrued nine or more unexcused absences from scheduled inactive duty training during a 1-year period. The attached

memorandum, subject: Acknowledgment, Election and Waiver of Rights in Separation Proceedings under Army Regulation 135-178, Chapter 13, Unsatisfactory Participation, [Applicant], reflects no entries from the applicant acknowledging receipt of notification.

(4) A memorandum, Headquarters, Headquarters Company, 5th Battalion, 159th Aviation Regiment, subject: Commander's Report for Separation of [Applicant], under Army Regulation 135-178, Unsatisfactory Participation, undated, the applicant's company commander submitted a request to separate them prior to their expiration term of military service and their service be characterized as General (Under Honorable Conditions). The company commander states the applicant accumulated nine or more unexcused absences from scheduled inactive duty training during a 1-year period, their behavior has an undesirable effect on the unit, exhibits no potential or desire for continued service, and exhibits no potential to perform useful service if ordered to active duty to meet mobilization requirements.

(5) Headquarters, 99th Regional Support Command Orders 11-083-00031, dated 24 March 2011, discharged the applicant from the USAR with the type of charge of General (Under Honorable Conditions), effective 31 March 2011, under the authority of Army Regulation 135-178.

i. **Lost Time / Mode of Return:** NIF

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

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with personal statement
- Memorandum, Echo Company, 5th Battalion, 159th Aviation Regiment, subject: Commander's Report for Separation [Applicant]
- DA Form 2a (Personnel Qualification Record)
- Headquarters, 99th Regional Support Command Orders 11-083-00031
- College Transcript
- National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service)

6. POST SERVICE ACCOMPLISHMENTS:

- Masters of Arts
- Honorable service in the Texas Army National Guard
- completion of a police academy
- employment as a deputy sheriff and then with Department of Homeland Security

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

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

clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

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

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

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

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

d. Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures), dated 1 March 2005, defined ARNG of the United

States and USAR service obligations. It prescribed policies and procedures governing the various types of service obligations and participation requirements.

(1) Paragraph 3-3 (Satisfactory Participation of USAR Control Group Soldiers) stated Soldiers assigned to the Control Groups Annual Training have participation requirements. They are satisfactory participants if they –

- complete and promptly return all military correspondence
- promptly report any change of address to the Commander, HRC
- comply with other requirements imposed by the Commander, HRC
- report for a one day muster each year when directed by proper authority

(2) Chapter 4 (Absences) governed absences from Ready Reserve training, it applies to all Army National Guard of the United States (ARNGUS) and USAR Soldiers. Soldiers should be aware of their service obligation as assigned Soldiers of the IRR. Soldiers should further be aware of the prerequisites for satisfactory participation and the actions that may result from unsatisfactory participation. This information is provided to IRR Soldiers. Soldiers who relocate outside the United States may be transferred/reassigned to the USAR Control Group.

e. Army Regulation 135-178 (Enlisted Administrative Separations), dated 13 April 2007, set policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of ARNGUS 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 13 (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 as described in Army Regulation 135-91, chapter 4 and attempts to have the Soldier respond or comply with order or correspondence have resulted in the Soldier's refusal to comply with orders 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. Characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (Under Honorable Conditions) may be warranted.

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 AMHRR reflects their status as an Unsatisfactory Participation which led to their discharge from the U.S. Army Reserve. The applicant's AMHRR contains their discharge order from the USAR under the provisions of Army Regulation 135-178. They completed 2 years, 4 month, and 14 days service this period and did not complete their 8-year USAR enlistment contractual obligation.

c. Army Regulation 135-178, Chapter 13 (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 as described in Army Regulation 135-91, chapter 4 and attempts to have the Soldier respond or comply with order or correspondence have resulted in the Soldier's refusal to comply with orders 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. Characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (Under Honorable Conditions) may be warranted.

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 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 with all of their accomplishments, the general (under honorable conditions) from their early years of service feels like an anomaly that does not accurately reflect their character or commitment to the country. They believe their subsequent actions and achievements showcase their dedication, resilience, and growth. The Board determined that this contention was valid and voted to upgrade the characterization of service based on the applicant's length of service and post-service accomplishments.

(2) The applicant contends they faced personal challenges that severely affected their attendance and performance, their difficulties stemmed from a deeply personal issue with their ex-spouse. Instead of seeking guidance or counseling, they withdrew and failed to meet their obligations. 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 length of service and post-service accomplishments.

c. The Board determined the discharge is inequitable based on the applicant's length of service and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 135-178.

d. Rationale for Decision:

(1) The Board voted to grant relief by upgrading the applicant's characterization of service to Honorable. Although the Board found the discharge proper and equitable and there were no behavioral health diagnoses which mitigated the misconduct to warrant relief, it was found that the discharge has served its purpose. Thus, making the current reason for discharge improper.

(2) As there was no SPD Code listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

(3) As there was no RE Code listed on the applicant's discharge paperwork, due to being in the Army Reserves, no upgrade actions are required for these items.

10. BOARD ACTION DIRECTED:

a. Issue a New Separation Order: Yes

b. Change Characterization to: Honorable

c. Change Authority to: AR 135-178

Authenticating Official:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230014070

1/14/2025



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