

1. Applicant's Name: [REDACTED]**a. Application Date:** 24 October 2023**b. Date Received:** 30 October 2023**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable and that any associated aspect of their discharge certificate (separation code, reentry code, narrative reason for separation) impacted by such an upgrade, be appropriately changed as well.

(2) The applicant, through counsel, seeks relief stating equity demands it because, their notification of separation was fatally defective because it indicated the recommending authority and approval authority were the same person, and their timely elected to exercise their right to have a hearing before an administrative separation board and that election was ignored.

(3) Request the Board consider the interplay between their involuntary separation and the 2022 complaints they filed with the Army Inspector General, including their whistleblower reprisal complaint. Consider the Congressional Inquiry they filed in 2023 regarding the whistleblower reprisal they were enduring.

(4) It is important to note they have not yet received their final discharge certificate reflecting they were involuntarily separated from the Army with an other than honorable conditions characterization of service.

b. Board Type and Decision: In a records review conducted on 13 September 2024, and by a 3-2 vote, the Board determined that the discharge was unjust and therefore inequitable based on the applicant's length and quality of service, and post service accomplishments. Accordingly, 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 635-200, the narrative reason for separation to Miscellaneous (General Reasons), with a corresponding separation code of JND.

Please see Section 10 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Commission of a Serious Offense / Army Regulation 135-178 / JKQ / Under Other Than Honorable Conditions

b. Date of Discharge: 18 April 2023

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) is void of their case files for approved separation; however, the applicant provided the several

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separation documents. The information in 3c(1) through (6) were derived from those documents.

(1) Date of Acknowledgment of Notification of Intent to Separate: 13 April 2023

(2) Basis for Separation: The applicant was informed of the following reasons:

(a) On or about 20 October 2022, wrongfully solicit Sergeant (SGT) M____ R____ to write, with intent to deceive, an official statement to investigating officer in the administrative investigation of Command Sergeant Major (CSM) J____ W____ and Master Sergeant (MSG) A____ H____ had been untrue, which statement was totally false, and was then known by the applicant to be so false.

(b) On or about 20 October 2022, wrongfully endeavor to influence the statement of SGT R____ to an investigating officer in the administrative investigation of CSM W____ and MSG H____, by telling the said SGT R____ that they should falsely declare that their previous statements to the investigating officer were untrue.

(c) On or about 20 October 2022, violated a lawful general order, which was their duty to obey, by contacting SGT R____ and wrongfully attempting to influence them to retract a statement they had made to the investigating officer in an administrative investigation concerning CSM W____ and MSG H____.

(d) on divers occasions between on or about 16 August 2022 and on or about 17 January 2023, wrongfully do a certain act, to wit: contacted Victim A and attempted to discourage that person from cooperating with investigators from the Criminal Investigation Division, with intent to impede the due administrative of justice in the case of Staff Sergeant (SSG) C____ M____, against whom they had reason to believe that there were or would be disciplinary proceedings pending.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 13 April 2023 [Note: there is no evidence of counsel's acknowledgment for review, no signature on the Election of Rights memorandum; which was mailed to the applicant for completion.]

(5) Administrative Separation Board: On 13 April 2023, the applicant exercised their right to a hearing before an administrative separation board and request counsel for representation; however, there is no evidence of the administrative separation board convening as the applicant's AMHRR is void of their case files for approved separation.

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 26 October 2020 / 5 years (USAR)

b. Age at Enlistment / Education / GT Score: 35 / Associate's Degree / 106

c. Highest Grade Achieved / MOS / Total Service: E-5 / 88M2O, Motor Transportation Operator / 14 years, 1 month, 12 days (USAR)

d. Prior Service / Characterizations: None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** ARCOM, AAM, ARCAM-4, NDSM, GWTSM, ASR, OSR, ARCOSTR, AFRS

g. **Performance Ratings:** None

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

(1) A memorandum, Headquarters, 9th Mission Support Command, USAR, subject: Memorandum of Reprimand, dated 21 October 2022, reflects the applicant was reprimanded in writing for committing an act of reprisal in violation of Department of Defense Directive 7050.06, Military Whistleblower Protection and for soliciting a Soldier to commit the crime of False Official Statement in violation of Article 82, Uniform Code of Military Justice (UCMJ). The commanding general states –

(a) The applicant confronted SGT R____ demanding that they and SSG L____ C____ retract protected statements they gave during the course of investigation into CSM W____ and First Sergeant (1SG) H____. Their actions directly contradict the Army's goal of insuring the integrity of Army investigations as well as their intent to protect members of their command from unnecessary and illegal acts of reprisal and intimidation. The applicant's disgraceful conduct has compromised the ability of another Soldier to feel safe and protected.

(b) The applicant's brazen conduct shows a distinct lack of understanding of what it means to have integrity and Honor. There is no excuse for their irresponsible and improper behavior. Their conduct has led to question their ability to continue their service in the military.

(2) In the applicant's response to the GOMOR, dated 19 January 2023, they state –

(a) They request for the commanding general to consider their statements and rescind the GOMOR completely. The statement of SSG C____ is factually inaccurate, the allegations made against them indicate collusion with the Office of the Staff Judge Advocate (OSJA), which never took place, and they have upheld the Army Values for 13 years. They respectfully disagree with the GOMOR as drafted because it does not represent the true nature of the events that transpired.

(b) SSG C____'s statement is factually inaccurate because they never colluded with OSJA personal to illegally access any records, statements, or investigative materials. They had no prior knowledge that SGT R____ had made a statement regarding an investigation as the GOMOR suggested until after SGT R____ told them. Their request to SGT R____ was to encourage them to make a statement, not retract any prior statements.

(3) On 6 February 2023, the commanding general, carefully considered the GOMOR and all matters submitted by the applicant in their defense, extenuation or mitigation, if any, along with the recommendations of the applicant's subordinate commanders. The commanding general directed the GOMOR be placed permanently in the applicant's AMHRR.

(4) A memorandum, Headquarters, 9th Mission Support Command, USAR, subject: Notification of Separation Proceedings under Army Regulation 135-178, paragraph 11-1c (Commission of a Serious Offense), [Applicant], dated 6 February 2023, the separation authority notified them of their intent to separate them from the U.S. Army Reserve for Commission of a Serious Offense. The reasons for their proposed action is described above in paragraph 3c(2). The commanding general recommended the applicant receive a Under Other Than Honorable

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Conditions characterization of service. [Note: the 6 February 2023 memorandum, with a 30-day suspense, was mailed to the applicant postmarked 28 February 2023 and the United States Postal Service Delivery Confirmations reflects the applicant received the memorandum on 14 March 2023.]

(5) In the applicant's memorandum, subject: Acknowledgment and Election of Rights for Notification of Separation under Army Regulation 135-178, paragraph 11-1c (Commission of a serious Offense, [Applicant], dated 13 April 2023, reflects –

(a) The applicant acknowledged receipt of Notification of Separation Proceedings, dated 6 February 2023. They understood they may expect to encounter substantial prejudice in civilian life if their service is characterized as General (Under Honorable Conditions) or under Other Than Honorable Conditions and they may be ineligible for many or all benefits as a Veteran under both Federal and State laws.

(b) They have exercised their right to consult with counsel. They have been advised by their consulting counsel of the basis for the contemplated action to separate them, and its effects; of the rights available to them; and the effect of any action taken by them in waiving their rights.

(c) They understand they have the right to a hearing before an administrative separation board and they therefore exercise this right and have retained, or will retain, civilian counsel. The elected to waive their right to submit written statements.

(6) The Department of the Army Orders 0004540797.00, dated 21 April 2023, reflects the applicant was involuntarily separated with a Separation Program Designator of JKQ (Misconduct, Commission of a Serious Offense) and a Charter of Service of "E" (Under Other Than Honorable Conditions), effective 18 April 2023.

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

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 from the Armed Forces of the United States), letter
- Counsel Memorandum, subject: Request for Discharge Characterization Upgrade in the Case of [Applicant], with five enclosures
 - Enclosure 1 – Counsel Memorandum, subject: Improper Involuntary Separation of [Applicant], with 14 enclosures
 - Enclosure 2 – Separation Authority Response Letter to Counsel
 - Enclosure 3 – Applicant's Memorandum, subject: 100th Battalion, 442nd Infantry Regiment, Travel/Defense Travel System – Statement of [Applicant]
 - Enclosure 4 – Congressional Release and Authorization Form, dated 22 March 2023
 - Enclosure 5 – National Personnel Record Center Letter, with DD Forms 214

6. POST SERVICE ACCOMPLISHMENTS: College Certificate – Bachelor of Science

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 135-178 (Enlisted Administrative Separations), 7 December 2017, set policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of ARNG of the United States and USAR enlisted Soldiers for a variety of reasons.

(1) An honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate. When a Soldier is discharged before expiration of the service obligation for a reason for which an honorable characterization is discretionary, the following considerations apply, to include –

(a) An honorable characterization may be awarded when disqualifying entries in the Soldier's military record are outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service.

(b) It is a pattern of behavior and not an isolated instance which should be considered the governing factor in determining the character of service.

(c) Unless otherwise ineligible, a Soldier may receive an honorable characterization of service if he or she has, during his or her current enlistment, or any extension thereof, received a personal decoration.

(2) A General discharge is if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

(3) A Under Other Than Honorable Conditions Discharge, service may, but is not required to be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, homosexual conduct, unsatisfactory participation, or security reasons. The Adjutant General will direct reduction in grade to private/E-1 when the Soldier is discharged under other than honorable conditions.

(4) Paragraph 11-1 (Basis) stated a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances, including subparagraph c (Commission of a Serious Offense). Commission of a serious military or civilian offense if the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the UCMJ.

(5) Paragraph 11-8 (Characterization of Service) stated characterization of service normally will be under other than honorable conditions, but characterization of service as general (under honorable conditions) may be warranted.

e. Army Regulation 135-180 (Retirement for Non-Regular Service) dated 1 August 1987, implemented statutory authorities governing the granting of retired pay to Soldiers and former Reserve components Soldiers. Paragraph 2-10 (Computation of Service) stated one point for each authorized participation in drills or periods of instruction which conform to the requirements prescribed by the Secretary of the Army.

f. Army Regulation 600-8-19 (Enlisted Promotions and Reduction) dated 25 May 2017 prescribed the enlisted promotions and reductions function of the military personnel system. Paragraph 10-15 (Approved for Discharge from the Service Under Other Than Honorable Conditions) stated when the separation authority determines that a Soldier is to be discharged from the Service under other than honorable conditions, the Soldier will be reduced to the lowest enlisted grade. Further board action is not required for this reduction.

g. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before Expiration Term of Service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

h. Headquarters, Department of the Army Office of Chief Army Reserve G-1, Integrated Personnel and Pay System-Army (IPPS-A) provides codes for Character of Service – "A" for Honorable; "B" for General (Under Honorable Conditions); "D" for Bad Conduct; "E" for Under Other Than Honorable Conditions; "F" for Dishonorable; and "Y" for Uncharacterized.

i. DOD Directive 7050.60 updates the policy and responsibilities for military whistleblower protection under Title 10, U.S. Code, section 1034. It states it is DOD policy that members of the Armed Forces shall be free to make a protected communication and/or free from reprisal for making or preparing to make a protected communication. It further states that no person may take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any member of the Armed Forces for making or preparing to make a protected communication.

8. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation from the USAR. Notwithstanding the absence of records, their discharge order from the USAR provides the applicant was discharged with a character of service of under other than honorable conditions under the provisions of Army Regulation 135-178. They completed 14 years, 1 month, and 12 days USAR service; however, they did not complete their 5-year reenlistment obligation.

c. 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.

d. The applicant's AMHRR does not reflect documentation of their 2022 complaints they filed with the Army Inspector General or their whistleblower reprisal complaint; nor did the applicant provide these documents for the Board's review.

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 equity demands relief because, their notification of separation was fatally defective because it indicated the recommending authority and approval authority were the same person, and their timely elected to exercise their right to have a hearing before an administrative separation board and that election was ignored. 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 and quality of service, and post service accomplishments.

(2) The applicant contends the Board should consider the interplay between their involuntary separation and the 2022 complaints they filed with the Army Inspector General, including their whistleblower reprisal complaint. Consider the Congressional Inquiry they filed in 2023 regarding the whistleblower reprisal they were enduring. 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 and quality of service, and post service accomplishments.

(3) The applicant contends they have provided evidence that can pin their disability existed during the time of the event and show how it affected their performance. 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 and quality of service, and post service accomplishments.

(4) The applicant contends It is important to note they have not yet received their final discharge certificate reflecting they were involuntarily separated from the Army with an other than honorable conditions characterization of service. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being

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granted based on the applicant's length and quality of service, and post service accomplishments.

c. The Board determined that the discharge was unjust and therefore inequitable based on the applicant's length and quality of service, and post service accomplishments. Accordingly, 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 635-200, the narrative reason for separation to Miscellaneous (General Reasons), with a corresponding separation code of JND.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because of the applicant's length and quality of service, and post service accomplishments. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Miscellaneous (General Reasons) under the same rationale, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JND.

(3) As there is no RE-code listed on the applicant's discharge paperwork, due to being in the Army Reserve, no upgrade actions are required for this item.

10. BOARD ACTION DIRECTED:

- a. Issue a New Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: JND
- d. Change Authority to: AR 135-178

Authenticating Official:

2/23/2026

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