

**1. Applicant's Name:**

- a. **Application Date:** 20 December 2023
- b. **Date Received:** 20 December 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 their U.S. Army Reserve (USAR) characterization of service to honorable.

(2) The applicant seeks relief stating they formally appealing their general discharge from the USAR for non-attendance, a result of their refusal to comply with the Coronavirus Disease 2019 (COVID-2019) mandate. The mandate, while well intentioned, posed significant health concern for them and their family. They believe it is essential to consider the extraordinary circumstances surrounding their discharge. They are willing to provide any additional documentation or attend a hearing to further discuss their case.

**b. Board Type and Decision:** In a records review conducted on 24 July 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** NIF / Army Regulation 135-178, Chapter 12 (Unsatisfactory Participation in the Ready Reserve) / General (Under Honorable Conditions)

**b. Date of Discharge:** 26 October 2022

**c. Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of their case files for approved separation. On 23 January 2024 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files), as of this date there has been no response.

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 20 August 2020 / 8 years (USAR)

**b. Age at Enlistment / Education / GT Score:** 29 / HS Graduate / NIF

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 12B1O, Combat Engineer / 11 years, 6 months, 19 days

**d. Prior Service / Characterizations:** ARNG, 10 April 2008 – 9 April 2014 / Honorable  
USAR Control Group (Annual Training), 9 April  
2014 – 9 April 2016 / Honorable

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

f. **Awards and Decorations:** NDSM, ASR

g. **Performance Ratings:** None

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

(1) The Headquarters, 63rd Readiness Division (USAR) Orders 22-293-00018, dated 20 October 2022, discharged the applicant from the U.S. Army Reserve with an effective date of 26 October 2022, with the type of discharge as General (Under Honorable Conditions).

(2) A DA Form 5016 (Chronological Statement of Retirement Points) dated 12 June 2024, reflects from 10 April 2021 – 9 April 2022, the applicant was credited with 5 Inactive Duty Points (equivalent to 2.5 days of unit drills).

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

j. **Behavioral Health Condition(s):** NIF

5. **APPLICANT-PROVIDED EVIDENCE:** None

6. **POST SERVICE ACCOMPLISHMENTS:** None

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) defines ARNG of the United States and USAR service obligations. It prescribed policies and procedures governing the various types of service obligations and participation requirements. Chapter 4 (Absences) governed absences from Ready Reserve training. Unsatisfactory participation stated a Soldier is an unsatisfactory participant when nine or more unexcused absences from scheduled inactive duty training occur during a 1-year period. Paragraph 4-15 (Documentation of Unexcused Absences) stated a prescribed letter of instructions – unexcused absence will be delivered to the Soldier, delivery will be either in person or by U.S. mail. When certified mail is used, a copy of the notice and either a post office receipt confirming delivery or the returned unopened envelope showing the notice was not delivered. Mail sent to the mailing address on file as provided by the Soldier, which is refused, unclaimed, or otherwise not delivered may not be used as defense against unexcused absences when notices were correctly addressed to the address on file provided by the Soldier.

e. Army Regulation 135-178 (Enlisted Administrative Separations) 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) Chapter 12 (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 in an unsatisfactory participant as prescribed by Army Regulation 135-91 and attempts to have the Soldier respond or comply with orders or correspondence have resulted in – the Soldier's refusal to comply with orders or correspondence; a notice sent by certified mail was refused, unclaimed, or otherwise undeliverable; and verification that the Soldier has failed to notify the command of a change of address and reasonable attempts to contact the Soldier have failed.

(5) Paragraph 12-3 (Characterization of Service) stated characterization of service normally will be under other than honorable conditions, but characterization as general (under honorable conditions) may be warranted.

f. 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.

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. Chapter 15 (Secretarial Plenary Authority) 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.

#### 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. Due to the lack of evidence, the specific facts and circumstances surrounding the misconduct that led to their discharged under the provision on Army Regulation 135-178, chapter 12 are unknown. Notwithstanding the absence of records, their discharge order from the USAR provides the applicant was discharged with a character of service of General (Under Honorable Conditions). They completed 11 years, 6 months, 19 days of total service; however; they did not complete their 3-year contractual USAR enlistment.

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.

#### 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 are formally appealing their general discharge from the USAR for non-attendance, a result of their refusal to comply with the COVID-2019 mandate. The mandate, while well intentioned, posed significant health concern for them and their family. The Board considered this contention during the board proceedings and determined. However, the Board determined there were no Servicemembers discharged from the Army Reserves due to COVID-19 vaccination refusal.

**(2)** The applicant contends they believe it is essential to consider the extraordinary circumstances surrounding their discharge. They are willing to provide any additional documentation or attend a hearing to further discuss their case. The Board acknowledged this contention.

**c.** The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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 not to change the applicant's characterization of service based on the following reasons. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. Additionally, there were no Service Members in the Reserve Component discharged for COVID-19 vaccination refusal. Therefore, the applicant's argument that he received a General Discharge as a result of his refusal to comply with the COVID-19 mandate was not a valid argument. The Board Members believed the chain of command discharged the applicant due to not attending drills. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

**(2)** The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same reasons, 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.

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No change
- c. **Change Reason / SPD code to:** No change
- d. **Change RE Code to:** No change
- e. **Change Authority to:** No change

**Authenticating Official:**

8/5/2024

X

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

**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