

1. Applicant's Name:

- a. **Application Date:** 22 December 2023
- b. **Date Received:** 14 March 2024
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

b. The applicant states, in effect, they were deployed in support of Operation Enduring (OEF) wrong decisions were made that resulted in them being discharged with an OTH characterization of service on 2 March 2014. It was not until 2012 the applicant was aware they were suffering from PTSD as a result of serving in OEF and they believe the PTSD was a mitigating factor to the indiscipline that occurred while mobilized at Fort Campbell, KY. Based on being a 100 percent (%) disabled veteran and part of the Kennedy v. McCarthy class action they are requesting an upgrade to their OTH characterization of service. (Note: the applicant's discharge was upgraded to General (Under Honorable Conditions) in October 2020.

c. **Board Type and Decision:** In a telephonic appearance ADRB conducted on 9 September 2024, and by a 3-2 vote, the board denied the request upon finding the separation was both proper and equitable.

Please see Board Discussion and Determination 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 600-8-24, Chapter 3-13 / DFS / NA / General (Under Honorable Conditions)

b. **Date of Discharge:** 02 March 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** N

(2) **DD Form 458 (Charge Sheet):** On 03 December 2013, the applicant was charged with violating Article 85, UCMJ, for desertion between 9 October 2012 to 24 November 2013.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 03 December 2013

(5) **Basis For Separation:** Pursuant to applicant's request for discharge under the provisions of Chapter 3, AR 600-8-24, Resignation, In Lieu of Trial by Court-Martial.

(6) **Separation Decision Date / Characterization:** On 19 February 2014, the DASA (RB) accepted the applicant's Resignation for the Good of the Service (RFGOS) in Lieu of

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AR20240002913

General Court Martial and discharged him with an Under Other than Honorable characterization of service.

4. SERVICE DETAILS:

a. Date / Period of Appointment: 09 October 2012 / Orders 12-283-00041 state that the applicant was assigned to HHC, Warrior Transition Battalion, Fort Campbell, KY 42223 (W2L810) until relieved from active duty by a competent authority.

b. Age at Enlistment / Education / GT Score: 30 / bachelor's degree / 52

c. Highest Grade Achieved / MOS / Total Service: O-3 / 27A, Judge Advocate General / 14 years 11 months and 27 days

d. Prior Service / Characterizations: IADT, 12 February 1998 – 17 June 1998 / UNC
USAR, 18 June 1998 – 12 June 2004 / NA
USAR, 13 June 2004 – 30 July 2005 / NA
AD, 01 August 2005 – 31 July 2006 / HD
USAR, 01 August 2006 – 15 December 2006 / NA
AD, 16 December 2006 – 03 August 2007 / HD
USAR, 04 August 2007 – 08 October 2012 / NA

e. Overseas Service / Combat Service: SWA / Afghanistan (26 December 2006 – 24 July 2007)

f. Awards and Decorations: ACM-2CS, MSM, AAM-4, JMUA, ARCAM-2, NDSM, GWOTSM, NCOPDR, ASR, ARCOTR, AFRMM-3, NATOMDL

g. Performance Ratings: NIF

h. Disciplinary Action(s) / Evidentiary Record:

(1) Memorandum, U.S. Army Human Resources Command dated 18 May 2004 shows he accepted and was appointed from the rank of Sergeant to a Reserve Commissioned Officer on 13 June 2004.

(2) Orders 11-305-00021, USAR Joint & Special Troops Support Command published on 1 November 2011 provide the applicant was ordered to Active duty for a period of 365 days with a 1 February 2012 report date to Miami, FL and a 3 February 2012 report date to Fort Stewart, GA; they were mobilized in support of OEF. The Home of Record shows as San Juan, Puerto Rico. There are 32 Additional Instructions which are void of the directive that as a mobilized/deployed Soldier they are required to have a Government Credit Card (GOVCC) and information regarding required submission of travel vouchers while on orders. The instructions do include, in pertinent part:

- Travel by privately owned vehicle is not authorized.
- Rental car is not authorized.
- Government quarters and mess will be used if available.
- If government provided lodging is not available or the Soldier is not assigned to an installation, the Soldier must use Army lodging to obtain housing or a statement of nonavailability. With a statement of nonavailability the Soldier is authorized 100% of the local per diem rate when orders are for 179 days or less; however, the authorized per diem rate will be 55% when the initial order is for 180 days or more if subsequent orders exceeds 179 days within a 12-month period.

(3) Orders ST-038-0009, Headquarters, Third Infantry Division and Fort Stewart, GA dated 7 February 2012, deployed [should read mobilized] the applicant in Temporary Change of Station (TCS) status the additional instructions include:

- Government quarters and dining facilities will be used at the replacement activity and during deployment. Essential Unit Mess (EUM) has been declared by Assistance Secretary of the Army (Manpower and Reserve Affairs) ASA(M&RA) for the mobilization and demobilization sites not to exceed (10) days. Per diem payable is \$5.00 per day for CONUS and \$5.00 per day for OCONUS for this period of duty.
- Within 48 hrs. of receiving these orders, SM must check with the supporting installation housing office before securing temporary lodging at the duty location. If lodging is not available or Soldier is not assigned to an installation, the Soldier must contact Army Lodging Success within 48 hours but no sooner than 45 days prior to orders start date to obtain housing or a statement of nonavailability (SNA). For toll-free reservation services 24/7 contact: 1-866-363-5771; <http://www.lodgingsuccess.com/> or central reservations at 1-800-462-7691 email: centralreservations@redstone.army.mil. With a SNA, the Soldier is authorized 100% of the local per diem rate when orders are for 179 days or less with receipts, however, the authorized per diem rate will be 55% of the local lodging, meals, and incidental per diem rate when the initial orders is for 180 days or more, or if subsequent orders exceeds 179 days within a 12-month period. Lodging Success will attempt to obtain lodging for the Soldier at the duty location no later than 3 working days after the Soldier has contacted Lodging Success. If Lodging Success is unable to obtain lodging during these 3 working days, they will issue an SNA for a temporary period (no longer than 8 days) at 100% per diem until suitable lodging can be obtained. If suitable lodging cannot be obtained, the Soldier will be issued an SNA to substantiate 55% of the local per diem for the remainder of the order.
- For Soldiers residing on installations, the per diem rate paid is based on availability of lodging and meals found in the worldwide listing W/O official travel Government Quarters found at the following link: <http://www.armymwr.com/portal/travel/lodging/>.
- During period of assignment/deployment, gaining/deployed unit commander has responsibility for personnel service support to include awards and decorations, UCMJ, and all other forms of personnel and legal administration support except Reserve Component promotional authority.
- Soldier may submit interim travel voucher if otherwise entitled to per diem and/or travel for the monthly payment of accrual travel payment. Care should be taken to keep all required documents to support payments/request for payments. Soldier must submit all ASA(M&RA) waivers and SNAs issued when filing claims. All supporting documents must accompany the final settlement voucher.

(4) Memorandum, 81st Regional Support Command dated 26 June 2012 provides the applicant was notified for first time non-selection of promotion to Major.

(5) On 6 September 2012 the Medical Evaluation Board (MEB) Outreach Paralegal provided two memorandums stating:

(a) On 6 March 2012 all staff members of the Office of Soldiers' Counsel (OSC) were directed to attend a OSC Certification Counsel from 14-18 May 2012. On the first day of the conference the applicant asked for the rental car keys stating they did not have money to pay accommodations so they would be sleeping in the car. The paralegal paid for the applicant's room, which the applicant reimbursed her, as he advised he would, upon getting paid on 16 May 2012; and

(b) On 4 September 2012, the applicant advised there was an emergency situation with their spouse and would have to leave at 1300 hours to go to Chicago and return on 5 September 2012, the applicant was to coordinate with another attorney to cover down on clients for that afternoon; however, later that afternoon the applicant's clients were sitting in the lobby unattended and based on internal staff responses nobody knew he was out. Later that afternoon the applicant called and asked them to conceal their absence, the applicant did not have enough time for all the paperwork for passes and stuff. It was determined later that the applicant only had one client covered down on. At approximately 1330 the applicant advised her he had departed to Chicago. The following day, the applicant advised her that he could not do this [work], they needed time off... after sitting in the office for a minute, they realized they cannot do this, they have got to go. The applicant's absences revealed they were not following OSC protocol for making appointments with clients and required her to reschedule 16 appointments many were appointments where the clients were to turn their paperwork into the Physical Evaluation Board Liaison Office (PEBLO) within the next workday. Additionally, the clients were unsure what they were there to do, it would have been their first appointment with the applicant.

(6) Developmental Counseling Form dated 11 September 2012, for issues of professional irresponsibility and appearance of impropriety during performance as Soldiers' counsel. The plan of action was to schedule a follow-up counseling 24 September 2012 and 8 October 2012. If the applicant failed to correct deficiencies in their work, attendance, and managing their financial responsibilities by 8 October 2012, they were to receive a Relief for Cause evaluation and submitted for immediate Release from Active Duty (REFRAD). The form is not signed by the counselor or the applicant.

(7) A memorandum for record, OSC, Chief, Client services dated 11 September 2012 stated that the applicant advised him on 4 September 2012 that they needed to drive their spouse to Chicago to begin courses at the School of Art Institute of Chicago, she would be attending courses in about a week, but recently learned she received a grant to attend a seminar that was to start on 5 September. At that time the applicant was advised he would need to take leave that day and the following day for return to Fort Campbell. The applicant stated their spouse arrived in Chicago and already had a place to live, over the Labor Day weekend, they drove to Chicago to pick up their spouse so that she could stay in Clarksville prior to starting her courses. They did not submit for a mileage pass for the Labor Day weekend. Additionally, the applicant was aware of the spouse's grant on 1 September 2012. Notwithstanding the details, the applicant was advised to coordinate coverage of scheduled clients as the Chief processed the necessary paperwork for approved leave. The Chief learned later that day that the applicant's clients showed up without coordination for someone else to cover their appointments. He called the applicant concerned they applicant was traveling and going to attempt to drive to Chicago and back to Fort Campbell in the same night; however, the applicant advised that they were not traveling and there was no way to determine whether he was driving at that time or not and advised the applicant they had an approved 4-day pass to submit the documents to the Warrior Transition Unit Commander and ensure that all of their clients scheduled for that week were covered by another MEB attorney, to find that the applicant did not do coordinate coverage. Chief attempted to call the applicant at approximately 1400 hours to no avail, so he left a message, however the applicant did not respond to him until 10 September 2012.

(8) On 18 September 2012 the MEB Outreach Attorney provided a Memorandum for Record stating that he was directed to provide supervision over the applicant from 13-18 September 2012. During this period, he asked the applicant to prepare a few draft memorandums based on previous conferences they both attended; additionally, he had detailed discussions with the applicant about client conferences and any specific work assignments. The documents prepared required extensive editing and not suitable for presentation to the clients under the MEB/PEB and VA processes without significant revisions. While the applicant has demonstrated excellent verbal communication skills with clients and performing basic tasks, they did not provide detailed research, organizational skills, and writing ability required to deal with the complex medical-legal issues presented in the MEB process at the current workload requirements.

(a) Based on his working relationship with the applicant he noted a significant change in the ability for them to handle higher workload demands in the MEB process over the last few weeks, particularly after Labor Day weekend when the staff's workload significantly increased. In effect, although the applicant had a generalized and basic understanding of the MEB process and medical diagnoses, he appeared to have difficulty understanding the DD Form 199, the Informal/formal appeal PEB appeal process, etc.

(b) Additionally, the applicant admitted he failed to continue taking some medication that affected their judgement which unfortunately coincided with the highest level of workload the MEB Counsel has had since 16 April 2012. Furthermore, the applicant lost the use of their vehicle, they currently live 8 miles from post and has recently had no dependable way to go to and from work. While he generally found rides, walked, or rode their bicycle to and from work, the lack of dependable transportation did not bode well with the ability to put in the number of hours required for a higher workload. The applicant failed to show they were capable of making a successful return to serve as MEB counsel at the level required for MEB counsel to meet the present volume of work.

(9) On 19 September 2012 the Deputy Staff Judge Advocate stated that on or about 11 April 2012 the applicant had taken up residence in an office in the OSJA building. It is unknown how long they had resided in the OSJA building, however, prior to that the applicant was living in a room at the Warrior Transition Barracks (WTB) but due to limited space was forced to move out. The applicant advised they did not have the financial means to obtain lodging off-post and needed to remain in the OSJA office at which time the applicant was advised they could not remain in the building. The Deputy assisted the applicant with gathering their belongings and drove the applicant to Turner Lodging where he remained for two nights at no cost to the applicant. On 13 April the applicant became a guest at the Deputy's home until he secured off-post lodging on or about 17 April 2012.

(10) A memorandum, Office of Soldier's Counsel, subject Memorandum of Administrative Reprimand for [the applicant] dated 19 September 2012 provides the Regional Supervising Counsel requested the applicant be give a General Officer Memorandum of Administrative Reprimand (GOMAR) for (1) failing to obtain an appropriate mileage pass to cover an absence to Chicago, IL, (2) soliciting a subordinate the applicant rated to conceal his absence to Chicago, (3) and numerous incidents of conduct unbecoming an Officer since their arrival in February 2012, to include sleeping in abandoned offices in the Office, Staff Judge Advocate for over a month, soliciting rides to and from work from subordinates, regular accepted gratuities such as meals, food and drink, (4) failure to report to work on-time due to lack of transportation, (5) failure to perform duties as an attorney by failing to appear for client meetings for approximately 4 days leaving multiple clients to wait for hours without counsel, and (6) unacceptable work prepared for clients, that required revisions by the subordinate and supervising staff. Despite the applicant's intent to resign their commission the GOMOR will bring

a strong message that actions of this nature will not be tolerated by the office and serve as a deterrent against any future misconduct of this nature should the applicant withdraw the request for resignation.

(11) A memorandum, Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, subject: Administrative Reprimand, dated 19 September 2012, provides Major General McC___ reprimanded the applicant for conduct unbecoming an officer for mismanaging finances, sleeping overnight in an empty government office, soliciting a loan of money from a subordinate on 14 and 18 May 2012, and on 4 and 5 September 2012 for dereliction of duty and departing place of duty without authorization without regard for 16 Soldiers with prescheduled appointments and wrongful solicitation of a subordinate to cover [for the applicant] in the event they were questioned about the applicants whereabouts. The applicant's conduct was described as reprehensible. The inability to manage personal affairs, the willingness to shirk their duties as an advocate for wounded warriors, the abuse of authority by taking advantage of a subordinate are all intolerable and inexcusable acts.

(a) A memorandum from the Office of the Staff Judge Advocated dated 2 October 2012 provides the applicant was served a complete copy of the reprimand on 19 September 2012 and indicated that they were going to submit a statement on their behalf, acknowledged they had until 27 September 2012 to submit matters for consideration to the filing authority; however on 28 September 2012 the applicant was contacted by a superior commissioned officer in the technical chain of command concerning the status of the rebuttal, where the applicant indicated they did not prepare a rebuttal. Additional attempts to contact the applicant failed to establish contact. As of the aforementioned date of the memorandum the rebuttal had not been received.

(b) The reprimand was filed in the applicant's AMHRR.

(12) Six Personnel Action forms, reflect the applicant's duty status changed as follows:

- From "Present for Duty (PDY)" to "Absent Without Leave (AWOL)," effective 09 October 2012
- From "AWOL" to "Dropped from Rolls (DFR)," effective 09 November 2012
- From "DFR" to "Confined by Civil Authorities (CCA)," effective 24 November 2013
- From "CCA" to "PDY," effective 26 November 2013
- From "PDY" to "CCA," effective 27 November 2013
- From "CCA" to "PDY," effective 08 December 2013

(13) On 3 December 2013 the applicant submitted their request for Resignation ILO trial by general court martial. The unit and battalion commander recommended denial, however the Brigade commander recommend the resignation be accepted and characterized as UOTHC with comments that include "...I would like to see a court martial, between his time served and the irregularities in his orders. I do not believe the punishment will fit the crime, nor will the value added be greater than the damage to the WT [Warrior Transition] population." On 19 February 2014 the Deputy Assistant Secretary, Army Review Boards accepted the resignation with an UOTHC characterization of service.

(14) Four DD Forms 214 (Certificate of Release or Discharge from Active Duty) that show:

(a) Separation Date this period as 17 June 1998, that provides they were Released from Active Duty for successful completion of Initial Active-Duty Training and received an uncharacterized characterization of service.

(b) They were deployed in support of OEF for a period of 1-year from 1 August 2005 to 31 July 2006 and received an Honorable characterization of service. The AMHRR is void of an approved waiver to break the required 12-month dwell time. Based on the foreign service being “blank” it appears the applicant was mobilized and served this period of Active Duty CONUS ISO OEF.

(c) They were deployed a second time with service in Afghanistan for a period of 7 months and 18 days from 16 December 2006 to 3 August 2007 and received an Honorable characterization of service.

(15) Army Discharge Review Board Case Report and Directive AR20210003354 provides in December 2021, the applicant received a ‘de novo’ review as part of the Kennedy v. McCarthy Stipulation and Agreement of Settlement and that board applied the Department of Defense guidance regarding liberal consideration of possible mitigating factors, such as PTSD, TBI, and other related mental health conditions.

(a) The CRD is void of information in regard to the applicant’s orders, comments from Brigade Commander in resignation endorsement regarding the multiple issues with the applicant’s order.

(b) The Board’s Medical Advisor opined after liberally considering the evidence that applicant’s PTSD and other BH diagnoses only partially mitigate the misconduct that was the basis for separation. While failure to follow orders, dereliction of duty and departing place of duty without authorization and AWOL can be part of the sequela of PTSD, soliciting a loan of money from a subordinate and mismanaging finances, is not, and therefore is not mitigated by applicant’s PTSD or other BH conditions. Soliciting a loan of money from a subordinate is a conscious and willful act that does not fall within the DSM 5 diagnostic criteria of PTSD, therefore there is no nexus between PTSD and soliciting a loan of money from a subordinate that remains an unmitigated basis for separation.

(c) The board determined that the applicant was properly and equitably discharged and there would be no change to the narrative reason or characterization of service, upholding the October 2020 discharge characterization upgrade of (General Under Honorable Conditions). The board voted not to change the applicant’s characterization of service because, despite applying liberal consideration, the applicant’s depression with anxiety, PTSD, Personality Disorder, Depressive Disorder NOS, and Major Depressive Disorder did not fully mitigate the offenses of failure to follow orders, dereliction of duty departing place of duty without authorization, AWOL, and soliciting a loan of money from a subordinate. 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.

i. Lost Time / Mode of Return: 423 days

- AWOL, 09 October 2012 – 25 November 2013 / Apprehended by Civil Authorities
- CCA, 27 November 2013 – 08 December 2013 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: provided a copy of his VA disability rating decision, dated 21 April 2015, which reflects the applicant was rated 100 percent disability for PTSD to include anxiety and lack of sleep.

(2) AMHRR Listed:

- Report of Medical Examination, dated 27 January 2014, shows the applicant underwent a separation physical and was diagnosed with anxiety.
- Report of Medical History, dated 27 January 2014, indicates the applicant was hospitalized and treated in June 2008 for depression and anxiety.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for Review of Discharge), VA Disability Rating

6. POST SERVICE ACCOMPLISHMENTS: None

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 600-8-24 (Officer Transfers and Discharges), sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Chapter 1 provides the authorized types of characterization of service or description of separation. An officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer. A general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. An under other than honorable conditions is an administrative separation from the service. An officer will normally receive an under other than honorable conditions for reasons to include when they (1) resign for the good of the Service; (2) is dropped from the rolls (DFR) of the Army; (3) is involuntarily separated due to misconduct, moral or professional dereliction.

(2) Chapter 3 prescribes the rules for processing voluntary resignations. Except as provided in paragraph 3-1b, any officer of the RA or USAR may tender a resignation under the provisions of this chapter. SECARMY (or designee) may accept resignations and orders will be issued by direction of the CG, HRC. An officer whose resignation has been accepted will be separated on the date specified in DA's orders or as otherwise directed by the DA. An appropriate discharge certificate as specified by the CG, HRC, will be furnished by the appropriate commander at the time the officer is separated. The date of separation, as specified or directed, will not be changed without prior approval of HQDA nor can valid separation orders be revoked subsequent to the specified or directed date of separation.

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 "DFS" as the appropriate code to assign Officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 3-9 or 3-13, in lieu of trial by court-martial.

f. Army Regulation 635-200 prescribed policies and procedures for enlisted administrative separation.

(1) A separation will be described as an entry level separation with service uncharacterized if processing is initiated while a Soldier is in entry level status, except under specific circumstances. For Army National Guard (ARNG) and USAR Soldiers, entry level status begins upon enlistment in the Army National Guard or U.S. Army Reserve and terminates for Soldiers ordered to IADT for one continuous period-180 days after beginning training or Soldiers ordered to IADT for the split or alternate training option-90 days after beginning Phase II (advanced individual training). (Soldiers completing Phase I (basic training or basic combat training) remain in entry level status until 90 days after beginning Phase II.

(2) Soldiers separated in an entry-level status received an uncharacterized character of service. The regulation defined an entry-level status separation as one that commanders initiated during the Soldier's first 180 days of continuous active duty. On a case-by-case basis, the Secretary of the Army could issue an honorable character of service to entry-level Soldiers when clearly warranted by unusual circumstances involving personal conduct or duty performance.

g. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, prescribes the transition processing function of the military personnel system. It states a DD Form 214 will be prepared for Reserve Component (RC) Soldiers awarded an MOS even if active duty is less than 90 days. RC Soldiers completing active duty that results in the award of a military occupational specialty (MOS), even when the active-duty period was less than 90 days (for example, completion of the advanced individual training component of the Army National Guard of the United States (ARNGUS) Alternate Training Program or USAR Split Training Program). When a RC Soldier successfully completes initial active duty training the character of service is Honorable unless directed otherwise by the separation approval authority.

h. USAR Regulation 37-2 (Government Travel Charge Card Program) provides guidance and procedures for establishing and operating a government travel charge card program and regulates the use of the Government Travel Card. It states if a Soldier is mobilized or deployed, and has a Card, it will be transferred to the active-duty unit's hierarchy and deactivated until required for use. If a Soldier does not have a Card but incurs a travel requirement at the active-duty unit, the Card may be issued and then cancelled when the Soldier returns to his/her unit. Travelers in a Temporary Change of Station (TCS) who are only paid the incidental expense portion of the per diem, because lodging and meals are provided, are prohibited from using their Card. Travelers who are required to pay for meals and/or lodging may use the Card to pay expenses.

i. Department of the Army Personnel Policy Guidance for Overseas Contingency Operations The intent of its development was to consolidate Theater and Department of the Army PPGs into one document in support of contingency operations. Due to rapid policy changes, it was determined that the PPG would best serve as a living document, rather than a

published. Regulation. NOTE: The term "Global War on Terror (GWOT)" has been replaced with "Overseas Contingency Operation (OCO)" throughout the PPG. Chapter 6 (Redeployment/Post-Deployment) provides guidance for the Early Release from Active Duty (REFRAD) for individual RC Soldiers supporting operations. It states, in pertinent part:

(1) RC Soldiers who have a justifiable hardship: RC Soldiers who have a justifiable hardship may request early REFRAD through their chain of command (reference AR 635-200 for enlisted Soldiers and AR 600-8-24 for officers). Any hardship request for early REFRAD must be justified and processed through the first General Officer in the supported chain of command. Replacements are authorized for Soldiers who REFRAD early because of a justifiable hardship.

(2) The supported command will identify and coordinate the recommendation for redeployment and early REFRAD of RC Soldiers. A memorandum signed by the first O-6 (General Officer, If request is for justifiable hardship) in the supported chain of command will specify the reason(s) for recommending early release.

(3) If Para 2-35a (1) of AR 600-8-24 applies, ALARACT 298/2009 requires commanders to seek behavioral health support for officers if appropriate before considering separation action. If separation action proceeds the DARNG and CDR, HRC, acting for HQDA, will convene a board of officers to consider recommendations for involuntary early release under Para 2-35a (1), concerning their respective personnel. The board will determine if the officer will be retained or released from the tour. In all cases, when release is ordered, the commander will contact the orders issuing agency for amendment of orders. The DARNG and the CG, HRC, will prescribe the board proceedings. A personal appearance by the officer before the board is not authorized. The board proceedings will be final.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable. Review of official military records provides the applicant request relief for an upgrade to honorable on three previous occasions, it was the intent of the ADRB to make the applicant's record as administratively correct as it should properly have been at the time; however, in review of the CRDs they were void of pertinent facts needed for the board to make an informed determination. Specifically,

(1) The available evidence provides orders that direct the use of government quarters and mess; and although the TCS orders provide instructions with lodging, they are void of a Government Credit Card (GOVCC) instruction. In accordance with HQDA Personnel Policy Guidance, the gaining command could have submitted for the applicant to get a GOVCC to cover their expenses for duty related travel. The record is void of evidence indicating the appropriate action to obtain a GOVCC was discussed and/or executed.

(2) In regard to the directed government quarters on their mobilization orders the available evidence provides the applicant initially had assigned quarters in the Warrior Transition Unit Barracks, however, due to limited space at some point they were told to move out which resulted in them using the OSJA building as their quarters, based on the statements made by the Deputy Staff Judge Advocate we can only advise the board, the applicant lost government quarters within approximately the first 30-45 days of reporting for duty. We are unable to determine what occurred that did not result in the chain of command assisting the applicant with the instructions on their TCS orders to obtain lodging or a statement of non-availability. Based on the noted financial transactions that were taken on behalf of the applicant

for lodging and the timelines indicated, the applicant was making reimbursing individual on or about every pay day, as well as able to accommodate quarters off post also on or about a pay date.

(3) In regard to the timeliness or lack thereof when reporting to work (walking, bicycling, asking for rides) the mobilization orders allowed transportation only to those CONUS service members, which the applicant orders show their home address in Puerto Rico. The record is void of action taken by the chain of command to amend the orders to authorize a rental or direct government transportation at no point during the tour of duty, to include at the time the applicant was displaced from government quarters or at the time they resided off-post.

(4) Additionally, the CRD's are void of the specific details surrounding the issuance of the GOMAR and processing of the resignation. Specifically, they do not address the Memorandums for Record submitted in September 2012, aside from the formal statements that led to the issuance of the GOMAR, official military records are void of any other attempts (formally and/or informally counsel the applicant regarding the personal and professional issues (financial, housing, transportation, and performance issues) that started occurring approximately 30 days upon their reporting to Fort Campbell, KY. It was not until the processing of the resignation in 2014 that a leader in the chain of command addressed the orders issues, specifically the Brigade Commander noted "orders issues" in their recommendation.

b. The available evidence provides the applicant entered active duty to complete initial entry training (IET) on 12 February was awarded military occupational specialty (MOS) 62E (Heavy Construction Equipment Operator). A DD Form 214 shows they were released from active duty (REFRAD) on 17 June 1998 under the provisions of Army Regulation 635-200, Chapter 4 with a characterization of service of uncharacterized. Although his DD Form 214 properly reflects his characterization of service as "uncharacterized" according to regulatory guidance in effect at the time of separation, effective 1 March 2014, regulatory guidance changed stating entry level soldiers who completed IADT and were awarded an MOS were to be given an honorable discharge, unless otherwise directed by the separation authority; based on this, and in the interest of equity, the characterization of service should read as honorable.

c. The applicant requests, in effect, the board reconsider their request for their characterization of service to be upgraded to honorable, and the narrative reason and separation program designator be changed accordingly.

(1) The applicant was a married Reserve Officer with financial responsibility to ensure their family is taken care of who was individually mobilized from his Puerto Rico home of record in February 2012. The published orders contained administrative irregularities and error beyond their control. The issues that resulted in receiving the GOMAR began to come to light in March 2012, but not addressed by chain of command until September 2012, approximately 7 months later in the staff Memorandums for Record.

(2) The available evidence demonstrates neither the applicant nor their chain of command were aware of what action(s) needed to occur to properly take care of the applicant's housing, mess, transportation, and medication which appears to have resulted in hardship. In accordance with HQDA Personnel Policy Guidance the gaining command was required to have taken action to resolve these issues as they occurred, to include, assisting with directed instruction on their orders, potential needed amendments regarding quarters, mess, and transportation, referral to Mental Health, and/or request early REFRAD if unable to overcome the inequities and impropriety that led to the personal, financial, and professional hardship the applicant was experiencing through no fault of their own.

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. 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): N/A

b. The applicant presented the following additional contention(s): N/A

c. Counsel / Witness(es) / Observer(s): N/A

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: Anxiety Disorder NOS, Major Depressive Disorder (MDD), Panic Disorder, PTSD, Narcissistic Personality Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** Anxiety Disorder NOS, Major Depressive Disorder (MDD), Panic Disorder, PTSD. Given personality disorders develop in adolescence, Narcissistic Personality Disorder was present in-service although not officially diagnosed.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the diagnosis of PTSD, trauma occurring prior to the misconduct, and nexus between trauma and avoidance, the AWOL is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the diagnosis of PTSD, trauma occurring prior to the misconduct, and the nexus between trauma and avoidance, the applicant's basis for separation (AWOL) is mitigated by the diagnosis of PTSD. However, the Board voted not to upgrade the discharge due to the multiple acts of misconduct in the applicant's file that did not warrant an upgrade to honorable.

b. Prior Decisions Cited:

(1) ARBA Docket AR20140016842, adjudicated in January 2016 denied the applicant's request to upgrade the Under Other Than Honorable Conditions characterization of service.

(2) ARBA Docket AR20190015659, adjudicated in October 2020 granted a partial approval and upgraded the characterization of service from Under Other Than Honorable conditions to General (Under Honorable Conditions).

(3) ARBA Case AR20210003354, a “de novo” review as part of the Kennedy v McCarthy Stipulation and Agreement adjudicated in December 2021 denied the request for an upgrade to the General (Under Honorable Conditions) characterization of service.

c. Response to Contention(s): The applicant requests an upgrade to honorable . The board considered the totality of the applicant's record, including liberal consideration of the applicant's behavioral health conditions and experiences. The board found that the applicant's AWOL offense was mitigated by the applicant's behavioral health conditions, however a majority of the board noted the applicant was reprimanded for conduct unbecoming an officer for mismanaging finances, sleeping overnight in an empty government office and dereliction of duty and departing their place of duty without authorization or regard for 16 Soldiers with prescheduled appointments. Based on the multiple acts of misconduct in the applicant's file, the board voted the current discharge is appropriate.

d. The board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

e. Rationale for Decision:

(1) The board determined the discharge is proper and equitable. The applicant has a characterization of General (Under Honorable Conditions), and the board noted this is an appropriate discharge for the amount of misconduct in the applicant's file. Aside from the applicant's basis for separation (AWOL), the applicant's file contains additional misconduct of soliciting money from a subordinate, reprimanded for conduct unbecoming an officer for mismanaging finances, sleeping overnight in any empty government office, dereliction of duty and departing their place of duty without authorization or regard for 16 Soldiers with prescheduled appointments. Based on the multiple acts of misconduct in the applicant's file, the board found the characterization of service proper and equitable. Therefore, no further relief is available.

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

(3) The RE code will not change as there is no RE-code listed on the applicant's discharge paperwork, due to being an Army Officer, no upgrade actions are required for this item.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No**
- b. Change Characterization to: No Change**
- c. Change Authority to: No Change**

Authenticating Official:

1/21/2025

X

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