

1. Applicant's Name:

- a. **Application Date:** 11 April 2024
- b. **Date Received:** 11 April 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.

The applicant seeks relief contending, in effect, the discharge was directly related to mental health issues from time spent in combat. The applicant states there was no other infractions other than those in Korea.

b. **Board Type and Decision:** In a Telephonic Personal Appearance Hearing conducted on 2 December 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Court-Martial (Other) / AR 635-200, Chapter 3 / JJD / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 22 November 2013

c. Separation Facts:

(1) **Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge:** As announced by Special Court-Martial Order Number 6, 27 March 2012, the applicant was found guilty the following:

Charge III, in violation of Article 128:

Specification 1: The applicant did on or about 22 April 2011, unlawfully strike PFC N. F. in the face with a closed fist. Plea: Guilty. Finding: Guilty.

Specification 2: The applicant did on or about 22 April 2011, unlawfully strike PFC C. M. in the face multiple times with closed fists and knees. Plea: Guilty. Finding: Guilty.

Specification 3: The applicant did on or about 22 April 2011, unlawfully strike PFC N. F. in the face multiple times with closed fists and knees. Plea: Guilty. Finding: Guilty.

Additional Charge II, in violation of Article 128. The Specification: The applicant did on or about 13 August 2011, unlawfully push SSG J. N. M. in the chest with the hands. Plea: Guilty. Finding: Guilty.

(2) **Adjudged Sentence:** Reduction to E-1; to be confined for six months, and to be discharged from the service with a Bad Conduct discharge.

(3) Date / Sentence Approved: 19 September 2011 / Only so much of the sentence, a reduction E-1, confinement for five months, and a bad conduct discharge was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed. The automatic forfeiture of two-thirds pay per month was deferred effective 3 October 2011 and the deferment was terminated on this date. The part of the sentence extending to confinement had been served.

(4) Appellate Reviews: The record of trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 October 2009 / 3 years

b. Age at Enlistment / Education / GT Score: 27 / Associate Degree / 121

a. Highest Grade Achieved / MOS / Total Service: E-6 / 13M34, Multiple Launch Rocket System / HIMARS Crewmember / 12 years, 4 months, 10 days

c. Prior Service / Characterizations: RA, 31 January 2001 – 30 September 2009 / HD

b. Overseas Service / Combat Service: Korea, SWA / Iraq (28 January 2005 – 10 January 2006)

c. Awards and Decorations: ARCOM-3, AAM-4, MUC, AGCM-3, NDSM, GWOTSM, KDSM, NCOPDR-2, ASR, OSR

d. Performance Ratings: 21 April 2009 – 20 April 2010 / Among the Best
7 July 2010 – 31 October 2010 / Among the Best

d. Disciplinary Action(s) / Evidentiary Record: See Special Court-Martial Order Number 6 as described in previous paragraph 3c(1).

e. Lost Time / Mode of Return: 155 days (Confinement, 19 September 2011 – 21 February 2012) / Released from Confinement

e. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: On-Line Application

6. POST SERVICE ACCOMPLISHMENTS: None submitted by the applicant.

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

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

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

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

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

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

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

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 3, Section IV establishes policy and procedures for separating members with a dishonorable or bad conduct discharge; and provides that a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial; and that the appellate review must be completed, and the affirmed sentence ordered duly executed.

(5) Because relevant and material facts stated in a court-martial specification are presumed by the ADRB to be established facts, issues relating to the applicant's innocence of charges for which he was found guilty cannot form a basis for relief. With respect to a discharge adjudged by a special court-martial, the action of the ADRB is restricted to upgrades based on clemency. Clemency is an act of leniency that reduces the severity of the punishment.

(6) Chapter 15 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): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant was adjudged guilty by a court-martial and the sentence was approved by the convening authority. Court-martial convictions stand as adjudged or modified by appeal through the judicial process.

The Board is empowered to change the discharge only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

The applicant contends the discharge was directly related to mental health issues from time spent in combat. The applicant's AMHRR contains no evidence of a mental illness diagnosis, and the applicant did not submit any evidence to support the contention that the discharge was the result of any medical condition.

The applicant states there was no other infractions other than those in Korea. The Board will consider the applicant service accomplishments and the quality of service according to the DODI 1332.28.

9. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

- a. The applicant submitted the following additional document(s):
- b. The applicant presented the following additional contention(s):
- c. Counsel / Witness(es) / Observer(s):

10. BOARD DISCUSSION AND DETERMINATION:

d. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Anxiety DO NOS; Generalized Anxiety DO (GAD); PTSD (50%SC). [Note: diagnosis of Adjustment DO with anxious features is subsumed under diagnosis of GAD.]

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found Anxiety DO NOS and GAD were diagnosed during active service. VA service connection for PTSD establishes nexus with active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the applicant has been diagnosed with Anxiety DO NOS, Generalized Anxiety DO (GAD) and PTSD, none of these conditions mitigate his misconduct as none of these conditions affects one's ability to distinguish right from wrong and act in accordance with the right. [Note-diagnosis of Adjustment DO with anxious mood is subsumed under diagnosis of GAD.]

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's conditions outweighed the applicant's list of offenses.

e. Prior Decisions Cited: None

f. Response to Contentions: The applicant contends the discharge was directly related to mental health issues from time spent in combat.

The Board considered this contention and determined that while the applicant has been diagnosed with Anxiety DO NOS, Generalized Anxiety DO (GAD) and PTSD, none of these conditions mitigate his misconduct as none of these conditions affects one's ability to distinguish right from wrong and act in accordance with the right.

g. 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 all available 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.

h. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, there is no medical mitigation for the basis for separation. Board members remarked that as a NCO (E-6/SSG), the applicant should have corrected his alcohol-related misconduct after the first fight that took place on April 22, 2011. However, the applicant had a second alcohol-related incident on August 13, 2011, where he pushed a SSG in the chest while the SSG (who was on courtesy patrol) confronted the applicant while he was drunk. The board acknowledged the applicant's length, quality, combat and post-service accomplishments; however, the board determined the applicant's basis of separation and multiple acts of misconduct did not warrant an upgrade to Honorable. 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20240005238

(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 the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- i. Issue a New DD-214 / Separation Order: No
- j. Change Characterization to: No change
- k. Change Reason / SPD code to: No change
- l. Change RE Code to: No change
- m. Change Authority to: No change

Authenticating Official:

1/9/2025

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