

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20240002633

APPLICANT REQUESTS:

- upgrade of his character of service from under honorable conditions (general) to honorable
- change of separation code from "JKQ" to "JFF" or another appropriate code
- change of narrative reason for separation from Misconduct (Serious Offense) to "Secretarial Authority"

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 12 December 2023
- legal counsel argument
- Exhibit 1 – Applicant's self-authored statement, 4 December 2023
- Exhibit 2 – DA Form 638 (Recommendation for Award), 17 August 2016
- Exhibit 3 – Army Achievement Medal Certificate, 18 August 2016
- Exhibit 4 – Character reference, from R.B., 6 April 2023
- Exhibit 5 – Diagnosis History
- Exhibit 6 – Mental Status Examination, 24 April 2014
- Exhibit 7 – Urology Medical Note, 30 May 2018
- Exhibit 8 – Behavioral Health Discharge Summary, 30 May 2018
- Exhibit 9 – Chapter Packet
- Exhibit 10 – DD Form 214 (Certificate of Release or Discharge from Active Duty), 26 July 2018
- Exhibit 11 – Order for Expungement of Records, 24 March 2022
- Exhibit 12 – Master Professional Life Coach Certificate, 9 August 2020
- Exhibit 13 – Emergency Medical Technician Certificate, 18 December 2022
- Exhibit 14 – Diploma, Santiago Canyon College, December 2020
- Exhibit 15 – Diploma, Humboldt State University, 22 December 2021
- Exhibit 16 – Diploma, Oregon State University, 8 September 2023
- Exhibit 17 – Army Discharge Review Boards Case, AR20170018235
- Exhibit 18 – Official Military Personnel File, 96 pages

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect, he enlisted to make something of himself. While serving he volunteered for "The Old Guard," where he felt confident in his abilities to perform his duties and went on to teach other Soldiers to perform the same. He received awards and he felt a sense of accomplishment.

a. While trying to be a good Soldier, he was experiencing difficult times with his team and squad leadership. He felt he was being targeted for hazing, he was put on extra workload and would be required to do pointless exercises like pushups while mopping the floor simultaneously, he felt humiliated while being singled out. He began to experience severe anxiety and depression.

b. He received an article 15, non-judicial punishment, where he was reduced in rank and required to complete 45 days of extra duty. His sergeant would order him to shout out his rank of private (E-2) to other Soldiers to humiliate him. While completing his extra duty, he was tortured through sleep deprivation and was given assignments, such as a ten-page essay due the next day, that were designed to ensure he would not be able to sleep. He even was required to participate in Ranger Physical Training.

c. He used sex and alcohol to cope with his anxiety and depression. Sleeping with as many females as he could and drinking to the point of blacking out. He would drink heavily on the weekends because he dreaded the upcoming work week. Before going to work, he would feel anxious and clammy, he experienced a racing heart, difficulty breathing, began to have frequent bed-wetting, and thought about killing himself.

d. His leadership made it clear that it was not okay to seek treatment for mental health issues. He believes his anxiety, depression, and alcohol use contributed to the incident which led to his separation. The main event being he got drunk and fell asleep, when his wife started to wake him, he punched and choked her. After his arrest, his parents came to visit him, when they were leaving, he asked them to take him to the emergency room for psychiatric care. He was admitted to the hospital for nine days, once discharged from the hospital he began to receive substance use disorder clinical care and counseling. He was court ordered one year of probation and 56 domestic violence classes, where he successfully attended and completed his classes and probation. He was also granted an expungement of the record on 24 March 2022.

e. After his separation, he attended all of his domestic violence classes, attended alcoholics anonymous meetings, and therapy, he meditates, and has kept clean. He has tried to put his life on a path which he envisioned when he enlisted. He attends counseling sessions through the Department of Veterans Affairs (VA) and is compliant with his behavioral medications. He is rated at a 90% with service-connected disability due to his mental and behavioral health issues. He is no longer a womanizer or a drinker. He volunteers, he became a certified life coach and then a master certified life coach, he earned his Emergency Medical Technician credentials and has earned his associate degree, bachelor's degree, and a master's degree of business administration. He finds that having goals helps him, and his hope is that a discharge upgrade will allow him to continue moving forward and no longer have the feeling of being ashamed of who he was in the service.

3. The applicant's legal counsel provided a 19-page legal brief which is available for the Board to review in full in the supporting documents/evidence file. The following is a summary of counsel's legal brief:

a. Counsel briefly addresses the applicant's reconsideration request due to the applicant operating under a mental health condition that excuses or mitigates his discharge. Counsel addresses the applicant's entry in the Regular Army and his volunteer service to The Old Guard, referencing various awards earned.

b. Counsel addresses the events of hazing and punishments to include sleep deprivation and humiliation, which led to the applicant suffering from severe anxiety and depression. Counsel reiterates the applicant's personal statement and the incident of the applicant's arrest, to include the applicant being granted an expungement of his criminal record.

c. Counsel asserts the applicant's mental health condition excuses or mitigates his discharge, further referencing the Kurta memorandum and the Wilkie memorandum. Additionally, adding the Army Discharge Review Board (ADRB) granted relief to a case similar to the applicant's. Where a Soldier was separated with a general (under honorable conditions) discharge for misconduct (serious offense), the basis for separation was the Soldier had struck his wife and attempted to choke her during a domestic dispute. This Soldier's medical records contained diagnoses of adjustment disorder with mixed disturbance of mood and conduct, acute stress reaction, alcohol abuse, and adult physical abuse. The VA indicated a diagnosis of major depressive disorder and periods of homelessness. The Board determined the discharge was inequitable based on the applicant's length and quality of service, homelessness, the circumstances surrounding discharge, and post service accomplishments. The Board voted to upgrade the characterization from general to honorable, change the separation authority, narrative reason, and separation code. Further stating the circumstances of the applicant's case is similar to the case in which was upgraded.

d. Counsel argues the applicant's inequity regarding policies and procedures, addressing the Army adding additional protections for Soldiers who are separated for misconduct. Additionally adding the applicant's mental health, which includes his anxiety and depression, his adjustment disorder with anxiety, contributed to his discharge and he was not given a mental status evaluation. If a mental status evaluation was given, Counsel believes the applicant's discharge may have been different.

e. Counsel concludes the Board should reconsider the ADRB denial of his prior request and upgrade his discharge.

4. The applicant enlisted in the Regular Army on 31 August 2015, for a period of 3 years and 16 weeks. He was awarded the military occupational specialty of 11B (Infantryman). The highest rank he attained was private first class/E-3.

5. The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), on 12 October 2016, for unlawfully pushing and pinning Private First Class A___ S___ to the ground with his hands and torso on or about 19 August 2016. His punishment imposed was reduction to E-2 and restriction of 14 days.

6. The applicant accepted NJP, under the provisions of Article 15, of the UCMJ, on 14 December 2016, for disobeying a lawful command from his superior commissioned officer, by communicating with Private First Class A___ S___ between on or about 20 September 2016 and on or about 13 October 2016. His punishment imposed was reduction to E-1, forfeiture of \$783.00 pay per month for two months, 45 days of restriction, and 30 days of extra duty.

7. The applicant underwent a mental status examination for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14-12 (Separation for Misconduct- Acts or Patterns of Misconduct) on 20 April 2017, the applicant was cleared for any administrative or judicial actions deemed appropriate by his Command and was cleared for administrative separation.

8. A DA Form 4856 (Developmental Counseling Form) shows on 13 May 2018 the applicant received event orientated counseling for arrest for domestic violence, no contact order, recommendation for flag of favorable action, recommendation for bar of continued service, and recommendation for involuntary separation from the military. The key points of discussion stated he was being recommended to be flagged from favorable action for the reasons of adverse action and involuntary separation. He additionally was being considered for a bar from continued service and separation from the military for patterns of misconduct and domestic violence. He agreed to the counseling session.

9. The applicant's immediate commander notified him of the intent to initiate separation action against him under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense. As the specific reasons, the commander cited the applicant assaulting his spouse by striking her in the face and placing his hands around her neck on or about 13 May 2018, the applicant pushing and pinning another female Soldier to the ground with his hands and torso on or about 19 August 2016, and the applicant violating a no contact order placed on him between on or about 20 September 2016 and on or about 13 October 2016. The commander recommended he receive an under honorable conditions (general) discharge. The applicant acknowledged receipt on 17 June 2018

10. On 21 June 2018, the applicant was advised by counsel of the basis for the contemplated action to separate him under the provisions of AR 635-200, Chapter 14-12c (Commission of a Serious Offense) he understood he was not entitled to consideration of his case by an administrative separation board, he requested consulting counsel and representation by military and/or civilian counsel at no expense to the government, and he elected to not submit statements in his own behalf. He further understood he may be ineligible for benefits as a veteran under both Federal and State laws and that he may encounter substantial prejudice in civilian life if he received an under honorable conditions (general) discharge.

11. The applicant's immediate commander formally recommended his separation, under the provisions of AR 635-200, paragraph 14-12c. His intermediate commander recommended his service be characterized as under honorable conditions (general).

12. The separation authority memorandum directing the applicant's separation is incomplete and without proper endorsement. However, his DD Form 214 shows he was discharged on 26 July 2018, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious offense), in the grade of E-3. His service was characterized as under honorable conditions (general), with separation code JKQ, and reentry code 3. He was credited with 2 years, 10 months, and 26 days of net active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

13. Through counsel the applicant provides:

a. Recommendation for the award of the Army Achievement Medal, the Army Achievement Medal Certificate for the applicant's outstanding achievement during the

battalion memorial affairs training and evaluation program from 27 June 2016 to 29 July 2016.

b. The applicant's medical diagnosis history, which shows the applicant was diagnosed with the following:

- adjustment disorder with anxiety, 22 September 2016
- adjustment disorder with disturbance of conduct, 25 May 2018
- adjustment disorder with mixed anxiety and depressed mood, 31 May 2018
- adjustment disorder with mixed disturbance of emotions and conduct, 24 July 2018
- adjustment disorder, 23 May 2018
- alcohol dependence, uncomplicated, 5 June 2018

c. Urology notes that summarized the applicant was having issues bedwetting on visitation 30 May 2018.

d. His master certified profession coach certificate earned on 9 August 2020, his emergency medical technician certificate awarded on 18 December 2022, and three diplomas showing he earned his Associate of Arts Degree in December 2020, Bachelor of Arts Degree on 22 December 2021, and Master of Business Administration Degree on 8 September 2023.

e. Order for expungement of records, dated 24 March 2022, which shows the applicant was entitled and ordered to have his expungement of his police records pertaining to his arrest on or about 13 May 2018.

f. A character reference statement from Mr. R.B., dated 6 April 2023, who was assigned to the same unit as the applicant. Mr. R.B., states the applicant was targeted on many occasions by his leaders and he never understood why the leaders singled him out and targeted him, however Mr. R.B. does remember feeling bad for the applicant whenever he would watch him get yelled at, called out constitutently, and would have to do physical exercises as a punishment. Overtime Mr. R.B., says the applicant became too much for people to handle due to becoming an alcoholic, he isolated himself, and it was clear his mental health was depreciating as time went on. The applicant and Mr. R.B., would talk about seeking mental health and how the leadership made it difficult to seek the proper care.

g. His official military personnel file, approximately 96 pages, varying from documentation for his enlistment, throughout his career, and to his discharge.

14. ADRB, case AR20200006104, considered the applicant's request for upgrade of his discharge requested on 98 March 2020. After careful review of the application, military

records, and all other available evidence, the Board determined he was properly and equitably discharged and denied his request for a change in his characterization of service and/or narrative reason.

15. Regulatory guidance provides:

a. When an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

b. When an individual is discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense, "JKQ" is the appropriate separation code.

16. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his character of service from under honorable conditions (general) to honorable, a change of separation code from "JKQ" to "JFF" or another appropriate code, and a change of narrative reason from separation for Misconduct (Serious Offense) to "Secretarial Authority".

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- Applicant enlisted into the Regular Army on 31 August 2015.
- Applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), on 12 October 2016, for unlawfully pushing and pinning Private First Class A___ S___ to the ground with his hands and torso on or about 19 August 2016. His punishment imposed was reduction to E-2 and restriction of 14 days.
- Applicant accepted NJP, under the provisions of Article 15, of the UCMJ, on 14 December 2016, for disobeying a lawful command from his superior commissioned officer, by communicating with Private First Class A___ S___ between on or about 20 September 2016 and on or about 13 October 2016. His punishment imposed was reduction to E-1, forfeiture of \$783.00 pay per month for two months, 45 days of restriction, and 30 days of extra duty.

- A DA Form 4856 (Developmental Counseling Form) shows on 13 May 2018 the applicant received event orientated counseling for arrest for domestic violence, no contact order, recommendation for flag of favorable action, recommendation for bar of continued service, and recommendation for involuntary separation from the military. The key points of discussion stated he was being recommended to be flagged from favorable action for the reasons of adverse action and involuntary separation. He additionally was being considered for a bar from continued service and separation from the military for patterns of misconduct and domestic violence. He agreed to the counseling session.
- Applicant's immediate commander notified him of the intent to initiate separation action against him under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense. As the specific reasons, the commander cited the applicant assaulting his spouse by striking her in the face and placing his hands around her neck on or about 13 May 2018, the applicant pushing and pinning another female Soldier to the ground with his hands and torso on or about 19 August 2016, and the applicant violating a no contact order placed on him between on or about 20 September 2016 and on or about 13 October 2016. The commander recommended he receive an under honorable conditions (general) discharge. The applicant acknowledged receipt on 17 June 2018.
- His DD Form 214 shows he was discharged on 26 July 2018, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious offense), in the grade of E-3. His service was characterized as under honorable conditions (general), with separation code JKQ, and reentry code 3.
- ADRB, case AR20200006104, considered the applicant's request for an upgrade of his discharge in March 2020. After careful review of the application, military records, and all other available evidence, the Board determined he was properly and equitably discharged and denied his request for a change in his characterization of service and/or narrative reason.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "while trying to be a good Soldier, he was experiencing difficult times with his team and squad leadership. He felt he was being targeted for hazing, he was put on extra workload and would be required to do pointless exercises like pushups while mopping the floor simultaneously, he felt humiliated while being singled out. He began to experience severe anxiety and depression. He received an article 15, non-judicial punishment, where he was reduced in rank and required to complete 45 days of extra duty. His sergeant would order him to shout out his rank of private (E-2) to other Soldiers to humiliate him. While completing his extra duty, he was tortured through sleep deprivation and was given assignments, such as a ten-page essay due the next day, that were designed to ensure he would not be able to sleep. He

even was required to participate in Ranger Physical Training. He used sex and alcohol to cope with his anxiety and depression. Sleeping with as many females as he could and drinking to the point of blacking out. He would drink heavily on the weekends because he dreaded the upcoming work week. Before going to work, he would feel anxious and clammy, he experienced a racing heart, difficulty breathing, began to have frequent bed-wetting, and thought about killing himself. His leadership made it clear that it was not okay to seek treatment for mental health issues. He believes his anxiety, depression, and alcohol use contributed to the incident which led to his separation. The main event being he got drunk and fell asleep, when his wife started to wake him, he punched and choked her. After his arrest, his parents came to visit him, when they were leaving, he asked them to take him to the emergency room for psychiatric care. He was admitted to the hospital for nine days, once discharged from the hospital he began to receive substance use disorder clinical care and counseling. He was court ordered one year of probation and 56 domestic violence classes, where he successfully attended and completed his classes and probation. He was also granted an expungement of the record on 24 March 2022. After his separation, he attended all of his domestic violence classes, attended alcoholics anonymous meetings, and therapy, he meditates, and has kept clean. He has tried to put his life on a path which he envisioned when he enlisted. He attends counseling sessions through the Department of Veterans Affairs (VA) and is compliant with his behavioral medications. He is rated at a 90% with service-connected disability due to his mental and behavioral health issues. He is no longer a womanizer or a drinker. He volunteers, he became a certified life coach and then a master certified life coach, he earned his Emergency Medical Technician credentials and has earned his associate degree, bachelor's degree, and a master's degree of business administration. He finds that having goals helps him, and his hope is that a discharge upgrade will allow him to continue moving forward and no longer have the feeling of being ashamed of who he was in the service."

d. The applicant's counsel argues the applicant was not given a mental status evaluation prior to his discharge, and if a mental status evaluation had been given, counsel believes the applicant's discharge may have been different. Contrary to counsel's statement, active-duty electronic medical records available for review show the applicant underwent an in-depth mental status evaluation on 20 April 2017. He screened negative for PTSD, Depression, Anxiety, TBI, and substance abuse. He was cleared for any administrative or judicial actions deemed appropriate by his command. There were no mitigating psychological factors that diminished his ability to make deliberate choices, know right from wrong, and adhere to the former. The clinician opined he should be subject to the normal channels of counseling and discipline. The active-duty electronic medical record further indicates the applicant had extensive behavioral health services. He self-referred for behavioral health services in September 2016 and once again in October 2016 and was diagnosed with Adjustment Disorder with Anxiety, related to occupational problems. In November 2017, he once again sought behavioral health services related to issues with panic and anxiety and was

diagnosed with Adjustment Disorder with Anxiety and received ongoing services via supportive psychotherapy and medication management until his discharge. He was later diagnosed with Other Specified Anxiety Disorders. Following the domestic violence incident that was the basis of his discharge, the applicant voiced suicidal ideation related to his legal issues and multiple Article 15's, as a result he was psychiatrically hospitalized on 22 May 2018 and discharged on 30 May 2018. He was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. A psychiatric note dated 31 May 2018, best captures the applicant's diagnostic impression as having a "significant character pathology" and a recurrent history of domestic violence (as the offender) with "limited insight" and "no identifiable remorse". This evaluation diagnosed him with Unspecified Disorder of Adult Personality and Behavior. The applicant engaged in Family Advocacy encounters from June through August 2018, following the assault of his wife, and was enrolled in a Men's Domestic Violence group. The applicant further participated in Substance Use Disorders Clinical Care (SUDCC) treatment and was diagnosed with Alcohol Dependence, uncomplicated.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 70% for Bipolar Disorder.

f. A Disability Benefits Questionnaire (DBQ) dated 9 October 2023, indicates the applicant did not meet criteria for PTSD, but he was diagnosed with Unspecified Bipolar and Unspecified Alcohol Related Disorder. No symptoms of mania or psychosis were noted. The applicant's antisocial tendencies and significant character pathology were highlighted during the assessment by his reporting that he completed his MBA by paying someone to do most of the work for the degree. In a DBQ dated 3 May 2023, the applicant was diagnosed with Bipolar I, with panic attacks, and Unspecified Alcohol Related Disorder based on his reported symptoms of panic, depressed mood, sexual addiction, and alcohol addiction. No symptoms of mania or psychosis were noted. The applicant bragged about being in an MBA graduate program and multiple people in his life, including "a woman in the program who is head over heels for him and family members doing much of the work for him". Once again, the applicant demonstrated his manipulative antisocial tendencies and significant character pathology. In a DBQ dated 4 January 2023, the applicant was diagnosed with Bipolar I and Alcohol Use Disorder. No symptoms of mania or psychosis were noted. On 15 October 2018, the applicant participated in a DBQ and was diagnosed with Unspecified Depressive Disorder, Generalized Anxiety Disorder to include panic attacks, and Alcohol Use Disorder.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service. However, his BH condition would not mitigate his misconduct since there is no evidence that he was in the midst of a manic or psychotic episode when he committed his offenses.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts OMH as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Adjustment Disorder, Other Specified Anxiety Disorders, and Alcohol Dependence during military service. He is currently 70% service connected for Bipolar Disorder. In addition, the applicant reports experiencing hazing while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to assaulting his spouse by striking her in the face and placing his hands around her neck (choking her), pushing and pinning another female Soldier to the ground with his hands and torso, and violating a no contact order placed on him. The applicant's action of choking his wife indicates a serious escalation of domestic violence and is considered a significant factor that correlates with an increased likelihood of death of the spouse. Per a psychiatric note dated 31 May 2018, the applicant had a recurrent history of domestic violence (as the offender) with "limited insight" and "no identifiable remorse". The diagnostic impression indicated the applicant presented as having a "significant character pathology". While in service the applicant was assessed repeatedly and diagnosed with Adjustment Disorder and Alcohol Dependence. An Adjustment Disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition. However, the applicant is currently service-connected for Bipolar Disorder. The applicant's Bipolar Disorder diagnosis would not mitigate physical assault of his spouse and of another female soldier, along with a blatant disregard for command in his violation of the no contact order. There is no evidence in the record indicating the applicant was experiencing a manic or psychotic episode that could have potentially impacted his ability to distinguish right from wrong and act in accordance with the right. Regardless of diagnosis or adverse experience (hazing), the applicant's misconduct of physically assaulting his wife and another female Soldier would not be mitigated by any of his asserted conditions. There is no nexus or natural sequelae between the asserted BH conditions and physical assault. Specifically, these conditions/circumstances do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions. Regarding his assertion of hazing while in military service, this is not a mitigating factor, hazing experiences do not propel an individual to subsequently physically assault other people, particularly those who were not involved in any aspect of the hazing.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows the applicant committed misconduct (assaulting spouse by striking her in the face and placing his hands around her neck (choking her), pushing and pinning another female Soldier to the ground with his hands and torso, and violating a no contact order placed on him). As a result, his chain of command initiated separation action against him. He was discharged with a general, under honorable conditions characterization of service. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding the applicant's action of choking his wife indicates a serious escalation of domestic violence and is considered a significant factor that correlates with an increased likelihood of death of the spouse. The medical reviewer found, and the Board agreed, that there is no nexus or natural sequelae between the asserted behavioral health conditions and physical assault. Specifically, these conditions/circumstances do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions. Regarding his assertion of hazing while in military service, this is not a mitigating factor, hazing experiences do not propel an individual to subsequently physically assault other people, particularly those who were not involved in any aspect of the hazing. Furthermore, although the applicant provided a character reference letter in support of a clemency determination, the Board did not find it sufficient to outweigh the serious misconduct he committed. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of chapter 14-12c of AR 635-200, due to his serious misconduct. The narrative reason specified by Army Regulations for a discharge under this chapter for an enlisted Soldier is "Misconduct" and the separation code is "JKQ." AR 635-8, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in Block 28, and separation code, entered in Block 26, will be entered exactly as listed in AR 635-5-1, Separation Program Designator Codes. The Board found no mitigating factors that would merit a change to the applicant's narrative

reason for discharge. In view of the foregoing, the Board determined that the reason for discharge was both proper and equitable and there is no reason to change it.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by Army Review Boards Agency (ARBA) be

provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). It states that the separation code "JKQ" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14-12c, for misconduct.

4. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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.

b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; Traumatic Brain Injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//