

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- 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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, at the time, requesting separation under Chapter 5-10 [sic]. The applicant was going through a difficult marriage where the spouse was cheating on the applicant. The applicant tried to save the marriage, but the spouse was in a sadomasochism (S&M) relationship with other people and was drinking heavily, using drugs, and being advised by their friends instead of attending family counseling, which they had agreed upon. The spouse would go out and stray away and made allegations of abuse in the relationship. Instead of going through a long embarrassing hearing, the applicant opted to be discharged from the Army and save the applicant and the Army any embarrassment. Since the discharge the applicant has obtained three associate degrees, Associates in Applied Sciences in Emergency Medical Services (EMS), Associates of General Education, Associates of General Occupational Technology. The applicant obtained an Emergency Medical Technician (EMT), Paramedic certification, and work on an ambulance for many state and local government agencies. The applicant obtained the Instructor in Basic Life Support and Advanced Life Support and Pediatric Advanced Life Support certifications and teach for a private company and two local colleges. The applicant recently remarried following being divorced in 2006. The applicant purchased a home and had been a pillar of the community with no blemishes on their record. The applicant is remorseful for any embarrassments they may or may not have caused while on active duty.

b. **Board Type and Decision:** In a records review conducted on 29 October 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more details 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 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 19 August 2005

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 7 July 2005, the applicant was charged with:

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210000659**

Charge I: Violating Article 90, UCMJ, The Specification: Did on divers occasions between 25 April and 6 July 2005, willfully disobey a superior commissioned officer to have no contact or communication with T. D., their friends, bosses, or colleagues.

Charge II: Violating Article 128, UCMJ, The Specification: Did on divers occasions between 1 July 2003 and 17 April 2005, unlawfully shove T. D. with the hands into a wall; unlawfully punch T. D. in the eye with the hand; unlawfully hit T. D. on the back and head with a dog leash; and unlawfully choke T. D. with the hands and arms.

Charge III: Violating Article 134, UCMJ:

Specification 1: Did on divers occasions between 31 December 2004 and 17 April 2005, wrongfully communicate to T. D. a threat to injure T. D. by saying, "If you do not come back to me, no one's going to have you," "You will not be breathing," and "I will cut your heart out and leave you with nothing."

Specification 2: Did between 1 and 17 April 2005, wrongfully communicate to D. S. a threat to injure D. S. by saying, "I am going to burn your house down," and "I am going blow your head off."

**(2) Legal Consultation Date:** 1 August 2005

**(3) Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

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

**(5) Separation Decision Date / Characterization:** 9 August 2005 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

- a. Date / Period of Enlistment:** 15 January 2002 / 6 years
- b. Age at Enlistment / Education / GT Score:** 24 / HS Graduate / 110
- c. Highest Grade Achieved / MOS / Total Service:** E-5 / 91W2P, Health Care Specialist / 10 years, 2 months, 6 days
- d. Prior Service / Characterizations:** RA, 14 June 1994 – 27 September 1999 / HD  
RA, 28 September 1999 – 14 January 2002 / HD
- e. Overseas Service / Combat Service:** SWA / Iraq (1 July 2003 – 1 April 2004)
- f. Awards and Decorations:** ARCOM-2, AAM-4, AGCM-3, NDSM, ICM, GWOTSM, NCOPDR, ASR, OSR, EFMB
- g. Performance Ratings:** April 2001 – March 2002 / Among the Best  
April 2002 – September 2003 / Fully Capable  
October 2002 – September 2003 / Among the Best  
October 2003 – August 2004 / Among the Best

**h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 12 April 2000, reflects the applicant was apprehended for: assault (on post). Investigation revealed the applicant and spouse were involved in a verbal altercation which turned physical when the applicant threw the spouse to the bead and covered their mouth.

Memorandum, 29 October 2004, reflects the commander issued an order to the applicant not to contact T. D. The document was unsigned.

Memorandum, 19 November 2004, reflects the commander ordered the no contact order, issued on 19 October 2004, to be lifted upon meeting certain requirements.

Memorandum, 17 February 2005, reflects the commander issued an order to the applicant not to contact T. D., their friends, their bosses, or their colleagues because of harassment and threats of physical violence allegations made by T. D. and their friends to First Sergeant B. The order was effective immediately until rescinded by the commander. The applicant acknowledged receipt. The order was supported by a statement from the applicant's spouse.

Company Grade Article 15, 24 March 2005, for failing to obey a lawful command from Captain (CPT) K. S., their superior officer commissioned officer, to have no contact with T. D. and D. S. (between 19 and 21 March 2005). The punishment consisted of extra duty and restriction for 14 days.

Military Police Report, 17 April 2005, reflects the applicant was apprehended for: domestic disturbance and spousal abuse, civilian victim (on post). Investigation revealed during a physical altercation, the applicant struck their spouse on the back with a dog leash while at the quarters.

Ex Parte Domestic Violence Order of Protection, 25 April 2005, reflects the district court issued a protective order against the applicant for protection of the applicant's spouse because the applicant made threats to seriously injure or kill their spouse; made threats to commit suicide; and inflicted serious injuries upon the plaintiff.

Two Developmental Counseling Forms, for violating the commander's no contact order and a court's restraining order; their spouse being afraid to file for separation / divorce because of repercussions by the applicant; being charged with domestic violence; being informed of the recommendation of the Division Mental Health.

**i. Lost Time / Mode of Return:** None

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 12 April 2005, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant was diagnosed with adjustment disorder with depressed mood; personality disorder not otherwise specified (NOS).

*The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.*

**5. APPLICANT-PROVIDED EVIDENCE:** Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant obtained three associate's degrees and various medical certifications, teach for a private company and two local colleges, has recently remarried, is the pillar of the community, and has no blemishes on their record.

**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) 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 (Active Duty Enlisted Administrative Separations) 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)** Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

**(5)** Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

**(6)** Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

**(7)** Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

**(8)** Paragraph 10-8b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes. RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**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 evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends a difficult marriage with a cheating spouse, who made allegations of abuse, led to the applicant's discharge. The applicant AMHRR reflects the applicant was charged with assault, communicating threat, and domestic violence by military and civilian authorities. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends obtaining three associate's degrees and various medical certifications, teaching for a private company and two local colleges, being recently remarried, being the pillar of the community, and having no blemishes on their record. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

**9. BOARD DISCUSSION AND DETERMINATION:**

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board 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: PTSD, MDD, and TBI.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant has a service-connected (for treatment-only) PTSD diagnosis and is 40 percent service-connected for TBI.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. As there is a nexus between PTSD, difficulty with authority, and angry verbal outbursts, the offense of communicating threats is mitigated. The assaults of the applicant's spouse are not mitigated as assault is not natural sequela of PTSD or MDD. The available evidence does not support that, at the time of the misconduct, the applicant's TBI was of a severity to impact judgement, cognition, or behavior.

(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 Post Traumatic Stress Disorder, Major Depressive Disorder, and/or Traumatic Brain Injury outweighed the medically unmitigated assault offenses.

b. Response to Contention(s):

(1) The applicant contends a difficult marriage with a cheating spouse, who made allegations of abuse, led to the applicant's discharge. The Board considered this contention but found that the applicant's marital difficulties do not excuse or mitigate the applicant's violent offenses against the applicant's spouse. The applicant, under advisement from counsel, voluntarily requested discharge in lieu of trial by court-martial rather than contest the offenses. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends obtaining three associate's degrees and various medical certifications, teaching for a private company and two local colleges, being recently remarried, being the pillar of the community, and having no blemishes on their record. The Board considered the applicant's post-service accomplishments and determined that they do not outweigh the medically unmitigated offenses of assault against the applicant's spouse.

c. The Board determined that the discharge is, at this time, proper and equitable, considering 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, and Traumatic Brain Injury did not

outweigh the medically unmitigated offenses of assault against the applicant's spouse. The Board also considered the applicant's contentions regarding marital difficulties and post-service accomplishments and found that the totality of the applicant's record does not warrant a discharge upgrade given the severity of the unmitigated misconduct. The applicant did not present any issues of impropriety for the Board's consideration. 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. Therefore, the applicant's Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranting an Honorable discharge.

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

(3) The RE code will not change given the service-connected BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

10/29/2024

**X**

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

**Legend:**

AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs