

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

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

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

The applicant seeks relief contending, in effect, seeking treatment from the VA for undiagnosed PTSD and depression from a deployment to Afghanistan from December 2011 to September 2012. The applicant is currently not eligible for services with the VA because of the current discharge. The applicant would like to receive treatment for PTSD and depression and also enroll in college by using the Post 9/11 GI Bill. The applicant would use the college degree to find a good job to support the family.

b. **Board Type and Decision:** In a records review conducted on 26 September 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:** Misconduct (Civil Conviction) / AR 635-200, Chapter 14, Sec II / JKB / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 14 February 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 26 September 2013

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was convicted of a Felony (Assault 4) by a civil court.

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

(4) **Legal Consultation Date:** 2 October 2013

(5) **Administrative Separation Board:** On 2 October 2013, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable.

The AMHRR is void of a disapproval of the conditional waiver.

On 20 November 2013, the administrative separation board convened, and the applicant appeared with counsel. The Board determined the applicant's actions do qualify as conviction by civil court under the provisions of AR 635-200, Chapter 14, paragraph 14-5. Furthermore, the board found the applicant did get convicted of a Class A Misdemeanor (Assault 4) by assaulting B. P. The board recommended the applicant be separated from the service and issued an under other than honorable conditions discharge certificate, which should be executed immediately.

On 14 January 2014, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: On 14 January 2014, the separation authority reviewed the separation packet and the finding and recommendations of the Administrative Separation Board and approved the findings and recommendations of the Board and directed the applicant be separated from the United States Army prior to the expiration of the current term of service, under the provisions of AR 635-200, Chapter 14-5. / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 6 January 2011 / 3 years, 20 weeks
- b. Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 92
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 91L10, Construction Equipment Repairer / 3 years, 1 month, 9 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** Alaska, SWA / Afghanistan (4 December 2011 – 27 September 2012)
- f. Awards and Decorations:** ACM-CS, ARCOM, NDSM, GWOTSM, ASR, OSR, NATOMDL, CAB
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** Anchorage Police Department Police Report, 22 June 2013, reflects the applicant was the subject of an investigation and was charged with Assault 2 – serious injury/reckless; Assault 4 – recklessly injured; and Interfere w/Report of DV Crime.

Military Police Report Number 00299-2013-MPC109, 26 June 2013, investigation revealed on 22 June 2013, officers responded to a report of an assault. Investigation revealed B. P. was assaulted by the applicant in their apartment. B. P. believed they would have died if they did not escape from the applicant who took the cell phone when B. P. tried to call police. The applicant assaulted B. P. by strangulating B. P. twice, grabbing, hitting all over, and pushing/tossing B. P. around. As a result of this incident, B. P. went unconscious for a few seconds, suffered bruising to the neck, scratches to the chest, a raised bruise to the right arm, pain to the back, and a cut to the hand. The applicant was not present when officers arrived. An arrest warrant was obtained and on 23 June 2013, the applicant turned their self in. The applicant was arrested for Assault 2, Assault 4 and interfere with a report of a DV crime.

District/Superior Court for the State of Alaska, Court Order, 2 July 2013, reflects the applicant was to appear in court on 5 July 2013 for the charges of Assault; Assault 4 and interfere with a report of DV.

District Court for the State of Alaska at Anchorage, Judgement, 18 September 2013, reflects the applicant plead guilty and was found guilty of the charges.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: VA Notes, 1 October 2021, reflect a diagnosis.

(2) AMHRR Listed: Report of Medical History, 24 July 2013, the examining medical physician noted the applicant's medical conditions in the comments section.

Report of Medical Examination, 24 July 2013, the examining medical physician noted the applicant's medical conditions in the comments section.

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: Application for Correction of Military Record; self-authored statement; Certificate of Release or Discharge from Active Duty; ARBA letter; VA Notes.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought help for their mental health condition with a private provider in 2019 and is currently in treatment.

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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(6) Paragraph 14-3 prescribes 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 such is merited by the Soldier's overall record.

(7) Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings: 1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended; 2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender; Initiation of separation action is not mandatory. Although the conditions established in a (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction.

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 "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, section II, misconduct (civil conviction).

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 applicant contends suffering from mental health issues and being diagnosed with PTSD by the VA. The applicant provided VA Notes, 1 October 2021, reflecting a diagnosis. The applicant's AMHRR reflects Report of Medical History, 24 July 2013, the examining medical physician noted the applicant's medical conditions in the comments section. A Report of Medical Examination, 24 July 2013, the examining medical physician noted the applicant's medical conditions in the comments section. The AMHRR does not contain a mental status evaluation (MSE). All medical documents contained in the AMHRR were considered by the separation authority.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant sought help for their mental health condition with a private provider in 2019 and is currently in treatment. 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 found (based on the Board's Medical Advisor's opine, a review of the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation) that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Anxiety Disorder NOS, and PTSD. Additionally, the applicant asserts Depression, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board determined that (based on the Board Medical Advisor's opine) the applicant was diagnosed in service with an Adjustment Disorder, Anxiety Disorder NOS, and is service connected by the VA for PTSD. The applicant also self-asserts Depression, which is supported by the active-duty

medical record.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate or excuse the discharge. There is no natural sequela between an Adjustment Disorder, Anxiety Disorder NOS, and/or Depression and assault since these conditions do not have a nexus with aggression or violence. The applicant's PTSD was carefully and liberally considered, but the police report reveals that the assault took place after an escalating argument with a specific victim, which indicates choice and motivation uncharacteristic of a PTSD reenactment. Furthermore, the applicant left the scene of the assault prior to police arrival, suggesting that the applicant was aware of right and wrong. Accordingly, none of the applicant's BH conditions mitigate the assault that led to the separation.

(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, Adjustment Disorder, Anxiety Disorder NOS, and/or Depression outweighed the medically unmitigated assault offense.

b. Response to Contention(s):

(1) The applicant contends suffering from mental health issues and being diagnosed with PTSD by the VA. The Board liberally considered this contention and determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Adjustment Disorder, Anxiety Disorder NOS, and/or Depression outweighed, or has a nexus with the medically unmitigated assault offense.

(2) The applicant contends an upgrade would allow veterans and other benefits including educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(3) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(4) The applicant sought help for their mental health condition with a private provider in 2019 and is currently in treatment. The Board considered this contention and determined that seeking treatment does not provide the Board with sufficient basis to outweigh the medically unmitigated assault offense.

c. The Board determined that the discharge is, at this time, proper and equitable considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support 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 evidence before the Board, the applicant's Post

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Traumatic Stress Disorder, Adjustment Disorder, Anxiety Disorder NOS, and/or Depression did not outweigh or have a nexus with the medically unmitigated assault offense. The Board considered the totality of the applicant's record and determined it did not outweigh 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 General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for a characterization upgrade to Honorable.

(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 based on 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:

11/12/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs