

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the separation is not misconduct. The four-wheeler was purchased from another Soldier, and the real owner of the property contacted the applicant. The applicant voluntarily returned the property and the applicant's money was returned. The applicant's colonel indicated after a year this could be removed from the applicant's records. There is no reason for the misconduct. The foreign service and prior active serving in the National Guard were not included on the DD Form 214.

b. **Board Type and Decision:** In a records review conducted on 5 November 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 detail 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, Section II / JKB / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 22 February 2008

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 5 February 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was convicted of assault 4th degree domestic violence with minor injury.

(3) **Recommended Characterization:** General (Under Honorable Conditions)

(4) **Legal Consultation Date:** On 8 February 2008, the applicant waived legal counsel.

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 11 February 2008 / General (Under Honorable Conditions) / The separation authority, Commander, Headquarters, 101st Brigade Troops Battalion, a lieutenant colonel, approved the applicant's separation under the provisions of Army Regulation 635-200, Chapter 14, Section II, Misconduct (Civil Conviction).

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 23 May 2006 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 36 / HS Graduate / 103
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 42A10, Human Resources Specialist / 2 years, 6 months, 5 days
- d. **Prior Service / Characterizations:** USAR, 15 August 2005 – 22 May 2006 / HD AD (4 months, 29 days) / NIF (Concurrent Service)
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Commonwealth of Kentucky Uniform Citation, 29 May 2007, reflect on 27 May 2007, the applicant was arrested by civilian authorities for assault 4th degree, domestic violence minor injury. Investigation revealed police officers were dispatched because of a report of a reckless driver. The caller reported the applicant was hitting, kicking, grabbing, and shoving their spouse. When the officer made contact the applicant, the driver, was upset. The victim indicated the applicant had not taken their medication and snapped.

Commonwealth of Kentucky Uniform Citation, 6 August 2007, reflects on 4 August 2007, the applicant was arrested for assault 4th degree, domestic violence, minor injury. Investigation revealed police officers were dispatched on a disturbance call. Upon arrival the applicant's spouse stated the applicant shoved the spouse down and choked the spouse.

Order of Protection, 23 October 2007, reflects the applicant's spouse filed a motion to amend the Domestic Violence Order, issued on 2 October 2007. The parties were allowed to have non-threatening, non-violent contact, and the applicant had to follow any bond conditions.

Marshall District Court Case History, 1 November 2007, reflects on 30 September 2007, the applicant as charged with theft by unlawful taking or disposition, auto over \$300.

Memorandum, 19 November 2007, reflects the applicant was seen by the hearing conservation clinic, and the doctor indicated based on the applicant's inconsistent screening results, the applicant had intent to feign hearing loss. It was possible the applicant's termination audiogram, 29 October 2007, documented poorer hearing ability than the applicant truly had.

Marshall County District Court document, 10 January 2008, reflects the applicant was found guilty, consistent with the plea, of assault 4th degree domestic violence minor injury, 27 May 2007, and sentenced to confinement for 12 months (suspended); 2 years' probation; and a fine of \$250 (suspended). The applicant was to have no unlawful contact, no violations or threatening contact with the complaining witness or members of the household; was to comply with medical or mental providers; and take medications and provide proof. The applicant was found guilty, consistent with the plea, of a second charge of assault 4th degree domestic violence minor injury, 4 August 2007, and was sentenced to confinement for 12 months (suspended) to run concurrently with the previous charge, and the same conditions applied.

Field Grade Article 15, 17 January 2008, for failing to go at the time prescribed to the appointed place of duty (4 October 2007); willfully disobeying an order from Sergeant (SGT) C. L., a noncommissioned officer (NCO), (2 October 2007); and being disrespectful in language toward SGT C. L. (13 October 2007). The punishment consisted of a reduction to E-1; forfeiture of \$650 pay per month for two months (\$650 pay for one month suspended); extra duty for 45 days; and restriction for 45 days (suspended).

Seven Developmental Counseling Forms, for making a false official statement to an NCO; disrespecting an NCO; being restricted to post; being informed of requirements surrounding an assault 4th degree domestic violence charge and conviction; being in jail for three days; failing to follow a court order regarding counseling and medication; and being indebted to the government.

i. Lost Time / Mode of Return: 3 days (Confined by Civilian Authorities, 27 September 2007 – 29 September 2007) / Released from Confinement.

j. Behavioral Health Condition(s):

(1) Applicant provided: Memorandum for Record, 16 October 2007, reflected the applicant was being treated by a psychiatrist at the Blanchfield Army Community Hospital and the psychiatrist recommended discharge under AR 635-200, Chapter 5-17 (Other Designated Physical or Mental Conditions).

(2) AMHRR Listed: Report of Mental Status Evaluation, 15 October 2007, reflects 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 mixed anxiety and depressed mood. The provider recommended separation under AR 635-200, Chapter 5-17.

Chronological Record of Medical Care, 11 December 2007, reflects the applicant's mental health problems listed as adjustment disorder with anxiety and depressed mood; insomnia because of stress; reaction to chronic stress; family problems; psychosocial and environment problems; malingering; and psychiatric disorders.

Report of Medical Examination, 19 December 2007, the examining medical physician noted in the summary of defects and diagnoses section: Anxiety; depression; insomnia; and history of suicide attempt.

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 Correction of Military Record; self-authored statement; and a memorandum for record from a Behavioral Health psychiatrist.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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) Paragraph 1-19, in effect at the time, states commanders who are special court-martial convening authorities (SPCMCA) authorities are authorized to approve or disapprove separation under Chapter 14 when discharge under other than honorable conditions is not warranted under and the notification procedure is used. An honorable discharge may be ordered only when the commander exercising general court-martial jurisdiction has authorized the exercise of separation authority in the case. Commanders in the grade of lieutenant colonel or above who have a judge advocate or legal advisor available are authorized to approve or disapprove separation under paragraph 5-11 and chapters 8, 11; and chapters 9, 13, and 18 in those cases in which the notification procedure is used.

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

(3) 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.

(4) 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.

(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-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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.

Army Regulation 635-200, in pertinent part, stipulates a Soldier may be separated when initially convicted by civil authorities, or when action is taken tantamount to a finding of guilty, if a punitive discharge authorized for the same or a closely related offense under the Manual for Courts Martial or the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation. At the time of the applicant's discharge, the applicant was sentenced to confinement for 12 months (suspended); 2 years' probation; and a fine of \$250 (suspended).

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, Section II, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Civil Conviction)," and the separation code is "JKB." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends there was no misconduct because the property was returned to the owner. The applicant's AMHRR shows the reason for the separation was the applicant was convicted of assault 4th degree domestic violence with minor injury. The record contains evidence to show the applicant was convicted the charge on two occasions. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being informed the narrative reason would be removed from the applicant's DD Form 214 a year after being discharged. The applicant's issue about an upgrade based on the passage of time was carefully considered. The U.S. Army does not have, nor has it ever had, a policy to automatically upgrade discharges or the reasons for discharge. Each

case is decided on its own merits when an applicant submits a DD Form 293 requesting a change in discharge. Changes may be warranted if the Board determines the characterization of service or the reasons for discharge, or both were improper or inequitable.

The applicant contends corrections should be made to the DD Form 214 regarding foreign service and prior active service in the Army National Guard. The applicant's requested changes to the DD Form 214 do not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: MDD severe with psychotic features, Adjustment Disorder w/Anxiety and Depressed Mood, Acute Stress Reaction, Reaction to Chronic Stress, Intermittent Explosive Disorder (IED), and PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant is 100 percent service connected for MDD.

(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 the discharge. The applicant's assault offense is not mitigated as assault is not natural sequela of MDD, Adjustment Disorder, Acute Stress Reaction, PTSD, or Chronic Stress. None of these conditions were of a severity to render the applicant unable to differentiate between right and wrong and adhere the right. While the applicant was diagnosed with IED by a VA provider, the justification for rendering the diagnosis was secondary to the applicant stating that the applicant attacked a police officer, and that the applicant was calm prior to doing so. This description is not sufficient to meet criteria for the disorder, and therefore the IED is not further considered for mitigation. Finally, while the Initial PTSD DBQ (2019) reflects the applicant reported auditory hallucination with onset during service, a review of the in-service records showed the applicant consistently denied symptoms of psychosis, thought disorder, A/V/H, and cognitive distortion across the applicant's in-service BH treatment history. Therefore, there is not medical mitigation for the applicant's offenses.

(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 Major Depressive Disorder, Adjustment Disorder, Acute Stress Reaction, Reaction to Chronic Stress, Intermittent Explosive Disorder (IED), or Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated domestic violence offense.

b. Response to Contention(s):

(1) The applicant contends there was no misconduct because the property was returned to the owner. The Board considered this contention and found that it does mitigate the applicant's misconduct to a degree warranting discharge upgrade. The evidentiary record reflected additional misconduct per paragraph 4h.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention and found that the applicant's Misconduct (Civil Conviction) narrative reason for separation is proper and equitable given the applicant's domestic violence conviction.

(3) The applicant contends being informed the narrative reason would be removed from the applicant's DD Form 214 a year after being discharged. The Board considered this contention and found that the applicant signed a memorandum informing the applicant of the right to appeal to the Army Discharge Review Board, not of a guaranteed removal of the narrative reason for separation.

(4) The applicant contends corrections should be made to the DD Form 214 regarding foreign service and prior active service in the Army National Guard. The Board determined that the applicant's requested changes to the DD Form 214 do not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

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 evidence before the Board, the applicant's Major Depressive Disorder, Adjustment Disorder, Acute Stress Reaction, Reaction to Chronic Stress, Intermittent Explosive Disorder (IED), and/or Post Traumatic Stress Disorder did not outweigh the medically unmitigated offense of domestic violence. The Board also considered the applicant's contentions regarding returning property to the victim but found that the totality of the applicant's record and severe misconduct do not warrant a discharge upgrade. 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 an 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 given the BH conditions. The current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000753

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:

11/13/2024

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