

**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, pending an Article 32 hearing, which was dismissed by the commanding general because the government did not have sufficient evidence against the applicant and the applicant's spouse openly admitted the spouse lied. Upon hearing this, the first sergeant (1SG) patented negative counseling, DA Forms 4856 (Developmental Counseling Form), against the applicant to give the applicant an Article 15, when the applicant was in a lowly vulnerable suicidal state. The 1SG informed the applicant, the 1SG was going to make an example of the applicant. The 1SG claimed it would be wise for the applicant to accept Article 15 if the applicant wanted to continue serving in the Army. In lieu of the applicant accepting Article 15, the 1SG initiated separation paperwork against the applicant and denied the applicant the opportunity to speak with the chain of command. The 1SG pulled the applicant back into the 1SG's office and 1SG informed the applicant the 1SG was going to give the applicant a general (under honorable conditions) discharge for the applicant to receive Department of Veterans Affairs (VA) benefits. The 1SG said it was for the best while still denying the applicant access to the chain of command, stating the chain of command did not have time to cope with the situation.

b. **Board Type and Decision:** In a records review conducted on 18 July 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 (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 20 March 2012

**c. Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** NIF

- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NIF
- (6) **Separation Decision Date / Characterization:** NIF

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 17 August 2005 / 3 years, 2 weeks / The AMHRR is void of any enlistment contract retaining the applicant on active duty after the most recent enlistment period; however, the applicant's DD Form 214 reflects the applicant had continuous honorable service from 17 August 2005 to 12 October 2009, and reenlisted on 13 October 2009.

b. **Age at Enlistment / Education / GT Score:** 19 / HS Graduate / NIF

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92Y10, Unit Supply Specialist / 5 years, 1 month, 22 days / The applicant's DD Form 214 reflects the applicant had 6 months, 26 days prior inactive service. The applicant's AMHRR reflects the applicant had 4 months, 6 days total prior active service; however, it appears this time is included in the total prior inactive service reflected on the applicant's DD Form 214.

d. **Prior Service / Characterizations:** USAR, 28 January 2005 – 16 August 2005 / NA  
IADT, 28 January 2005 – 3 June 2005 / UNC  
(Concurrent Service)

e. **Overseas Service / Combat Service:** Hawaii, SWA / Iraq (19 July 2009 – 3 July 2010)

f. **Awards and Decorations:** MUC, NDSM, GWOTSM, ICM-CS, ASR, OSR, OSB

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** The applicant provides memorandum, subject: Dismissal of Court-Martial Charges in U.S. vs [Applicant], 7 November 2011, reflecting the Commander, 94th Army Air and Missile Defense Command, Fort Shafter, dismissed court-martial charges preferred against the applicant on 11 October 2011.

Orders 067-0021, 7 March 2012, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 20 March 2012 from the Regular Army.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was authenticated with the applicant's electronic signature. The applicant had lost time for the period 30 May 2006 to 7 June 2008.

i. **Lost Time / Mode of Return:** 2 years, 9 days (740 days), (AWOL, 30 May 2006 – 7 June 2008 / Apprehended by Civil Authorities

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

*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:** DD Form 149; DD Form 214; DD Form 293; and Dismissal of Court Martial Charges memorandum.

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

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

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

**(4)** Chapter 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.

**(5)** Paragraph 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

**(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)** Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

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.

The applicant's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of general (under honorable conditions).

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, 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 (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents), governs the preparation of the DD Form 214, and dictates the 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 being in a vulnerable and suicidal state while facing disciplinary action from the 1SG. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR contains no documentation of a mental health diagnosis or evidence of suicidal ideations. The AMHRR is void of a mental status evaluation.

The applicant contends the 1SG harassed the applicant; denied the applicant an opportunity to speak with the chain of command; and pursued administrative separation because the applicant refused to accept an Article 15. The applicant did not submit any evidence, other than the applicant's statement, to support the contention.

The applicant contends pending an Article 32 hearing for a crime the applicant did not commit. The applicant submitted evidence to show the commanding general dismissed charges against the applicant, preferred on 11 October 2011. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

#### **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's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Depression, Anxiety, Post Traumatic Stress Disorder.

**(2)** Did the condition exist or experience occur during military service? **No.** The Board's Medical Advisor found that the applicant was diagnosed in-service with Depression and Anxiety, and the applicant is service connected by the VA for Post Traumatic Stress Disorder. Service connection establishes that the Post Traumatic Stress Disorder also existed during military service.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in-service with Depression and Anxiety, and the applicant is service connected by the VA for Post Traumatic Stress Disorder. While the full facts and circumstances of the applicant's separation are not contained in the service record, the medical record indicates that the basis of separation was domestic violence. There is no natural sequela between Depression, Anxiety, Post Traumatic Stress Disorder and perpetrating domestic violence which is a violent act that involves a specific victim and reflects choice and motivation. Domestic violence is not mitigated by any of the applicant's Behavioral Health conditions.

**(4)** Does the condition or experience outweigh the discharge? **N/A**

**b.** Response to Contention(s):

**(1)** The applicant contends the narrative reason for the discharge needs changed. The Board liberally considered this contention and determined that the applicant's Depression, Anxiety, and Post Traumatic Stress Disorder does not outweigh the misconduct based on the seriousness of the applicant's offense of perpetrating domestic violence which is a violent act that involves a specific victim and reflects choice and motivation.

**(2)** The applicant contends being in a vulnerable and suicidal state while facing disciplinary action from the 1SG. The Board liberally considered this contention and determined that the applicant's Depression, Anxiety, and Post Traumatic Stress Disorder does not outweigh the misconduct based on the seriousness of the applicant's offense of perpetrating domestic violence which is a violent act that involves a specific victim and reflects choice and motivation.

**(3)** The applicant contends the 1SG harassed the applicant; denied the applicant an opportunity to speak with the chain of command; and pursued administrative separation because the applicant refused to accept an Article 15. The Board liberally considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided

evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention, to show/support. Therefore, a discharge upgrade is not warranted.

(4) The applicant contends pending an Article 32 hearing for a crime the applicant did not commit. The Board liberally considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention, to show/support. Therefore, a discharge upgrade is not warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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 of all the evidence before the Board, the Depression, Anxiety, and Post Traumatic Stress Disorder did not excuse or mitigate the seriousness of the applicant's offense of perpetrating domestic violence which is a violent act that involves a specific victim and reflects choice and motivation and found that totality of the applicant's record does not warrant a discharge upgrade. 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 discharge.

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**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:**

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

**AR20210000991**

8/14/2024

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