

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 alleged charges were unfounded by Family Advocate and CID. The applicant was due to be medically boarded.

b. **Board Type and Decision:** In a records review conducted on 2 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, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 10 October 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 7 April 2014

(2) **Basis for Separation:** The applicant was informed of the following reasons: Substantiated spousal abuse, including an aggravated assault on the spouse, after numerous professional interventions from both mental health and Emergency Services personnel, in addition to unit rehabilitative efforts.

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

(4) **Legal Consultation Date:** 14 April 2014

(5) **Administrative Separation Board:** NA / At the time of the initiation of the separation the applicant had 5 years and 7 months of service and was not eligible for an administrative separation board.

(6) **Separation Decision Date / Characterization:** 18 September 2014 / General (Under Honorable Conditions) / The separation authority carefully considered and reviewed the medical evaluation board proceedings, the administrative separation packet and recommendations of the chain of command and determined the applicant's medical condition was not the direct or substantial contributing cause of the conduct which led to the recommendation for administrative elimination, or other circumstances of the applicant's case warrant disability processing instead of further processing for administrative separation.

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 9 April 2010 / 5 years
- b. Age at Enlistment / Education / GT Score:** 29 / Associate Degree / 94
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 19K10 K4, M1 Armor Crewman / 6 years, 2 months
- d. Prior Service / Characterizations:** RA, 11 August 2008 – 8 April 2010 / HD
- e. Overseas Service / Combat Service:** Germany, SWA / Iraq (18 November 2009 – 21 August 2010)
- f. Awards and Decorations:** ARCOM, AGCM, NDSM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR-2
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report Number 025-25-2009-MPC014, 1 August 2009, reflects the applicant was apprehended and charged with Assault – Consummated by Battery (Article #128, UCMJ) (On Post); Spouse Abuse – Civilian Victim (Article #134, UCMJ) (On Post); Interference with Emergency Telephone Call (TPC, Title 9, Sec 42.062) (On Post); and Drunk/Disorderly – Bring Discredit (Article #134, UCMJ).

Initial Report / Incident Report, 25 October 2012, reflects a domestic altercation in the house of the applicant and spouse when the spouse was wrestled to the ground by the applicant and among others locked in the bathroom for about two hours. No visible injuries, therefore, the victim did not want to receive medical treatment.

FG Article 15, 5 March 2013, on or about 25 October 2012, willfully and wrongfully damage a cell phone by throwing it to the ground of a value less than \$500, the property of J. S. W; on or about 25 October 2012, commit an assault upon J. S. W. by choking with a means and force likely to produce death or grievous bodily harm on or about 25 October 2012; and willfully and wrongfully confine and hold J. S. W. a person not a minor against their will on or about 25 October 2012. The punishment consisted of a reduction to E-2; forfeiture of \$849 pay per month for two months (suspended); and extra duty for 7 days; oral reprimand.

Military Police Report Number 01688-212-MPC147, 26 October 2012, reflects the applicant was apprehended and charged with Aggravated Assault by Strangulation (Article 128, UCMJ) (Off Post); Spouse Abuse Civilian Victim (Article 134, UCMJ) (Off Post); and Obstruction of Justice – Interference with an Emergency Telephone Call (Article 134, UCMJ) (Off Post).

Memorandum of Record, 13 March 2013, reflects on 21 November 2012, the Case Review Committee reviewed an allegation of domestic abuse and determined it met the criteria for physical abuse. They recommended the following treatment for the applicant and spouse: Individual Counseling and Martial Counseling.

Military Police Report Number 00594-2013-MPC147, 2 May 2013, reflects the applicant was the subject of an investigation for Assault consummated by a Battery (Article 128, UCMJ); Spouse Abuse Civilian Victim (Article 134, UCMJ); and Communicating a Threat (Article 134, UCMJ).

Memorandum, Family Advocacy Case Review Committee (CRC) Incident Determination, 3 September 2013, reflects the CRC met on 28 August 2013 to review incident 20130088. The allegation was adult sexual abuse. The applicant was identified as the sponsor-offender. The CRC determined the incident did not meet criteria for sexual abuse. The CRC recommended the following treatment plan for the applicant: Individual counseling for SM/H at Graf BH and/or SWS/FAP.

Memorandum Closure / Transfer of Family Advocacy Program (FAP) Case Review Committee (CRC) File, 3 September 2013, reflects in accordance with the Army Regulation 608-18 (FAP), the CRC met on 28 August 2013 and determined the incident 20130088 did not meet the criteria for sexual abuse regarding the applicant. The incident was reviewed and closed by the CRC for the following identified reasons: Did not meet Criteria – Close.

CID Report of Investigation – Final, 25 September 2013, investigation established probable cause to believe the applicant committed the offense of Rape and Forcible Sodomy when the applicant forcefully engaged in sexual acts with the spouse without their consent.

Developmental Counseling Form, reflects the applicant was issued a no drinking alcohol order; off post pass privileges suspended; and incident relating to domestic disturbance.

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

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

(1) **Applicant provided:** Memorandum Re: [applicant], 11 March 2013, reflects a senior Army psychiatrist had evaluated and treated the applicant. The memorandum contains a diagnosis.

Report of Mental Status Evaluation (MSE), 7 March 2014, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The evaluation contains a diagnosis.

(2) **AMHRR Listed:** MSE as described in previous paragraph 4j(1).

Initial Post Traumatic Stress Disorder Disability Benefits Questionnaire, 23 May 2014, reflects a diagnosis.

Medical Evaluation Board Proceedings, 30 May 2014, reflects the applicant was referred to a Physical Evaluation Board (PEB) for two unfitting diagnoses.

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 293; DD Form 214; State of Illinois Department of Veterans Affairs document; Memorandum for Commander; nine third-party letters; Memorandum for Record; DA Form 3822; Orders 093-101; Assumption of Acting Command Memorandum; Memorandum Re: [applicant]; Family Advocacy Case Review Committee Incident Determination; Closure/Transfer of Family Advocacy Program Case Review Committee 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 14-3 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.

(6) 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 waivable. 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 contends the alleged charges were unfounded by Family Advocate and CID. The applicant provided Memorandum, Family Advocacy Case Review Committee (CRC) Incident Determination, 3 September 2013, which reflects the CRC met on 28 August 2013 to review incident 20130088. The allegation was adult sexual abuse. The applicant was identified as the sponsor-offender. The CRC determined the incident did not meet criteria for sexual abuse. The CRC recommended the following treatment plan for the applicant: Individual counseling for SM/H at Graf BH and/or SWS/FAP. Memorandum Closure / Transfer of Family Advocacy Program (FAP) Case Review Committee (CRC) File, 3 September 2013, reflects in accordance with the Army Regulation 608-18 (FAP), the CRC met on 28 August 2013 and determined the incident 20130088 did not meet the criteria for sexual abuse regarding the applicant. The incident was reviewed and closed by the CRC for the following identified reasons: Did not meet Criteria – Close. The AMHRR reflects Memorandum of Record, 13 March 2013, reflects on 21 November 2012 the Case Review Committee reviewed an allegation of domestic abuse and determined it met the criteria for physical abuse. They recommended the following treatment for the applicant and spouse: Individual Counseling and Martial Counseling. A CID Report of Investigation – Final, 25 September 2013, investigation established probable cause to believe the applicant committed the offense of Rape and Forcible Sodomy when the applicant forcefully engaged in sexual acts with the spouse without their consent. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the discharge should have been for medical reasons. The applicant provided Report of Mental Status Evaluation (MSE), 7 March 2014, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The evaluation contains a diagnosis. Memorandum Re: [applicant], 11 March 2013, reflects a senior Army psychiatrist had evaluated and treated the applicant. The memorandum contains a diagnosis. Medical Evaluation Board Proceedings, 30 May 2014, reflects the applicant was referred to a Physical Evaluation Board (PEB) for two unfitting diagnoses. On 18 September 2014, the separation authority carefully considered and reviewed the medical evaluation board proceedings, the administrative separation packet and recommendations of the chain of command and determined the applicant's medical condition was not the direct or substantial contributing cause of the conduct which led to the recommendation for administrative elimination, or other circumstances of the applicant's case warrant disability processing instead of further processing for administrative separation. All the medical documents in the AMHRR were considered by the separation authority. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

The third-party statements provided with the application reflect the applicant's hard work, good conduct, and character while serving in the Army.

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: PTSD, MDD, Depression, TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent service connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that after reviewing the available information, the applicant has BH conditions that could potentially mitigate applicant's misconduct as outlined in the BoS. The applicant has in-service diagnoses of PTSD, MDD, and mTBI, and is 70 percent SC for PTSD by the VA. However, the applicant's misconduct characterized by physical assault of applicant's spouse is not mitigated by either disorder because the misconduct is not natural sequela of either disorder. Additionally, record reflects the applicant with history physical assault of applicant's first spouse, prior to deployment. Regarding applicant's diagnosis of TBI, there is no evidence in the record that the condition was of a severity to impair judgement or cognition at the time of the misconduct. Finally, as related to the applicant's assertion that applicant should have been separated through medical channel, records reflect applicant was in fact undergoing the MEB process, however, applicant's command and the separation authority elected to separate applicant due to serious misconduct, which was within their authority.

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

b. Response to Contention(s):

(1) The applicant contends the alleged charges were unfounded by Family Advocate and CID. The Board considered this contention and found insufficient evidence to support the applicant had any experiences or BH conditions that could outweigh or excuse the applicant's substantiated spousal abuse, including aggravated assault on the spouse, numerous professional interventions from both mental health and emergency services personnel, in addition to unit rehabilitative efforts basis for separation. Therefore, the applicant's discharge is proper and equitable.

(2) The applicant contends the discharge should have been for medical reasons. The Board considered this contention and determined there is documentation in the file to support the applicant was determined unfit for duty due to right ankle pain due to synovitis. However, the separation authority carefully considered the applicant's misconduct and medical status and determined the applicant be separated from service. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct. The discharge is proper and equitable.

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 applicant's PTSD, MDD, Depression, and TBI did not excuse or mitigate the offenses of substantiated spousal abuse, including aggravated assault on the spouse, numerous professional interventions from both mental health and emergency services personnel, in addition to unit rehabilitative efforts. 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, and 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:

1/10/2025

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