

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

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

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

The applicant seeks relief contending, in effect, being falsely accused of sexual assault which led to the applicant suffering from depression and anxiety. The applicant also lost their family due to the accusation.

b. **Board Type and Decision:** In a records review conducted on 1 August 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 13 December 2013

c. **Separation Facts:**

(1) **Date and Charges Preferred (DD Form 458, Charge Sheet):** On 8 October 2013, the applicant was charged with:

Charge I: Violating Article 92, UCMJ:

Specification 1: On or about 17 February 2013, the applicant violated a lawful general regulation, to wit: paragraph 4-4a (2), Army Regulation 600-20, dated 20 September 2012, by having an inappropriate relationship with PFC C. M. M. who was the applicant's direct subordinate at the time.

Specification 2: On or about 1 March 2013, the applicant failed to obey a lawful general regulation, to wit: paragraph 4-14(b), Army Regulation 600-20, dated 20 September 2012, by wrongfully engaging in an improper relationship with SPC A. B.

Charge II: Violating Article 128, UCMJ. The Specification: On or about 13 July 2013, the applicant did assault SFC J. R. M. who then was and was then known by the applicant to be a person having and in the execution of military law enforcement duties, by pushing the said SFC M. and subsequently grabbing and squeezing the private parts.

Charge III: Violating Article 90, UCMJ. The Specification: On or about 18 July 2013, the applicant offered violence against CPT J. B., the superior commissioned officer, then known by the applicant to be the superior commissioned officer, who was then in the execution of their office, by flipping a table, removing the ACU blouse and moving towards the said CPT J. B.

**(2) Legal Consultation Date:** 29 October 2013

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

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

**(5) Separation Decision Date / Characterization:** 3 December 2013 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 1 March 2012 / 4 years

**b. Age at Enlistment / Education / GT Score:** 25 / High School Graduate / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 92A20, Automated Logistical Specialist / 7 years, 3 months, 22 days

**d. Prior Service / Characterizations:** RA, 22 August 2006 – 20 October 2008 / HD  
RA, 21 October 2008 – 29 February 2012 / HD

**e. Overseas Service / Combat Service:** SWA / Afghanistan (26 May 2007 – 5 April 2008)

**f. Awards and Decorations:** ACM-CS, ARCOM-2, AAM-2, MUC, AGCM-2, NDSM, GWOTSM, ASR, OSR, NATOMDL

**g. Performance Ratings:** 1 May 2011 – 30 April 2012 / Among the Best  
1 May 2012 – 21 December 2012 / Among the Best

**h. Disciplinary Action(s) / Evidentiary Record:** CID Report of Investigation – Final (c) /SSI-0322-2013-CID016-40347-6E4A/5Y2B3 / 5Y2E / 9G1 / 9G2F, 8 August 2013, investigation established probable cause to believe the applicant committed the offense of Cruelty and Maltreatment of Subordinates and Failure to Obey a Lawful Regulation (AR 600-20) when the applicant utilized the military rank for personal gain and had sexual intercourse with a junior Soldier. Investigation did not establish probable cause to believe the applicant committed the offense of sexual assault as the reported conduct did not constitute sexual assault.

Charge Sheet as described in previous paragraph 3c (1).

Memorandum for Record, 10 December 2013, reflects on 9 March 2013 the applicant's company initiated an investigation into allegations of adultery and inappropriate relationships which were made against the applicant. When PFC C. M. was asked to make a statement, they reported the applicant had sexually assaulted them around Valentine's Day of 2013. Upon further investigation evidence indicated the encounter had been consensual. Investigation into allegation of sexual assault was closed with a finding of no probable cause.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Madigan Army Medical Center letter, 29 October 2013, reflects the applicant has been in treatment with 4-2 Embedded Behavioral Health since 17 June 2013. The letter contains a diagnosis.

*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; Certificate of Release or Discharge from Active Duty; Memorandum for Record; third-party letter.

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

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

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

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

The applicant contends being falsely accused of sexual assault which led to the applicant suffering from depression and anxiety. The applicant also lost their family due to the false accusation. The applicant provided a Memorandum for Record, 10 December 2013, which reflects on 9 March 2013 the applicant's company initiated an investigation into allegations of adultery and inappropriate relationships which were made against the applicant. When PFC C. M. was asked to make a statement, they reported the applicant had sexually assaulted them around Valentine's Day of 2013. Upon further investigation evidence indicated the encounter had been consensual. Investigation into allegation of sexual assault was closed with a finding of no probable cause. A CID Report of Investigation, 8 August 2013, established probable cause to believe the applicant committed the offense of Cruelty and Maltreatment of Subordinates and Failure to Obey a Lawful Regulation (AR 600-20) when the applicant utilized the military rank for personal gain and had sexual intercourse with a junior Soldier. Investigation did not establish probable cause to believe the applicant committed the offense of sexual assault as the reported

conduct did not constitute sexual assault. The AMHRR shows Madigan Army Medical Center letter, 29 October 2013, reflects the applicant has been in treatment with 4-2 Embedded Behavioral Health since 17 June 2013. The letter contains a diagnosis. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The third-party statement provided with the application reflects the applicant's good character and hard work.

#### **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: Adjustment Disorder, Major Depressive Disorder with Anxiety.

**(2)** Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Major Depressive Disorder with Anxiety. The VA has service connected the Major Depressive Disorder.

**(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 an Adjustment Disorder and Major Depressive Disorder with Anxiety. The VA has service connected the Major Depressive Disorder. However, neither of the applicant's Behavioral Health conditions have a nexus with the misconduct that led to the applicant's separation. Major Depressive Disorder with Anxiety is a mood disorder that impacts mood, sleep, appetite, concentration, motivation, and enjoyment in activities, but it has no natural sequela with having inappropriate relationships, pushing and grabbing the private parts of a law enforcement official, or flipping a table. An Adjustment Disorder is a low-level, temporary difficulty coping with stressors that would not contribute to any of the misconduct that led to the applicant's separation. Accordingly, the applicant's Adjustment Disorder and Major Depressive Disorder with Anxiety provide no mitigation for the basis of separation.

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

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

**(1)** The applicant contends being falsely accused of sexual assault which led to the applicant suffering from depression and anxiety. The applicant also lost their family due to the false accusation. 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. Therefore, a discharge upgrade is not warranted.

**(2)** The third-party statement provided with the application reflects the applicant's good character and hard work. The Board liberally considered this contention and the applicant's four years of service, including a combat tour in Afghanistan and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's inappropriate

relationships, pushing and grabbing the private parts of a law enforcement official, or flipping a table.

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 Adjustment Disorder and Major Depressive Disorder with Anxiety did not excuse or medically mitigate the inappropriate relationships, pushing and grabbing the private parts of a law enforcement official, or flipping a table offenses.

(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:**

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