

**1. Applicant's Name:** [REDACTED]

- 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 the period under review is honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, receiving a memorandum signed by Major General (MG) J. O., indicating the applicant received an honorable discharge.

b. **Board Type and Decision:** In a records review conducted on 21 March 2024, and by a 5-0 vote, the Board determined the narrative reason for the applicant's separation is improper based on the applicant's Military Sexual Trauma and Intimate Partner Violence victimization outweighing the applicant's offenses an inappropriate relationship and disobeying a superior commissioned officer's lawful order. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF and a change to the reentry eligibility (RE) code to 3.

*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-4 / Honorable

b. **Date of Discharge:** 17 October 2014

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file. However, the applicant provided documents which are described below in 3c (6).

(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:** 9 October 2014 / Honorable / The separation memorandum reflects the applicant did file an unrestricted report of sexual assault within 24 months of initiation of the separation action and the separation does involve a medical

condition which is related to the sexual assault, to include Post-Traumatic Stress Disorder (PTSD).

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 11 May 2012 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 28 / Bachelor's Degree / 114
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 68W10, Health Care Specialist / 5 years, 26 days
- d. **Prior Service / Characterizations:** RA, 22 September 2009 – 10 May 2012 / HD
- e. **Overseas Service / Combat Service:** Belgium / None
- f. **Awards and Decorations:** AAM-2, MUC, AGCM, NDSM, GWOTSM, NCOPDR, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** General Officer Memorandum of Reprimand, 10 December 2013, reflects the applicant had an inappropriate relationship with Major J. T, a married person, and violated a superior commissioned officer's lawful order. An Army Regulation 15-6 revealed the applicant engaged in an inappropriate romantic relationship with MAJ T., and willfully disobeyed a lawful order to cease the relationship and have no contact with MAJ T.

Orders 280-0100, 7 October 2014, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 17 October 2014 from the Regular Army.

The applicant's Enlisted Record Brief (ERB), 19 November 2014, reflects the applicant was flagged for Involuntary Separation or Discharge (Field Initiated) (BA), effective 11 December 2013, and Adverse Action (AA), effective 28 April 2014; and was ineligible for reenlistment because of Pending Separation (9V).

The applicant's DD Form 214, 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 not authenticated with the applicant's signature.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**
  - (1) **Applicant provided:** The separation memorandum as described in previous paragraph 3c(6).
  - (2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 149; DD Form 293; separation approval memorandum (two copies); Enlisted Record Brief; enlistment documents; temporary change of station (TCS) orders, Afghanistan; NATO Travel Order; revocation of TCS orders; Service School Academic Evaluation Report; separation orders; two memorandums responding

to request for redacted Criminal Investigation Division (CID) report; Army Review Boards Agency Case Tracking System data page.

**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)** 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.

**(4)** 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.

**(5)** 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.

**(6)** Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

**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).

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.

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 current characterization of service for the period under review is 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 not authenticated by the applicant's 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 honorable.

The applicant contends the separation authority directed an honorable discharge.

#### **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: Anxiety Disorder NOS, PTSD, MST, IPV, Major Depression.

(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 Anxiety Disorder NOS, Major Depression, and PTSD. The active-duty medical record also reveals in service MST and IPV, and the VA has service connected the applicant's PTSD related to MST.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's BH

conditions and experiences mitigate the discharge. There is a nexus between MST and seeking comfort in relationships even if they are inappropriate, so the applicant's MST mitigates fraternization. There is also evidence of IPV, which has a nexus with fear and powerlessness. There is documented evidence in the applicant's active-duty medical record that the experience of IPV contributed to disobeying a lawful order from a commissioned officer to end the relationship. Therefore, disobeying a lawful order is also mitigated.

**(4)** Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Military Sexual Trauma and Intimate Partner Violence victimization outweighed the applicant's offenses an inappropriate relationship and disobeying a superior commissioned officer's lawful order.

**b.** Response to Contention(s): The applicant contends the discharge authority directed an honorable discharge. The current characterization of service for the period under review is honorable. The Board considered this contention but found that the applicant received the requested upgrade from a prior ADRB. As part of the Board's review of the file, the Board Medical Advisor examined the applicant's medical record and opined that medical mitigation exists. The Board liberally considered the applicant's behavioral health and experiences and determined that the applicant's Military Sexual Trauma and Intimate Partner Violence victimization outweighed the applicant's offenses to include an inappropriate relationship and disobeying a superior commissioned officer's lawful order. Therefore, an upgrade to the applicant's narrative reason for separation is warranted.

**c.** The Board determined the narrative reason for the applicant's separation is improper based on the applicant's Military Sexual Trauma and Intimate Partner Violence victimization outweighing the applicant's offenses to include an inappropriate relationship and disobeying a superior commissioned officer's lawful order. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF and a change to the reentry eligibility (RE) code to 3.

**d.** Rationale for Decision:

**(1)** The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable. No further relief is available.

**(2)** The Board voted to change the reason for discharge to Secretarial Authority due to the applicant's Military Sexual Trauma and Intimate Partner Violence victimization outweighing the applicant's offenses to include an inappropriate relationship and disobeying a superior commissioned officer's lawful order. Thus, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

**(3)** The RE code will change to RE-3.

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

**AR20210001397**

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

**Authenticating Official:**



Army Discharge Review Board

Signed by: USA

**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