

**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, requesting reinstatement to active duty with no break in service because of due process and fairness. The applicant contends it took more than 30 days to receive a response from the Article 15 appeal authority. The turnaround should have been five working days. The turnaround for chapter packets should have been up to ten working days. The chapter packet was approved and finalized within two days. Leaving very little time to recant the plea bargain arrangement and request a formal hearing. The applicant states the Rear Detachment Commander who initiated all legal actions did not have Uniform Code of Military Justice authority. The applicant was not under their command at the time of the alleged incident or when the chapter process was initiated. The alleged incident occurred a year prior, and the applicant was transferred to another battalion after the Article 15 was finalized.

b. **Board Type and Decision:** In a records review conducted on 4 January 2023, 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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 10 January 2013

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 31 July 2012

**Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully assaulted spouse by slapping.

The applicant was derelict in the performance of their duties from on or about 1 November 2011 to on or about 3 May 2012.

The applicant failed to report on multiple occasions.

The applicant failed to obey a lawful order given by their commander, CPT M., to pay child support.

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

**(3) Legal Consultation Date:** 1 August 2012

**(4) Administrative Separation Board:** On 1 August 2012, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

**(5) Separation Decision Date / Characterization:** 4 October 2012 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 22 March 2011 / 3 years

**b. Age at Enlistment / Education / GT Score:** 39 / High School Graduate / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-6 / 42A3S, Human Resources Specialist / 16 years, 2 months, 15 days

**d. Prior Service / Characterizations:** USAR, 26 October 1996 – 30 July 2002 / NA  
RA, 31 July 2002 – 9 June 2010 / HD  
RA, 10 June 2005 – 10 September 2008 / HD  
RA, 11 September 2008 – 21 March 2011 / HD

**e. Overseas Service / Combat Service:** Alaska, SWA / Iraq (17 March 2010 – 26 October 2010); Kuwait (18 January 2003 – 31 July 2003; 15 January 2005 – 3 December 2005)

**f. Awards and Decorations:** ICM-2CS, MSM, ARCOM-4, AAM, MUC, AGCM-2, ARCAM, NDSM, GWOTEM, GWOTSM, NCOPDR-3, ASR, OSR

**g. Performance Ratings:** 23 April 2011 – 22 April 2012 / Marginal

**h. Disciplinary Action(s) / Evidentiary Record:** Report of Mental Status Evaluation, 10 May 2012, 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 applicant did not have a severe mental disorder and was not considered mentally disordered. However, had a long-standing disorder of character, behavior, and adaptability. The applicant had been screened for substance use disorders (alcohol and drugs). The applicant indicated some understanding of the reason for the chapter and chapter process. The applicant displayed no significant difficulties completing a mental status evaluation including orientation and reverse memory tasks. The applicant expressed a desire to remain in the Army but understood the possibility of being separated. If separated, the applicant had a desire to be a police officer, but the chapter under misconduct would probably prevent this. Otherwise, the applicant had no sense of what their plans would be except work. The applicant was polite and cooperated. A review of medical records indicated a behavioral health diagnosis which would not impact their capacity to understand the chapter process. Based on the

interview, the applicant was cleared by a Behavioral Health Specialist to proceed with the Chapter 14-12C.

FG Article 15, 1 June 2012, for on or about 1 November 2011, to on or about 3 May 2012, were derelict in the performance of those duties. The applicant negligently failed to process leave forms for 2-3 77th PFAF. On or about 14 June 2011, unlawfully struck spouse, on the face with their hand. The punishment consisted of a reduction to E-5; forfeiture of \$1,497 pay per month for two months (suspended); and extra duty and restriction for 30 days.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; self-authored letter; separation file.

**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 1-7 Processing goals states processing time for separations when the notification procedure is used will not normally exceed 15 working days. Processing time when the administrative board procedure is used will not normally exceed 50 working days. Processing time will be measured from the date the Soldier acknowledges receipt of the notification of the proposed separation to the date the separation authority directs separation. (See para 2-2h concerning the receipt of notification. Shorter processing times are encouraged, particularly for cases in which prompt action is likely. Failure to process an administrative separation within these timeframes will not prevent separation or characterization of service. DA Form 5138 is used to ensure processing goals are met.

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

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

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

(5) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(6) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(7) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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 contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct" and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly 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 it took more than 30 days to receive a response from the Article 15 appeal authority. The turnaround should have been five working days. The applicant's issue does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

The applicant contends the turnaround for chapter packets should have been up to ten working days. The chapter packet was approved and finalized within two days. AR 635-200 Chapter 1-7 Processing goals states processing time for separations when the notification procedure is used will not normally exceed 15 working days. The processing time will be measured from the date the Soldier acknowledges receipt of the notification of the proposed separation to the date the separation authority directs separation. Shorter processing times are encouraged, particularly for cases in which prompt action is likely. Failure to process an administrative separation within these timeframes will not prevent separation or characterization of service. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends not having enough time to request a formal hearing. Evidence in the AMHRR reflect on 2 October 2012, the applicant waived their rights to have their case determined by an administrative separation board.

The applicant states the Rear Detachment Commander (who initiated all legal actions) did not have Uniform Code of Military Justice authority. The applicant was not under their command at the time of the alleged incident or when the chapter process was initiated. The alleged incident occurred a year prior, and the applicant was transferred to another battalion after the Article 15 was finalized. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant requests reinstatement to active duty with no break in service because of due process and fairness. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR) using a DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

## **9. BOARD DISCUSSION AND DETERMINATION:**

a. As directed by the 2017 memo signed by [REDACTED] 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Delusional Disorder and Psychosis NOS.

(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 a Delusional Disorder and Psychosis NOS.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with a Delusional Disorder and Psychosis NOS, which was later determined to be a result of underlying personality disorder characteristics. Nonetheless, the applicant was experiencing psychotic symptoms reflective of being out of touch with reality. Given the nexus between Psychosis and impaired functioning, the applicant's FTRs and being derelict in the performance of duties are mitigated. There is no evidence that the applicant's Psychosis or Delusional Disorder contributed to the applicant assaulting the applicant's spouse or not following an order to pay child support, so this misconduct is not mitigated.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Delusional Disorder and Psychosis outweighed the medically unmitigated offenses of assaulting the applicant's spouse or not following an order to pay child support.

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

(1) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but determined that the applicant committed multiple medically unmitigated offenses over time. Therefore, the Board found that the pattern of misconduct narrative is proper and equitable.

(2) The applicant contends it took more than 30 days to receive a response from the Article 15 appeal authority. The turnaround should have been five working days. The Board considered this contention but found no evidence that the Article 15 appeal delay prejudiced the applicant.

(3) The applicant contends the turnaround for chapter packets should have been up to ten working days. The chapter packet was approved and finalized within two days. The Board considered this contention but found that the applicant voluntarily waived an administrative separation board. Therefore, a discharge upgrade is not warranted.

(4) The applicant contends not having enough time to request a formal hearing. The Board considered this contention but determined that the applicant voluntarily waived an administrative separation board and that the applicant did so with advisement from counsel.

(5) The applicant states the Rear Detachment Commander, who initiated all legal actions, did not have Uniform Code of Military Justice authority. The applicant was not under their command at the time of the alleged incident or when the chapter process was initiated. The alleged incident occurred a year prior, and the applicant was transferred to another battalion after the Article 15 was finalized. The Board considered this contention but determined that Army Regulation 635-200 does not prohibit a commander from administratively separating a Soldier for misconduct committed under a previous command.

(6) The applicant requests reinstatement to active duty with no break in service because of due process and fairness. The Board determined that the applicant's request for reinstatement does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

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c. The Board determined that the discharge is, at this time, proper and equitable, considering 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 Delusional Disorder and Psychosis did not outweigh the medically unmitigated offenses of assaulting the applicant's spouse and not following an order to pay child support. The Board considered the totality of the applicant's service record but found it did not warrant a discharge upgrade. The Board found that the applicant's contentions of improprieties in the separation process were not supported by the available evidence. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, 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:**

1/10/2024

X

Presiding Officer, COL, U.S. ARMY  
Army Discharge Review Board

**Legend:**

AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division

ELS – Entry Level Status  
FG – Field Grade Article 15  
GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma

N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified  
OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)

OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial



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SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury

UNC – Uncharacterized  
Discharge

UOTHC – Under Other Than  
Honorable Conditions

VA – Department of Veterans  
Affairs