

**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, is currently incarcerated for a felony sex offense. The applicant has been in treatment for this crime and believes the criminal conduct was a result of compounded issues. Prior to the applicant's first combat deployment in October 2003, the applicant was a loyal spouse and dedicated parent of two. While deployed, the combat stresses the applicant was exposed to caused raised agitation, hyper vigilance, anger out bursts, and some emotional numbing. As a result, the time between deployments was full of domestic issues, infidelity, a temporary separation with the spouse and exploration of deviant sexual interest. During the second tour to Iraq the unit suffered significant losses. The platoon was reduced to 25 percent combat effectiveness. On 2 August 2007, the Stryker was struck by a catastrophic IED which killed four members and four others were evacuated with severe injuries. The applicant was treated at the CSH Green Zone Baghdad. This event significantly compounded the applicant's already existent PTSD. On 16 August 2007, the applicant met with a clinical psychologist and advised the applicant to be seen by a medical board and the applicant not be deployed to a combat theater again. When they brought this to the chain of command, the applicant was told they could not afford to lose anymore trained NCO's, and the applicant needed to suck it up and drive on. The applicant received a Purple Heart and Bronze Star downgrade to ARCOM with Valor for this incident and remained in theater and on mission until October 2007. When the applicant returned home the applicant believed they were wired wrong, and nothing was real. The applicant did not connect to their loved ones, cared little about the role in the military and lost connection to everything. The applicant became sexually aroused to an underage member of their own family and could not understand why. The applicant did not act on these issues until they learned the unit was scheduled for a third tour in Iraq. After the devastation of the second tour, the applicant did not expect to survive. The applicant deployed for the third time, accepting their imminent death removed the fear of consequences. The applicant has been in treatment for both PTSD and sexual deviancy since being incarcerated. The treatment has shown the applicant the PTSD and possible TBI were directly linked to the criminal behavior. The VA has awarded the applicant 70 percent disability rating for PTSD. The applicant could have pressed the issue about being kept in country; however, feared it would jeopardize their career.

b. **Board Type and Decision:** In a records review conducted on 9 January 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 / Under Other Than Honorable Conditions

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

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant raped their seven year old child on five separate occasions and sexually exploited the child on one occasion.

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

(4) **Legal Consultation Date:** 24 May 2012

(5) **Administrative Separation Board:** On 24 May 2012, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) **Separation Decision Date / Characterization:** 7 November 2012 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 26 February 2007 / 6 years

b. **Age at Enlistment / Education / GT Score:** 27 / High School Graduate / 117

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 11B2P, Infantryman / 13 years, 4 months, 3 days

d. **Prior Service / Characterizations:** RA, 18 August 1999 – 7 January 2003 / HD  
RA, 8 January 2003 – 18 June 2004 / HD  
RA, 19 June 2004 – 25 February 2007 / HD

e. **Overseas Service / Combat Service:** SWA / Iraq (1 November 2003 – 15 November 2004; 19 June 2007 – 4 October 2007; 26 July 2009 – 2 June 2010)

f. **Awards and Decorations:** ICM-4CS, ARCOM-V, ARCOM-2, PH, AAM-3, AGCM-3, NDSM, GWOTSM, GWOTEM, NCOPDR-2, ASR, OSR-3, CIB, EIB

g. **Performance Ratings:** 1 September 2006 – 31 August 2007 / Fully Capable  
1 September 2007 – 31 August 2008 / Among the Best  
1 September 2008 – 31 August 2009 / Fully Capable  
1 September 2009 – 31 August 2010 / Fully Capable  
1 September 2010 – 28 February 2011 / Among the Best

h. **Disciplinary Action(s) / Evidentiary Record:** Mental Status Evaluation, 4 January 2012, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear thinking process and had the mental capacity to understand and participate in the proceedings.

State of Washington Department of Corrections Pre-Sentence Investigation, 19 September 2012, reflects the applicant was formally charged with five Counts of Rape of a Child in the First Degree (Count I, II, III, IV and V), and one count of Sexual Exploitation of a Minor (Count IV) by the Pierce County Prosecuting Attorney's Office. On 24 August 2012, an Amended Information was filed in Pierce County court wherein the applicant was formally charged with two Count of Rape of a Child in the First Degree – Domestic Violence (Count I and II) and one Count of Assault of a Child in the Third Degree – Domestic Violence (Count III). On the same day the applicant pled guilty to those charges (Count I, II, and III). The applicant is currently incarcerated in the Pierce County Jail, and will be sentenced on this cause on 5 October 2012.

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

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

(1) **Applicant provided:** Health Record, Chronological Record of Medical Care, 16 August 2007, Mental Status Examination: Axis I: Posttraumatic Stress Disorder (Acute), Axis III: Possible TBI; Axis IV: Combat/Operational Stress; Significant Combat Exposure; Multiple Near Death Events. It was noted: Recommend follow-up with psychiatrist while in Theater; Recommend follow-up with both psychiatry and psychology upon return to garrison; This applicant should not deploy again to this theater of operations; and consideration should be given to a Medical Board.

VA Rating Decision, 8 June 2016, reflects the applicant was granted 70 percent service-connected disability for PTSD.

State of Washington Department of Veterans Affairs, Traumatic Brain Injury Program, undated, reflects the applicant was diagnosed with PTSD. It was noted the applicant's accounts also recall having been exposed to significant incidents to which there would be sufficient reason to suspect the applicant incurred a brain injury. It was the professional opinion there was little doubt the applicant's PTSD was complicated by the presence of a brain injury.

(2) **AMHRR Listed:** Report of Medical Examination, 4 January 2012, the examining medical physician noted in the comments section: history of PTSD and Anger Management since 2007.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293; self-authored statement; DD Form 214; one party letter; Health Record; VA Rating Decision.

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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

The applicant requests an upgrade to honorable.

The applicant contends good service, including three combat tours.

The applicant contends family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends according to medical records, they should not have been deployed as of 16 August 2007. The applicant provided Health Record, Chronological Record of Medical Care, 16 August 2007, Mental Status Examination: Axis I: Posttraumatic Stress Disorder (Acute), Axis III: Possible TBI; Axis IV: Combat/Operational Stress; Significant Combat Exposure; Multiple Near Death Events. It was noted: Recommend follow-up with psychiatrist while in Theater; Recommend follow-up with both psychiatry and psychology upon return to garrison; This applicant should not deploy again to this theater of operations; and consideration should be given to a Medical Board.

The applicant contends suffering from PTSD and TBI. The applicant provided VA Rating Decision, 8 June 2016, which reflects the applicant was granted 70 percent service-connected disability for PTSD. State of Washington Department of Veterans Affairs, Traumatic Brain Injury Program, undated, reflects the applicant was diagnosed with PTSD. It was noted the applicant's accounts also recall having been exposed to significant incidents to which there would be sufficient reason to suspect the applicant incurred a brain injury. It was the professional opinion there was little doubt the applicant's PTSD was complicated by the presence of a brain injury. The AMHRR contains Mental Status Evaluation (MSE), 4 January 2012, which reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear thinking process and had the mental capacity to understand and participate in the proceedings. Report of Medical Examination, 4 January 2012, the examining medical physician noted in the comments section: history of PTSD and Anger Management since 2007. The applicant's Health Record, MSE and Report of Medical Examination were considered by the separation authority.

The third-party statement provided with the application is from the applicant's parent which outlines the applicant's behavior before and after the deployments.

## 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, Anxiety Disorder, Depression NOS.

(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 the applicant is 70 percent SC for PTSD and has potentially mitigating diagnoses of Anxiety Disorder and Depression NOS. However, as rape and sexual exploitation of a child is not natural sequela of PTSD, Anxiety Disorder, or Depression, the applicant misconduct is not mitigated by either disorder. While the applicant asserts TBI, documentation in the record refute the applicant's

claim and the VA TBI examiner found the applicant did not meet criteria for TBI/TBD. Records are void of the applicant having any condition that rendered applicant unable to differentiate between right and wrong and adhere to the right.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's PTSD, Anxiety Disorder, and Depression NOS did not outweigh the basis of separation - rape and sexual exploitation of a child.

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

(1) The applicant contends good service, including three combat tours. The Board considered the applicant's 13 years of service, including 3 combat tours in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's rape and sexual exploitation of a child basis for separation.

(2) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention and determined that the applicant's family issues does not mitigate the applicant's rape and sexual exploitation of a child basis for separation. as the Army affords many avenues to Soldier's including seeking separation for hardship.

(3) The applicant contends according to medical records, they should not have been deployed as of 16 August 2007. The Board considered this contention and determined the applicant's records show a provider recommended the applicant not deploy due to applicant's PTSD and TBI, however, neither BH condition excuses or mitigates the applicant's rape and sexual exploitation of a child, the applicant's basis for separation.

(4) The applicant contends suffering from PTSD and TBI. The Board considered this contention and determined the applicant has diagnoses for PTSD and TBI, however neither BH condition excuses or mitigates the applicant's rape and sexual exploitation of a child basis for separation.

**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, Anxiety Disorder, Depression NOS did not excuse or mitigate the rape and sexual exploitation of a child offense. 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge.

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

**AR20210001421**

(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:**

4/29/2024

**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