

1. Applicant's Name:

- a. **Application Date:** 26 April 2023
- b. **Date Received:** 26 April 2023
- 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, of being accused of a serious crime while on leave from Iraq and was discharged six months prior to a verdict in the case. Ultimately, all charges were dropped and the premature decision by the separation authority to discharge the applicant with an under other than honorable conditions characterization prior to the conclusion in the case was unfair. The applicant did not commit any crime and the court dropped all the charges against the applicant. All the accusations were false. Prior to the false accusation, the applicant never had any negative evaluations or non-judicial punishment. Due to the consequences of this bad discharge, the applicant has lost education and health benefits which the applicant deserves.

b. **Board Type and Decision:** In a records review conducted on 18 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:** 24 January 2008

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 20 August 2007

(2) **Basis for Separation:** The applicant was informed of the following reason: The applicant sexually assaulted their child, who was under 16 years of age at the time of the act. Such conduct was considered commission of a serious offense.

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

(4) **Legal Consultation Date:** 15 October 2007

(5) **Administrative Separation Board:** On 15 November 2007, the applicant was notified to appear before an administrative separation board and advised of rights.

On 20 December 2007, the administrative separation board convened, and the applicant appeared with counsel. The Board determined by unanimous consent that the applicant, by a preponderance of the evidence did commit offenses congruent with a commission of serious offense under the provisions of AR 635-200, Chapter 14-12c. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions. It was noted: In the event the applicant is exonerated in Lee County Criminal Court, The Board recommends application be made for review of the characterization of service. This Board is also concerned this Soldier's chain of command has not checked on this Soldier's welfare since incarceration.

On 9 January 2008, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 9 January 2008 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 20 April 2005 / NIF
- b. **Age at Enlistment / Education / GT Score:** 24 / NIF / 100
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 11C10, Indirect Fire Infantry / 1 year, 11 months, 28 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Dixon Police Department Incident Report, 13 September 2006, reflects the applicant was arrested and being charged with the offense of Predatory Criminal Sexual Assault of a Child, the defendant, who was 17 years of age or older, committed an act of sexual penetrating with M. H. M. was under 13 years of age when the act was committed, the defendant attempted to place the private part into the private part of M. H. M., in violation of 720 ILCS 5/12-14.1(a)(1), said offense being a Class X Felony.

Personnel Action Form, reflect the applicant's duty status changed as follows: From "Present for Duty (PDY)," to "Confined by Civilian Authorities (CCA)" effective 18 April 2007.

Report of Proceedings by Board of Officers, 9 January 2008, reflects the Board determined by unanimous consent the applicant, by a preponderance of the evidence did commit offenses congruent with a commission of serious offense under the provisions of AR 635-200, Chapter 14-12c. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions. It was noted: In the event the applicant is exonerated in Lee County Criminal Court, the Board recommended application be made for review of the characterization of service. The Board was also concerned the applicant's chain of command has not checked on this Soldier's welfare since incarceration.

The applicant provided a copy of Circuit Court of the Fifteenth Judicial Circuit Lee County Illinois document, which reflects on 7 August 2008, the People of the State of Illinois by P. T. W., State's Attorney, moved to nolle prosequi the entitled cause due to review of evidence considering suppression of defendant's confession. On Motion of the State's attorney, the above entitled cause was nolle prosequi, and any outstanding warrants are were recalled and quashed.

i. Lost Time / Mode of Return: 9 months, 6 days (CCA, 18 April 2007 – 24 January 2008)
/ Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Mental Health Provider letter, 16 February 2015, reflects the applicant was receiving therapeutic services beginning on 22 September 2014. The applicant presented with observed and reported symptoms consistent with Post Traumatic Stress Disorder according to the Diagnostic and Statistical Manual of Mental Health Disorders. Due to the frequency and severity of symptoms, it was recommended the applicant continue to seek therapeutic treatment to directly address symptoms of PTSD and resulting emotional distress.

The Center for Veterans and their Families at Rush letter, 22 April 2015, reflects the applicant was being treated at Rush University Hospital Road Home Program on an outpatient basis. A through psychiatric evaluation was conducted and the applicant was diagnosed with PTSD and Major Depressive Disorder. The applicant was also being evaluated for a suspected Traumatic Brain Injury.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; DD Form 214; separation packet; DA Form 31; Orders 016-0161; ERB; DD Form 93; SGLV-8286; three VFW Letters; Court documents; ARBA 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 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 non-waiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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 non-waiverable 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 of 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 contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be 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 good service, including a combat tour. The applicant further contends that prior to the false accusation, the applicant had never had any negative evaluations or non-judicial punishment.

The applicant contends being discharged six months prior to a verdict in the case. Ultimately all charges were dropped and the premature decision by the separation authority to discharge the applicant prior to a conclusion of the case was unfair. The applicant provided a copy of Circuit Court of the Fifteenth Judicial Circuit Lee Count Illinois document, which reflects on 7 August 2008, the People of the State of Illinois by P. T. W., State's Attorney, and moved to nolle prosequi the entitled cause due to review of evidence considering suppression of defendant's confession. On Motion of the State's attorney, the above entitled cause was nolle prosequi, and any outstanding warrants were recalled and quashed. The AMHRR contains Report of Proceedings by Board of Officers, 9 January 2008, which reflects the Board determined by unanimous consent the applicant, by a preponderance of the evidence did commit offenses congruent with a commission of serious offense under the provisions of AR 635-200, Chapter 14-12c. The Board recommended the applicant's discharge with characterization of service of under other than honorable conditions. It was noted: In the event the applicant is exonerated in Lee County Criminal Court, the Board recommended application be made for review of the characterization of service. The Board was also concerned the applicant's chain of command had not checked on the applicant's welfare since incarceration. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the DD Form 214 does not reflect service in Iraq and requests the rank of E-4 be restored. The applicant's requested changes to the DD Form 214 do 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 requests a reentry eligibility (RE) code change. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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, Major Depressive Disorder, TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found evidence of diagnoses of PTSD, Major Depressive Disorder, and TBI. The applicant asserts that the conditions existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board Medical Advisor opined that the applicant's PTSD, MDD, and TBI do not mitigate the applicant's offense of sexually assault against a minor as there is no natural sequela between these behavioral health conditions and perpetrating sexual assault against a minor since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, to include the Board's Medical Advisor opine, the ADRB determined that the applicant's PTSD, MDD, or TBI did not outweighed the applicant's medically unmitigated offense of sexually assaulted their child.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined that a narrative change is not warranted because, while the applicant's civilian criminal case was dismissed based on insufficient evidence (based on applicant's confession suppressed) , the evidentiary standard and the rules of evidence required in a civilian criminal case is higher than required in an administrative separation action. The Board determined that the administrative separation board finding that the applicant committed the misconduct by preponderance of the evidence was in accordance with AR 635-200, paragraph 14-12c.

(2) The applicant contends good service, including a combat tour. Further, the applicant contends that, prior to the false accusation, the applicant had never had any negative evaluations or non-judicial punishment. The Board considered the applicant's one(1) year of

service and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's offense of sexual abuse of a child.

(3) The applicant contends being discharged six months prior to a verdict in the case. Ultimately all charges were dropped and the premature decision by the separation authority to discharge the applicant prior to a conclusion of the case was unfair. The Board considered this contention and determined the separation authority's decision was proper and equitable based on the evidence referenced in paragraph 3c(5) above and in accordance with AR 635-200, paragraph 14-12c. Dismissal of the applicant's civilian criminal case does not prove the event did or did not take place. 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

(4) The applicant contends the DD Form 214 does not reflect service in Iraq and the applicant requests the rank of E-4 be restored. The Board determined that the applicant's requested change to the DD Form 214 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.

(5) The applicant requests a reentry eligibility (RE) code change. The Board considered this contention and voted to maintain the RE-code to a RE-3, which is a waivable code, due to the need for the applicant's BH conditions to be re-evaluated prior to re-entry into military service. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate.

(6) The applicant contends an upgrade would allow educational benefits through the GI Bill and veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare, or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

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, Major Depressive Disorder, and TBI did not outweigh the applicant's medically unmitigated offense of sexual abuse of a child. The Board also considered the applicant's contention regarding being discharged six months prior to a civil court verdict and found that the Separation Authority action were proper in accordance with AR 635-200, paragraph 14-12c. Further, the Board found that the totality of the applicant's record does not warrant a discharge upgrade. 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

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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.

(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 as the offenses of sexual abuse of a child is Misconduct (Serious Offense).

(3) The RE code will remain at RE-3, due to the need for the applicant's BH conditions to be re-evaluated prior to re-entry into military service.

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:

6/11/2024

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

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs