

**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 the under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, a desire to receive full GI Bill benefits. In March 2013, the applicant sought help from behavioral health for their issues at home. The applicant successfully finished anger management at Family Advocacy and took daily medication for an anxiety disorder. The applicant states informing their commander the group therapy and medication had improved the applicant's mental condition. The applicant requested to continue serving their country; however, their request was denied. The applicant states being a better citizen, spouse, and parent.

**b. Board Type and Decision:** In a records review conducted on 2 November 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 20 June 2014**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 20 November 2013

**(2) Basis for Separation:** The applicant was informed of the following reasons: On 30 November 2012, the applicant drove while intoxicated.

The applicant assaulted spouse on 1 December 2012, and 6 May 2013.

On 5 May 2013, the applicant threatened to stab spouse with a pencil, and throw acid in the spouse's face.

On 7 May 2013, the applicant violated a Military Protective order issued by CPT K., to have no contact with the spouse.

The applicant failed to report to duty on 1 December 2012, and 2 December 2012.

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

**(4) Legal Consultation Date:** 25 November 2013

**(5) Administrative Separation Board:** On 11 February 2013, and 22 January 2014 the applicant was notified to appear before an administrative separation board and advised of rights.

On 25 November 2013, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable discharge.

On 20 February 2014, the administrative separation board convened, and the applicant appeared with counsel. The Board determined two of the seven reasons listed in the notification memorandum were not supported by a preponderance of the evidence. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions).

On 4 April 2014, the separation authority approved the findings and recommendations of the administrative separation board.

**(6) Separation Decision Date / Characterization:** 4 April 2014 / General (Under Honorable Conditions) / The separation authority after having reviewed both the administrative separation packet and the medical evaluation board proceedings pertaining to the applicant, the separation authority determined the Soldier's medical condition was not a direct or substantial contributing cause of the conduct which led to the recommendation for administrative separation. The separation authority also determined there are no other circumstances in this case which would warrant disability processing instead of further processing for administrative separation.

#### **4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 10 October 2009 / NIF

**b. Age at Enlistment / Education / GT Score:** 27 / High School Graduate / 112

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 92G10, Food Service Specialist / 7 years, 1 month, 25 days

**d. Prior Service / Characterizations:** RA, 26 April 2007 – 9 October 2009 / HD

**e. Overseas Service / Combat Service:** SWA / Iraq (7 January 2009 – 25 November 2009)

**f. Awards and Decorations:** ARCOM, AAM-2, MUC, NDSM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 30 November 2012, reflects the applicant was apprehended for: Driving Under the Influence of Alcohol and/or refusal (on post).

General Officer Memorandum Of Reprimand, 6 February 2013, reflects on or about 30 November 2012, the applicant was apprehended by military law enforcement officials on Joint Base Lewis-McChord, Washington, for suspicion of driving under the influence of alcohol. The applicant was administered a Standardized Field Sobriety Test which indicated impairment. The applicant was arrested and transported to the Joint Base Lewis-McChord Military Police Station where the applicant attempted to submit to a lawfully requested breathalyzer test but could not register. After several attempts the applicant quit trying and recorded as a refusal.

Military Police Report, 7 May 2013, reflects the applicant was apprehended for: Assault, Domestic Violence; Spouse abuse civilian victim (on post).

Military Protective Order, 7 May 2013, reflects the applicant's commander directed the applicant to make no contact with spouse, except through the commander or a third party approved by the commander.

Developmental Counseling Forms, for violation of 72 hour cool down period and failure to obey order.

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

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

**(1) Applicant provided:** Medical documents from the OTC Medical Group, 10 July 2013, reflect a diagnosis of Axis I: Anxiety Disorder with Alcohol Abuse in early remission.

**(2) AMHRR Listed:** Report of Medical Examination and History, 29 April 2014, the examining medical physician noted in the comments section: Anxiety disorder and suicide attempt.

Report of Mental Status Evaluation, 20 May 2013, 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. The applicant had been screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Chronic Adjustment Disorder, Alcohol Dependence. The applicant presented on 19 March 2013, for a mental status evaluation IAW AR 635-200, chapter 1-32 (b) because the applicant was being considered for administrative separation under AR 635-200, chapter 14. From a behavioral health perspective, the applicant did not meet the medical fitness standards for retention due to a Chronic Adjustment Disorder IAW the release of updated DoDI 1332.38 and new guidance from the OTSG. The Chronic Adjustment Disorder is of sufficient severity to interfere with effective military performance and necessitate limitations of duty. A permanent profile had been initiated to enter the applicant into the IDES system. Further processing of the administrative separation IAW 635-200 Chapter 1-33 and ALARACT 159/2012 was recommended. Restrict access to or disarm all weapons and ammunition (including those which are privately owned). Prohibit the use of alcohol as alcohol is a CNS depressant and may impair inhibitions and judgment. Inspect the service member's quarters and secure all hazardous items (e.g., pills, knives, razors, weapons, etc.). Move the service member into the barracks and provide continuous monitoring. SM already involved in ASAP.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293 and medical records.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant contends becoming a better citizen, spouse, and parent.

**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)** 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.

**(5)** 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.

**(6)** 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-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

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

The applicant contends suffering from an Anxiety Disorder. The applicant provided medical documents from the OTC Medical Group, 10 July 2013, reflecting a diagnosis of Axis I: Anxiety Disorder with Alcohol Abuse in early remission. The applicant's AMHRR contains a Report of Mental Status Evaluation, 20 May 2013, reflecting a diagnosis of Chronic Adjustment Disorder, Alcohol Dependence. Also, a Report of Medical Examination and History, 29 April 2014, wherein the examining medical physician noted in the comments section: Anxiety disorder and suicide attempt. The mental status report was considered by the separation authority.

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 becoming a better citizen, spouse, and parent. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

#### **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, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, Dysthymic Disorder, Anxiety Disorder NOS, 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 an Adjustment Disorder, Depression, Anxiety Disorder NOS, and Dysthymic Disorder. The VA has also service connected the applicant for the Dysthymic Disorder.

**(3)** Does the condition or experience actually excuse or mitigate the discharge?

**Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of multiple BH conditions that provide partial mitigation for the basis of separation. The applicant was diagnosed in service with an Adjustment Disorder, Depression, Anxiety Disorder NOS, and Dysthymic Disorder. The VA has also service connected the applicant for the Dysthymic Disorder. Given the nexus between Depression, Dysthymic Disorder, Anxiety, avoidance, and self-medicating with substances, the applicant's FTRs and DUI are mitigated. However, there is no natural sequela between any of the applicant's BH conditions (i.e., Depression, Dysthymic Disorder, Anxiety Disorder NOS, Adjustment Disorder) and domestic assault, making threats, or violating a no contact order, 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 opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Dysthymic Disorder, Anxiety Disorder NOS, Depression outweighed the basis for applicant's separation – domestic assault, making threats, or violating a no contact order.

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

**(1)** The applicant contends suffering from an Anxiety Disorder. The Board considered this contention and determined the applicant is diagnosed with Anxiety Disorder, however, the applicant's misconduct of domestic assault, making threats, and violating a no contact order are not excused or mitigated by applicant's Anxiety Disorder. The applicant was properly and equitably discharged.

**(2)** The applicant contends an upgrade would allow educational benefits through the GI Bill. 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.

**(3)** The applicant contends becoming a better citizen, spouse, and parent. The Board considered this contention and determined that the applicant becoming a better citizen, spouse, and parent does not outweigh the misconduct based on the seriousness of the applicant's unmitigated offenses of domestic assault, making threats, and violating a not contact order.

**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 Adjustment Disorder, Dysthymic Disorder, Anxiety Disorder NOS, and Depression did not excuse or mitigate the offenses of domestic assault, making threats, or violating a no contact order. 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

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equitable as the applicant's misconduct fell below that level of 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.

(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:**

1/26/2024

**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