

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

**a. Applicant's Requests and Issues:** The current characterization of service for the period under review is honorable.

The applicant seeks relief contending, in effect, reconsideration is based on the earlier application to the ADRB (Board) being denied. The new application is supported by materials which the Board had not previously evaluated, including the more recent guidance, and the current legal support. The applicant was not represented by counsel at the time. In the interest of justice, the applicant requests an upgrade and a change to the narrative reason. The chain of command violated AR 635-200 by failing to address the unrestricted report of the sexual assault in the discharge decision. The applicant was sexually harassed by the supervising NCO and sexually assaulted by a fellow Soldier. The applicant became a target with repeated disciplinary actions after reporting the sexual harassments to the senior NCO. Despite filing an unrestricted report of the sexual assault, no action or evidence of a CID investigation was found. No one in the line of command discussed or examined the sexual assault. The sexual assault and harassments led to the minor misconduct. The decision to discharge the applicant was in retribution for filing a sexual harassment claim against the supervisor and based on incorrect findings. Because the few disciplinary actions were the results of the MST and sexual harassment and based on the 2014 Secretary of Defense Memorandum and the 2017 Clarifying Guidance, liberal consideration should be granted. The current review must consider whether the separation was retaliatory; whether it involved a sexual assault-related medical condition; whether it was in the best interests of the Army, the applicant or both; and the status of the case against the alleged offender and the effect of the applicant's separation on the disposition or prosecution of the case. As indicated by the applicant's behavior, sexual assault and sexual harassment occurred during service, and most of the disciplinary measures supporting the discharge were improper. The applicant was also harassed by a succeeding NCO supervisor. The harassment took a massive toll on the mental health and the performance, and the applicant began seeing a behavioral health doctor. The applicant had no disciplinary difficulties until being sexually harassed. The applicant now faces a lifetime stigma of the current discharge and is unable to obtain an employment requiring background investigation. The applicant has been receiving treatment in the VA Healthcare System for extreme depression and was diagnosed with Major Depressive Disorder in May 2019. Both the applicant and the counsel further detail the contentions in the allied self-authored statements and legal brief provided with the application.

**b. Board Type and Decision:** In a records review conducted on 10 October 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:** Secretarial Authority / AR 635-200, Paragraph 5-3 / JFF / RE-1 / Honorable

**b. Date of Discharge:** 25 June 2012

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 17 April 2012

**(2) Basis for Separation:** The applicant was informed of the following reasons:

On 26 January 2012, the applicant committed an act of domestic violence; on multiple occasions, the applicant made a false official statement to an NCO; and on numerous occasions between 22 November 2011 and 31 March 2012, the applicant failed to go at the time prescribed to the appointed place of duty.

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

**(4) Legal Consultation Date:** On 18 April 2012, the applicant waived legal counsel.

**(5) Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 8 May 2012 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 4 January 2011 / 4 years

**b. Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 90

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 25U10, Signal Support System Specialist / 1 year, 5 months, 22 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:** Eleven Developmental Counseling Forms for various acts of misconduct.

Memorandum, 12 April 2012, while acknowledging receipt of separation notice, the applicant noted being a victim of a sexual assault for which an unrestricted report was filed and did not believe the separation action was a direct or indirect result of the sexual assault itself or the filing of the unrestricted report.

CG Article 15, 11 June 2012, for failing to go at the time prescribed to the appointed place of duty on three separate occasions on 22 November, and 5 and 8 December 2011. The punishment consisted of a reduction to E-2 (suspended); extra duty for 14 days; and an oral reprimand.

Report of Mental Status Evaluation, 30 March 2012, reflects the applicant was psychiatrically cleared for an administrative separation under Chapter 14. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. 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, if present, when determining final disposition. There were no diagnoses.

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

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

(1) **Applicant provided:** Psychiatry Admission Evaluation Note, 30 December 2013, reflects the applicant was admitted for psychiatric care because of being a suicidal risk, and the diagnoses were: depressive disorder and suicidal ideation.

(2) **AMHRR Listed:** Report of Medical History, 30 March 2012, the applicant noted behavioral health issues; however, the examining medical physician comments are illegible.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 149 and Legal Brief with all listed enclosures, Exhibits 1 through 24. Additional Evidence: Self-authored statement; three third-party statements; CID Case Activity Summary; acknowledgment of receipt memorandum; Psychiatry Admission Evaluation Note.

**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 provides the basic authority for the separation of enlisted personnel.

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

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

**(3)** Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government.

(4) Paragraph 5-1, states that a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status.

(5) Chapter 5-3 (Chapter 15 current regulation) provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided 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 identified the SPD code of "JFF" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5, paragraph 5-3, Secretarial Authority.

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-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.

**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 5-3, AR 635-200, with an honorable discharge. The narrative reason specified by Army Regulations, for a discharge under this paragraph is "Secretarial Authority," and the separation code is "JFF." Army Regulation 635-8, Separation Processing and Documents, governs 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 the chain of command violated AR 635-200 by not addressing the unrestricted report of the sexual assault, nor having discussed or examined the sexual assault; no action or evidence of a CID investigation was found on the reported sexual assaulted; most of the disciplinary measures were improper; and the decision to discharge the applicant was in retribution for filing a sexual harassment claim against the supervisor. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being sexually assaulted and harassed caused the minor misconduct, which led to the discharge. The AMHRR indicates the applicant committed many discrediting

offenses. Army Regulation 635-200, in pertinent part, stipulates circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends sexual assault-related medical condition should be considered and being diagnosed with a major depressive disorder. The applicant provided a CID case summary reflecting the servicing trial counsel opined the sexual contact incident fell more appropriately as a simple assault, rather than a wrongful sexual contact, and medical records indicating diagnoses of depressive disorder and suicidal ideation, and prescribed medication. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 30 March 2012, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis. The MSE was considered by the separation authority.

The applicant contends facing a life-time stigma and being unable to obtain an employment which requires a background check.

#### 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, after applying liberal consideration found the applicant's IPV and MST mitigated the applicant's original basis for separation that warranted a previous Board granting full relief - discharge characterization upgrade to Honorable Discharge, narrative reason "Secretarial Authority" with a corresponding SPD code of JFF and RE code of RE-1.

(2) Did the condition exist or experience occur during military service? **N/A.** The Board's Medical Advisor found that post service diagnoses were related to military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends the chain of command violated AR 635-200 by not addressing the unrestricted report of the sexual assault, nor having discussed or examined the sexual assault; no action or evidence of a CID investigation was found on the reported sexual assaulted; most of the disciplinary measures were improper; and the decision to discharge the applicant was in retribution for filing a sexual harassment claim against the supervisor. The Board considered this contention during proceedings but ultimately did not address because the applicant was previous granted full relief. (Honorable characterization; Secretarial Authority; Re-entry Code of 1).

(2) The applicant contends being sexually assault and harassed caused the minor misconduct, which led to the discharge. The Board considered this contention during proceedings but ultimately did not address because the applicant was previous granted full relief. (Honorable characterization; Secretarial Authority; Re-entry Code of 1).

(3) The applicant contends sexual assault-related medical condition should be considered and being diagnosed with a major depressive disorder. The Board considered this

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contention during proceedings but ultimately did not address because the applicant was previous granted full relief. (Honorable characterization; Secretarial Authority; Re-entry Code of 1).

(4) The applicant contends facing a life-time stigma and being unable to obtain an employment which requires a background check. The Board considered this contention during proceedings but ultimately did not address because the applicant was previous granted full relief. (Honorable characterization; Secretarial Authority; Re-entry Code of 1).

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has been granted full relief available with the ADRB.

d. Rationale for Decision: The Board determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable and a narrative Reason of Secretarial Authority, with a Re-entry eligibility code of "1". Therefore, no further relief is available.

**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:**

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