

**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 under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, because of one mistake in the past, the applicant was discharged with an under other than honorable conditions characterization of service. The applicant does not agree with the result of the applicant's military career. The applicant served honorably for two years and seven months as an Infantryman and as a dog handler. The applicant fast-tracked from E-2 to E-4 and was a team leader for a short time. The applicant completed multiple training courses, including Yakima Winter Warfare Training, National Training Center Desert Training, and Tactical Explosive Detector Dog (TEDD) handler school. The applicant was one of 11 Soldiers who passed the course out of 21.

After completing the TEDD course, the applicant deployed to Afghanistan in 2012 and 2013. The applicant never received an Article 15 or any disciplinary action during this period of service and received various awards. The applicant taught a class regarding dog handling to the Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff. The applicant is fully aware of the actions which led to the discharge and fully accepts the consequences, but the consequences have caused the applicant a very difficult and stressful life. The applicant believes in honor and duty above all else, and the applicant has been trying the applicant's best to earn back the honor. The applicant is a floor manager at a golf resort and spa and has been on schedule with all the classes and requirements of the applicant's probation. The applicant has been living and working to put all this behind the applicant and move on to better things. The applicant believes the applicant deserves to be considered for a discharge upgrade. The Army separated the applicant prior to receiving the results of the trial and when the applicant was separated, the applicant's military gear and uniforms were stolen. The applicant is being held accountable for those items, and the Army is requesting the applicant pay for those items. The applicant further details the contentions in the application.

b. **Board Type and Decision:** In a records review conducted on 26 September 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, Paragraph 14-12c / JKQ / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 14 July 2014

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 14 February 2014

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant engaged in wrongful sexual contact with a minor under the age of 16 on or about 1 September 2013.

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

(4) **Legal Consultation Date:** On 14 February 2014, the applicant waived legal counsel.

(5) **Administrative Separation Board:** On 14 February 2014, the applicant unconditionally waived consideration of the case before an administrative separation board. However, the separation approval memorandum indicates the separation authority reviewed the administrative separation board's findings and recommendations. The applicant's Army Military Resource Record is void of administrative board proceedings or any documents referring the case to a board.

(6) **Separation Decision Date / Characterization:** 20 May 2014 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 9 August 2011 / 4 years, 16 weeks

b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 106

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 2 years, 2 months, 13 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** SWA / Afghanistan (10 January 2013 –28 July 2013)

f. **Awards and Decorations:** ACM-CS, ARCOM, NDSM, GWOTSM, ASR, NATOMDL

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** State of California – County of Sierra Arrest Warrant and Affidavit, 11 October 2013, reflects a Warrant was issued for the applicant's arrest because there was probable cause to believe the applicant committed the crimes of California Penal Code sections 288(a), 288.2(a)(1), and 288.3(a). The bail was set at \$75,000.

Affidavit of Probable Cause in Support of Arrest Warrant, 11 October 2013, reflects on 2 September the affiant was assigned to investigate a possible cause of unlawful sex and lewd and lascivious acts with a child under 14 years of age, California Penal Code sections 261.5 and 288(a). On 3 September 2013, the affiant contacted the Confidential Mandatory Reporter (CMR), who reported being approached by two parents stating a 13 year old friend

(Confidential) of their children, was involved in a sexual relationship with the applicant. The investigation revealed through interviews and text conversations, the affiant believes probable cause exists the applicant violated California Penal Code (PC) by:

Arranging to meet with Confidential in private and touching Confidential's vagina and bare breast and nipple; exposing and placing the penis on Confidential's leg; and French kissing Confidential, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the applicant.

Communicating through text messaging with Confidential and sending photographs of the applicant's "abs," with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the applicant and/or Confidential, and with the purpose of seducing Confidential.

The applicant repeated text conversations with Confidential over several days with the intent to meet with confidential alone and privately for the purpose of molesting and kissing Confidential with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the applicant and or Confidential.

One of the underlying elements of Penal Code sections 288(a), 288.2(a), and 288.3(a) is knowledge the person is a minor. The affiant believes the applicant had knowledge or reasonably should have known Confidential was a minor because of speaking to Confidential's 8<sup>th</sup> grade class on the behalf of the Army and by the applicant text message conversation with an unknown person, the applicant told the unknown person "[Confidential] is in the 8<sup>th</sup> grade."

Sierra County Sheriff's Office Report Narrative, undated, contains similar information as the Affidavit of Probable Cause in Support of Arrest Warrant, 11 October 2013.

Sierra County Sherriff's Office Victim Address Deletion Form, undated (copy faxed to Child Protective Services on 16 October 2013), reflects the crimes committed by the applicant were lude are lascivious acts involving children, 288(a) PC; sending harmful matter to a minor by telephone messages 288.2(a) PC; and contact or communication with minor with knowledge and intent to commit specified offenses punishable by imprisonment 288.3(a) PC.

Personnel Action form, reflects the applicant's duty status changed from "Present for Duty (PDY)," to "Confined by Civil Authorities (CCA)," effective 22 October 2013.

**i. Lost Time / Mode of Return:** 8 months, 24 days (CCA, 22 October 2013 – 14 July 2014) / Discharged from the Service

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

**(1) Applicant provided:** Diagnosis Form, 18 August 2014, reflecting the applicant was diagnosed with PTSD; depressive disorder, not otherwise specified (NOS); other psychological and environmental; interaction with the legal system; economic problems; and primary support group.

Life Counsel letter, 14 May 2016, reflecting a licensed clinical social worker (LCSW) had been treating the applicant for PTSD. It is the LCSW's professional opinion the applicant's PTSD was not factored into the applicant's actions nor by the legal system when the applicant was prosecuted for those actions, and the applicant deserves a second chance and a discharge upgrade.

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 16 April 2014, reflects the applicant could understand and participate in administrative proceedings and could appreciate the difference between right and wrong; but required further examination or testing to finalize diagnosis and recommendations. The applicant was diagnosed with: Adjustment disorder, with depressed mood; legal problems; rule out personality disorder; and AXIS II diagnosis was deferred.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 214; DD Form 293; award and training certificates, self-authored statement; three third party character references; medical documents; and Life Counsel letter.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is a floor manager at a golf resort and spa and has been on schedule with all the classes and requirements of the applicant's probation.

**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) 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-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 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 being diagnosed with PTSD and depressive disorder and the conditions affected behavior, which led to the discharge. The applicant provided medical documents indicating a diagnosis of PTSD and depressive disorder, NOS. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 16 April 2014, which indicates the applicant could understand and participate in administrative proceedings and could appreciate the difference between right and wrong; but required further examination or testing to finalize diagnosis and recommendations. The applicant was diagnosed with: Adjustment disorder, with depressed mood; legal problems; rule out personality disorder; and AXIS II diagnosis was deferred. The MSE was considered by the separation authority.

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5c states there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends the Army separated the applicant prior to receiving the results of the trial. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour.

The applicant contends being a floor manager at a golf resort and spa and being on schedule with all the classes and requirements of the applicant's probation. 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.

The third-party statements provided with the application speak highly of the applicant and recognize the applicant's good military service.

#### 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 with Depressed Mood, PTSD, and Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the diagnosis of Adjustment Disorder with Depressed Mood was rendered during service. The applicant asserts PTSD and Depression.

(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's Adjustment Disorder with Depressed Mood, PTSD, and Depression diagnoses do not mitigate the applicant's wrongful sexual contact with a minor under the age of 16 as there is no nexus between the applicant's behavioral health conditions and the applicant's offense.

(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 applicant's PTSD, Depression, and Adjustment Disorder does not outweighed the applicant's medically unmitigated offense - wrongful sexual contact with a minor under the age of 16.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD and depressive disorder and the conditions affected behavior, which led to the discharge. The Board liberally considered this contention; however, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD or Depression outweighed the applicant's wrongful sexual contact with a minor under the age of 16. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention and determined that the applicant's wrongful sexual contact with a minor under the age of 16 constitutes a single event which can properly and equitably be the basis for the characterization of service.

(3) The applicant contends the Army separated the applicant prior to receiving the results of the trial. The Board considered this contention but found that the applicant voluntarily waived appearance before an administrative separation board. Therefore, a discharge was proper and equitable.

**(4)** The applicant contends good service, including a combat tour. The Board considered the applicant's two years of service, including combat service in Afghanistan, but determined that the applicant's service record does not outweigh the applicant's wrongful sexual contact with a minor under 16.

**(5)** The applicant contends being a floor manager at a golf resort and spa and being on schedule with all the classes and requirements of the applicant's probation. The Board considered the applicant's post-service accomplishments, but determined that these accomplishments do not outweigh the applicant's wrongful sexual contact with a minor under 16.

**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 to all the evidence before the Board, the applicant's Adjustment Disorder and asserted-Post Traumatic Stress Disorder and Depression did not outweigh the applicant's medically unmitigated wrongful sexual contact with a minor under 16 offense. The Board also considered the applicant's contentions that the offense was an isolated incident, the applicant was a good Soldier, and the applicant has made achievements post-service and 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 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, as the reason the applicant was discharged was both proper and equitable.

**(3)** The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.



**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

**Authenticating Official:**

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