

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 general (under honorable conditions). The applicant requests an upgrade to honorable and change of narrative reason to "Secretarial Authority."

The applicant seeks relief contending, in effect, being a highly decorated Army officer who was falsely accused of verbally sexually harassing subordinates. Despite the honorable service through three combat tours and a command post, the unfounded under other than honorable discharge deprives the applicant of veteran's benefits and affects the ability to be employed by the federal government. The applicant emphatically denies making any sexually harassing comments to the Soldier's in the Command. The applicant resigned from the military to avoid a miscarriage of justice and does not want this incident to affect the rest of the applicant's life. It is important to note the applicant was diagnosed with PTSD and has continued in treatment since discharge from the military. Despite the PTSD the applicant suffers from because of honorable service to the country, the applicant has started a new career and has maintained good standing in the community. The applicant respectfully requests the Board take past and present military and employment record into consideration. The events which led to the applicant's resignation were out of character and completely unfounded.

b. Board Type and Decision: In a records review conducted on 28 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: Unacceptable Conduct / AR 600-8-24, Chapter 4-2b and 4-24a (1) / BNC / General (Under Honorable Conditions)

b. Date of Discharge: 6 November 2013

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 6 March 2013

(2) Basis for Separation: The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraphs 4-2b and 4-24a (1) for acts of personal misconduct and conduct unbecoming of an officer, due to the following reasons: The applicant

created a hostile work environment and a perception of sexual harassment with enlisted and commissioned Soldiers under the applicant's command, by asking them to address the applicant by first name, calling them by their first names, inquiring into their personal sexual lives, and commenting on an enlisted Soldier's breasts to a subordinate commissioned officer. In addition, the applicant informed subordinate the applicant had no problem "bagging the hag upstairs," referencing the battalion commander. The actions were conduct unbecoming of an officer.

(3) Legal Consultation Date: 23 September 2013

(4) Board of Inquiry (BOI): On 5 April 2013, the applicant submitted request for resignation in lieu of elimination.

(5) GOSCA Recommendation Date / Characterization: On 9 October 2013, the GOSCA recommended approval of the applicant's request for resignation in lieu of elimination. / Under Other Than Honorable Conditions

(6) DA Ad Hoc Review Board: The AD Hoc review board considered the applicant's request for resignation in lieu of elimination in accordance with AR 600-8-24, Chapter 4-2b.

(7) Separation Decision Date / Characterization: 21 October 2013 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Appointment: 16 December 2006 / Indefinite

b. Age at Appointment: / Education: 25 / Bachelor's Degree

c. Highest Grade Achieved / MOS / Total Service: O-3 / 67A Health Services / 11 years, 3 months, 11 days

d. Prior Service / Characterizations: RA, 27 July 2000 – 5 January 2004 / HD
RA, 6 January 2004 – 9 January 2005 / HD
CDT, 10 January 2005 – 15 December 2006 / NA
USAR, 16 December 2006 – 6 January 2007 / NA

e. Overseas Service / Combat Service: Germany, SWA / Afghanistan (15 June 2002 – 10 January 2003); Iraq (29 September 2003 – 13 March 2004; 24 December 2007 for six months, no end of tour date available for review.)

f. Awards and Decorations: ACM-CS, ARCOM-4, AAM-2, AFAM, MUC, NDSM, GWOTEM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR, CMB

g. Performance Ratings: 16 April 2007 – 13 June 2009 / Best Qualified
14 July 2009 – 10 February 2012 / Best Qualified
11 February 2012 – 21 February 2013 / Do Not Promote

h. Disciplinary Action(s) / Evidentiary Record: Informal AR 15-6 Investigation Findings and Recommendations, 19 November 2012, reflects the investigation officer could neither confirm nor deny allegations of sexual harassment between the complainants and the applicant. All the allegations centered around verbal harassment. The alleged statements occurred when no one was around to witness them being said. The investigating officer recommended the applicant or 1LT A., be reassigned due to the extreme nature of the allegations and the

essential mission of the unit. Also recommend the Battalion commander counsel the applicant on the roles and duties of the commander which is nested in battalion priorities and guidance and a letter of concern.

Memorandum of Reprimand, 8 February 2013, reflects the applicant was reprimanded for exercising extremely poor judgment while serving as the commander of the 690th Medical Company, 14th Combat Support Hospital. The applicant created a hostile work environment and a perception of sexual harassment with enlisted and commissioned Soldiers under the applicant's command, by asking them to address the applicant by first name, calling them by their first names, inquiring into their personal sexual lives, and commenting on an enlisted Soldier's breasts to a subordinate commissioned officer. In addition, the applicant informed subordinate the applicant had no problem "bagging the hag upstairs," referencing the battalion commander.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record of Medical Care, 26 July 2011, reflects a diagnosis of PTSD.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Attorneys Brief and enclosures 1 through 10.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has started a new career and has maintained good standing in the community

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 600-8-24, Officer Transfers and Discharges, sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23, provides the authorized types of characterization of service or description of separation.

(2) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(3) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation;

Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.

(4) Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.

(5) Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.

(6) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.

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 "BNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, Unacceptable Conduct; and 4-24a (1), Resignation in Lieu of Elimination.

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 4, paragraph 4-2b, and 4-24a(1), AR 600-8-24 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Unacceptable Conduct," and the separation code is "BNC." 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 SPD code should be changed. SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 4, paragraph 4-2b and 4-24a (1), is "BNC."

The applicant contends relief should be granted because the applicant suffers from PTSD as a result of multiple combat tours. The applicant provided a Chronological Record of Medical Care, 26 July 2011, reflecting a diagnosis of PTSD. The applicant's AMHRR is void of a mental status report.

The applicant contends being found "not guilty" by the underlying 15-6 investigation into the alleged misconduct for which the applicant was separated. Informal AR 15-6 Investigation Findings and Recommendations, 19 November 2012, reflects the investigation officer could

neither confirm nor deny allegations of sexual harassment between the complainants and the applicant. The applicant received a memorandum of reprimand for creating a hostile work environment and perception of sexual harassment and received notification of elimination based on the same misconduct resulting in the applicant submitting a request for resignation in lieu of elimination which was approved by 21 October 2013. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the actions by the applicant's command in punishing the applicant by discharging the applicant, despite the fact that the command's 15-6 investigation found that the applicant was not guilty of any verbal sexual harassment was an abuse of process, erroneous and unjust. Informal AR 15-6 Investigation Findings and Recommendations, 19 November 2012, reflects the investigation officer could neither confirm nor deny allegations of sexual harassment between the complainants and the applicant. The applicant received a memorandum of reprimand for creating a hostile work environment and perception of sexual harassment and received notification of elimination based on the same misconduct resulting in the applicant submitting a request for resignation in lieu of elimination which was approved by 21 October 2013. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being deprived of veteran's 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.

The applicant contends good service, including three combat tours, and under a doctrine of progressive discipline, the act of jumping straight to separation for such a valuable and highly qualified soldier was excessive and unnecessary given the particulars of the case.

The applicant contends obtaining employment and a good standing in the community. 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: Depression, PTSD, and Anxiety.

(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 Depression, Anxiety, and PTSD. The VA has also service-connected applicant for the PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate the applicant's offense of creating a hostile work environment

and a perception of sexual harassment as none of the applicant's 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, including the Board Medical Advisor opine, the ADRB determined that the applicant's Depression, Anxiety, and PTSD did not outweigh the applicant's medically unmitigated basis of separation - creating a hostile work environment and a perception of sexual harassment.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board liberally considered this contention and determined the applicant's narrative reason for discharge is appropriate. The applicant's Depression, Post-Traumatic Stress Disorder, Anxiety, length and quality of service to include combat service does not outweigh or excuse applicant's creating hostile work environment and a perception of sexual harassment with enlisted and commissioned Soldiers under the applicant's command basis for separation.

(2) The applicant contends the SPD code should be changed. The Board liberally considered this contention and determined that the applicant received the appropriate SPD code for the discharge specified by AR 600-8-24, Chapter 4-2b and 4-24a (1) is "BNC". Therefore, no change is warranted.

(3) The applicant contends relief should be granted because the applicant suffers from PTSD as a result of multiple combat tours. The Board considered this contention and determined that applicant's PTSD does not outweigh the applicant's medically unmitigated misconduct - creating hostile work environment and a perception of sexual harassment with enlisted and commissioned Soldiers under the applicant's command.

(4) The applicant contends being found "not guilty" by the underlying 15-6 investigation into the alleged misconduct for which the applicant was separated. The Board considered this contention and determined that a discharge upgrade is not warranted because the weight of the evidence supports that the applicant created a hostile work environment and perception of sexual harassment. The applicant's misconduct was the basis for the applicant's memorandum of reprimand and initiation of elimination to which the applicant submitted an unconditional resignation rather than appear before a board of inquiry. Therefore, no relief is warranted.

(5) The applicant contends the actions by the applicant's command in punishing the applicant by discharging the applicant, despite the fact that the command's 15-6 investigation found that the applicant was not guilty of any verbal sexual harassment was an abuse of process, erroneous and unjust. The Board considered this contention and determined that the weight of the evidence does not support the applicant's contention. While the AR 15-6 investigation does not substantiate sexual harassment, the preponderance of the evidence supports that the applicant created a hostile work environment and a perception of sexual harassment which resulted in the applicant receipt of a memorandum of reprimand and command initiated elimination proceedings resulting in the applicant requested resignation in lieu of such proceedings. Therefore, the applicant's discharge is proper and equitable.

(6) The applicant contends being deprived of veteran's benefits. The Board liberally 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.

(7) The applicant contends good service, including three combat tours, and under a doctrine of progressive discipline, the act of jumping straight to separation for such a valuable and highly qualified soldier was excessive and unnecessary given the particulars of the case. The Board considered the applicant's 11 years of service, including two combat tours in Afghanistan and Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's creating hostile work environment and a perception of sexual harassment with enlisted and commissioned Soldiers under the applicant's command. Furthermore, the Board determined that the weight of the evidence supported that the applicant's misconduct was of the nature and severity that warranted the applicant's discharge and was with the discretion of the separation authority.

(8) The applicant contends obtaining employment and a good standing in the community. The Board considered this contention and determined that the applicant obtaining employment and having good standing in the community does not outweigh the misconduct based on the seriousness of the applicant's offense of creating hostile work environment and a perception of sexual harassment with enlisted and commissioned Soldiers under the applicant's command.

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, the applicant's Depression, Post-Traumatic Stress Disorder, and Anxiety did not outweigh the applicant's medically unmitigated offenses of creating hostile work environment and a perception of sexual harassment with enlisted and commissioned Soldiers under the applicant's command. The Board also considered the applicant's contentions of impropriety and found that there was no evidence of legal error warranting a discharge upgrade. Finally, the Board considered the applicant's contentions of equity and determined that a discharge upgrade is not warranted based on the seriousness of the applicant's misconduct. 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 GD was proper and equitable as the applicant's misconduct fell below that of meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge to "Secretarial Authority" or accompanying SPD code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

(3) As there is no RE-code listed on the applicant's discharge paperwork, no upgrade actions are required for this item.

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

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