

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, through counsel, requests an upgrade to honorable and a change to the narrative reason.

The applicant seeks relief contending, in effect, the Board of Inquiry (BOI) based its finding on the two GOMORs received by the applicant. The applicant immediately took responsibility in 2008 for their lapse in judgment. The applicant learned from their mistakes, had the full support of the command in moving forward and being retained for future service. The BOI used evidence of phone calls and text messages between the applicant and B. H. to support the allegation of an improper senior-subordinate relationship. The BOI used the unreliable identification of a photograph of the applicant by a motel clerk and a credit card statement of B. H. showing a charge at the Motel 6 in September 2010 to support the alleged improper sexual relations between the two. The applicant testified they did text back and forth with B. H. when B. H. was having difficulty worrying about the spouse being deployed at the time. The applicant spoke to the spouse about the situation, but the spouse was suspicious and initiated the complaint to the applicant's command.

The BOI did not substantiate any of the allegations of harassment against the applicant. This is likely due to the influence B. H. had on these witnesses making their statements unreliable. The Board ultimately based their decision on text messages, a charge from B. H. at the Motel 6, and an overwhelmingly unreliable identification from a motel clerk from two years prior. This is what the BOI used to recommend a distinguished officer be separated with a general characterization of service. Had the original GOMOR been the sole issue for the BOI to adjudge, as was the case the first time around, the applicant would have been retained, or at the minimum, separated with an honorable discharge. Instead, the applicant was left with a biased investigation, flimsy evidence, and a general discharge.

The applicant fought for this country in Iraq, was awarded the Purple Heart Medal for injuries sustained while in combat. In addition, the applicant received an Army Commendation Medal with V device for Valor. This is not a Soldier nor Officer who should have the future handled so carelessly. During the four investigations into the alleged misconduct, the applicant had continued to excel at the duties. The applicant is a combat veteran and wounded warrior. The applicant has suffered tremendously by being under investigation for many years and deserves to have a closer look at the evidence.

b. Board Type and Decision: In a records review conducted on 14 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: Unacceptable Conduct / AR 600-8-24, Chapter 4-2B / JNC / General (Under Honorable Conditions)

b. Date of Discharge: 21 July 2015

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 21 December 2012

(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 (5) and (8), and 4-2c (5) due to misconduct and derogatory information, due to the following reasons:

Derogatory information filed in the OMPF, being adverse Information being a General Officer Memorandum of Reprimand, 14 May 2012, for engaging in an improper senior-subordinate relationship in violation of Army Regulation 600-20, committing adultery with an individual in the unit, in violation of Uniform Code of Military Justice, sexually harassing individuals in the unit, in violation of Army Regulation 600-20 and the Army's Equal Opportunity program, and providing a false official statement to a prior AR 15-6 investigating officer, in violation of Uniform code of Military Justice.

Acts of personal misconduct as indicated by the above referenced GOMOR.

Conduct unbecoming an officer as indicated in the above referenced GOMOR.

(3) Legal Consultation Date: 1 February 2013

(4) Board of Inquiry (BOI): On 11 June 2013, the Board of Inquiry convened, and the applicant appeared with counsel. The board recommended the applicant be involuntarily separated for the good of the Service. The board believed the applicant's behavior was unacceptable and did not meet the standards of the Army Values and it was likely to continue if the applicant remained in the Service. Therefore, the Board recommended a general (under honorable conditions) discharge.

(5) GOSCA Recommendation Date / Characterization: On 28 August 2013 / General (Under Honorable Conditions)

(6) DA Board of Review for Eliminations: On 8 May 2014, the Army Board of Review for Eliminations convened, and in a closed session, and by secret written ballot, recommended the applicant be eliminated from the United States Army with a general (under honorable conditions) characterization of service.

(7) Separation Decision Date / Characterization: 25 June 2015 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 8 March 2003 / indefinite (Applicant was Mobilized on 26 February 2007)

b. Age at Appointment: / Education: 24 / Bachelor's Degree

c. Highest Grade Achieved / MOS / Total Service: O-3 / 12A, Engineer General / 19 years, 2 months, 23 days

d. Prior Service / Characterizations: ARNG, 29 April 1996 – 15 February 2007 / HD
IADT, 9 June 1997 – 31 July 1997 / UNC
(Concurrent Service)
USAR, 16 February 2007 – 25 July 2007 / NA

e. Overseas Service / Combat Service: SWA / Iraq (15 January 2005 – 23 December 2005)

f. Awards and Decorations: PH, ARCOM-V, AAM-3, ARCAM, NDSM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR, AFRM-M, CAB

g. Performance Ratings: 1 December 2006 – 30 April 2009 / Fully Qualified
15 October 2009 – 14 October 2010 / Best Qualified
15 October 2010 – 14 October 2011 / Best Qualified

h. Disciplinary Action(s) / Evidentiary Record: General Officer Memorandum of Reprimand, 3 June 2008, the applicant was reprimanded for adultery, fraternization, failure to obey order/regulation, by engaging in an improper and sexual relationship with MSG A. an enlisted Soldier and dual service military technician in the command. In addition, conduct unbecoming an officer, indecent language, and violating AR 600-20, chapter 7, by sexually harassing SPC T., an enlisted Soldier and civilian employee in the command.

General Officer Memorandum of Reprimand, 14 May 2012, reflects the applicant was reprimanded based upon the finding of an Army Regulation 15-6 investigation. The investigating officer found the applicant engaged in an improper senior subordinate relationship, committed adultery with an individual in the unit, sexually harassed individuals in the unit, and provided a false official statement to a prior Army Regulation 15-6 investigation officer.

Report of Proceedings by Board of Officers, 13 June 2013, reflects the Board recommended the applicant be involuntarily separated for the good of the Service. The Board believed the applicant's behavior was unacceptable and did not meet the standards of the Army Values and it was likely to continue if the applicant remained in the Service. Therefore, the Board recommended a general (under honorable conditions) discharge.

Developmental Counseling Form, for failure to follow written directions from MG C.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Initial Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, 24 October 2014, the Psychiatrist/Psychologist noted in the remarks section: Based upon the examination, the claimant needs to seek follow up treatment. The claimant requires individual psychotherapy and possibly psychotropic medication (if deemed necessary by a psychiatrist). The claimant does not appear to pose any threat of danger or injury to self or others.

(2) AMHRR Listed: Naval Hospital Camp Pendleton, 11 September 2014, reflects the applicant was diagnosed with Axis I; Posttraumatic Stress Disorder and Occupational Problem.

Naval Hospital Camp Pendleton Outpatient Mental Health Services, 5 January 2015, reflect the applicant is not fit for deployment due to receiving treatment for signs and symptoms of PTSD at NHCP since 31 October 2013.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; attorney brief; listed enclosures 1 through 16.

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 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 "JNC" 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.

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, 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 "JNC." 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 exactly as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation further stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends good service, including a combat tour and being awarded the Purple Heart.

The applicant contends the BOI based its finding on the two GOMORs received by the applicant. The applicant accepted full responsibility for the applicant's lapse in judgment and had the full support of the command in moving forward and being retained for future service. The BOI used evidence of phone calls and text messages between the applicant and B. H. to support the allegation of an improper senior-subordinate relationship. The applicant testified texting B. H. when B. H. was having difficulty worrying about the spouse being deployed at the time. The applicant spoke to B. H.'s spouse about the situation and the spouse became suspicious and initiated the complaint to the applicant's command. The applicant was left with a biased investigation, flimsy evidence, and a general discharge. The applicant is contending that the BOI based its decision on unreliable evidence and requests the Board to reconsider the evidence relied upon. Specifically, the applicant contends that the 15-6 IO was not thorough and impartial as the IO only spoke to witnesses that supported the alleged victim even after there was evidence supporting the alleged victim's motive to fabricate. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being a combat veteran and wounded warrior. The applicant has suffered tremendously by being under investigation for many years and deserves to have a closer look at the evidence. The applicant provided Initial Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, 24 October 2014, which reflects the Psychiatrist/Psychologist noted in the remarks section: "Based upon the examination, the claimant needs to seek follow up treatment. The claimant requires individual psychotherapy and possibly psychotropic medication (if deemed necessary by a psychiatrist). The claimant does not appear to pose any threat of danger or injury to self or others." The AMHRR contains Naval Hospital Camp Pendleton, 11 September 2014, which reflects the applicant was diagnosed with Axis I; Posttraumatic Stress Disorder and Occupational Problem. Naval Hospital Camp Pendleton Outpatient Mental Health services, 5 January 2015, reflects the applicant was not fit for deployment due to receiving treatment for signs and symptoms of PTSD at NHCP since 31 October 2013.

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: Post Traumatic Stress Disorder (PTSD) and Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant's PTSD and Adjustment Disorder existed during service. The applicant's Adjustment Disorder is subsumed under the applicant's PTSD diagnosis.

(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 PTSD does not mitigate the applicant's offenses of Adultery, engagement in improper senior-subordinate relationship, sexual harassment, and providing official false statements are not natural sequelae of Post-Traumatic Stress Disorder. There is no nexus between the applicant's misconduct and his diagnosis. Also, there is no indication in the records that the applicant had a condition that rendered the applicant unable to appreciate the difference between right and wrong and adhere to the right, and thus no medical mitigation for the applicant's misconduct.

(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 Post Traumatic Stress Disorder outweighed the medically unmitigated offenses of improper senior-subordinate relationship, sexual harassment, and providing official false statements.

b. Response to Contention(s):

(1) The applicant contends being a combat veteran and wounded warrior. The applicant has suffered tremendously by being under investigation for many years and deserves to have a closer look at the evidence. The Board considered the applicant's combat service and resulting combat related injuries. However, after applying liberal consideration, the Board determined that applicant's PTSD did not outweighed the medically unmitigated offenses of improper senior-subordinate relationship, sexual harassment, and providing official false statements. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends the BOI based its finding on the two GOMORs received by the applicant. The applicant took full responsibility for their lapse in judgment and had the full support of the command in moving forward and being retained for future service. The BOI used evidence of phone calls and text messages between the applicant and B. H. to support the allegation of an improper senior-subordinate relationship. The applicant testified texting B. H. when B. H. was having difficulty worrying about the spouse being deployed at the time. The applicant spoke to B. H.'s spouse about the situation and the spouse became suspicious and initiated the complaint to the applicant's command. The applicant was left with a biased investigation, flimsy evidence, and a general discharge. The Board considered this contention but found the weight of the evidence in the applicant's AMHRR and the evidence provided by the applicant does not support that there was an error in the applicant's separation process or that the command acted in arbitrary or capricious manner. Therefore, a discharge upgrade is not warranted.

(3) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined that the applicant's PTSD/Adjustment Disorder does not outweigh the misconduct based on the seriousness of the applicant's offense of improper senior-subordinate relationship, committing adultery with a subordinate, sexually harassing subordinates, and false official statement.

(4) The applicant contends good service, including a combat tour and being awarded the Purple Heart. The Board considered the applicant's 19 years of service, including one combat tour in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's improper senior-subordinate relationship, committing adultery with a subordinate, sexually harassing subordinates, and false official statement.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's PTSD/Adjustment Disorder did not outweigh the medically unmitigated offenses of improper senior-subordinate relationship, committing adultery with a subordinate, sexually harassing subordinates, and false official statement. The Board also considered the applicant's contentions regarding being a combat veteran and wounded warrior 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 General discharge was proper and 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:

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