

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 narrative reason change to "Secretarial Authority."

The applicant seeks relief contending, in effect, the charges against the applicant were grossly exaggerated in a light unfavorable to the applicant. The applicant believes the conduct the applicant engaged in did not constitute an assault or maltreatment. The applicant was the victim of a climate where commanders felt pressured to react in a harsh manner against Soldiers accused of an act to be construed as sexual assault or sexual harassment. The command to avoid criticism from the press, special interest groups, and politicians overacted by discharging the applicant. During the alleged offenses, the applicant was experiencing extreme difficulties in the personal life, having suffered through a failed marriage, overseas assignments/ deployments, financial difficulties, and homelessness with no help from the chain of command. The applicant states the chain of command or medical professionals did not address or support the applicant's request for assistance with the applicant's behavioral health issues. The applicant was not offered a medical or mental evaluation before the discharge. The applicant was awarded a rating of 50 percent disability for adjustment disorder with mixed anxiety depression and insomnia from the Veteran affairs (VA). Also, a mental health professional provided an assessment stating the applicant was struggling with major depressive disorder, recurrent, moderate (F33.1) and anxiety disorder, unspecified (F41.9) as well as post-traumatic stress disorder (PTSD), chronic (F43. 12). The mental health professional could not definitively state the applicant's actions led to the discharge, but the numerous traumatic events may have affected the applicant's mental state and sound judgement. Any alleged misconduct is aberrational and inconsistent with applicant's significant service record and accomplishments.

b. Board Type and Decision: In a records review conducted on 16 March 2023, and by a 4-1 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: 14 September 2015

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 24 July 2014

(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 for misconduct, moral, or professional dereliction, due to the following reasons:

Substantiated derogatory activity resulting in a General Officer Article 15, which was filed in the applicant's Army Military Human Resource Record (AMHRR), for maltreatment of a junior enlisted Soldier and an inappropriate or the appearance of an inappropriate relationship with a junior enlisted Soldier.

Conduct unbecoming an officer, as indicated by the above-referenced item.

(3) Board of Inquiry (BOI): On 20 October 2014, the GOSCA directed a BOI be convened. On 29 October 2014 and 6 November 2014, the applicant was notified of the BOI and appeared before the BOI. On 3 December 2014, the BOI recommended the applicant be separated from the service with a General (Under Honorable Conditions) characterization of service.

(4) GOSCA Recommendation Date / Characterization: On 6 January 2015, the GOSCA recommended disapproval of the applicant's request for retention and recommended the applicant be involuntarily eliminated from service. / General (Under Honorable Conditions)

(5) DA Board of Review for Eliminations: On 24 August 2015, the Army Board of Review for Eliminations considered the GOSCA's request to involuntarily separate the applicant for unacceptable conduct in accordance with AR 600-8-24, Chapter 4-2b.

(6) Separation Decision Date / Characterization: 25 August 2015 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 18 December 2007 / 6 years (OAD)

b. Age at Appointment: / Education: 30 / Associate's Degree

c. Highest Grade Achieved / MOS / Total Service: CW2 / 948B0, Electronic Systems Maintenance / 19 years, 2 months, 25 days

d. Prior Service / Characterizations: RA, 20 June 1996 – 24 January 2000 / HD
RA, 25 January 2000 – 20 June 2002 / HD
RA, 21 June 2002 – 7 May 2007 / HD
RA, 8 May 2007 – 17 December 2007 / HD

e. Overseas Service / Combat Service: Germany, Korea, SWA / Afghanistan (10 April 2012 – 5 January 2013)

f. Awards and Decorations: ACM-CS, BSM, MSM, ARCOM-2, AAM-5, ASUA, AGCM-3, NDSM, GWOTSM, KDSM, NCOPDR-3, ASR, OSR-3, NATOMDL

g. Performance Ratings: 18 December 2007 – 31 May 2010 / Best Qualified
1 June 2010 – 30 May 2013 / Best Qualified

h. Disciplinary Action(s) / Evidentiary Record: CID Report of Investigation - Initial Final, dated 12 February 2014, reflects an investigation established probable cause to believe the applicant committed the offense of Abusive Sexual Contact when the applicant touched PFC M. in a sexual manner without consent, which Trial Counsel, opined probable cause existed to believe the applicant committed the offense of Abusive Sexual Contact.

GO Article 15, dated 20 May 2014, for maltreating PFC M. M. by putting the applicant's mouth on PFC M. M. stomach touching PFC M. M. breasts; fraternize with PFC M. M. by knowingly flirting and lying-in bed with PFC M. M. (on or about 14 December 2013). The punishment consisted of a reduction to E-1; forfeiture of \$2,451 pay; restriction 12 days and written reprimand.

General Officer Memorandum Of Reprimand, dated 20 May 2014, reflects the applicant attended a party for a junior enlisted Soldier; the applicant's conduct constituted violations of several Articles of the UCMJ including assault, abusive sexual contact, and maltreatment. Further, the applicant routine behavior of fraternizing with junior Soldiers violates AR 600-200 paragraph 4-14.

Report of Proceedings by Investigating Officer/Board of Officers, dated 3 December 2014, reflects the investigating officer found: The allegation the applicant maltreated a junior Soldier and had an inappropriate or the appearance of an inappropriate relationship with a junior enlisted Soldier resulting in a General Officer Article 15, dated 20 May 2014, filed in the applicant OMPF, and a Letter of Reprimand, dated 20 May 2014, is supported by the preponderance of evidence. This conduct is unbecoming an officer, and is properly considered misconduct, and moral or professional dereliction as defined in AR 600-8-24, paragraph 4-2(b).

i. Lost Time / Mode of Return: None

j. Diagnosed PTSD / TBI / Behavioral Health: Report of Medical History, dated 4 August 2014, the examining medical physician noted in the comments section: Headache, depression, insomnia, and attempted suicide.

The applicant provided a copy of a VA disability rating decision, dated 15 September 2015, reflecting the applicant was rated 50 percent disability for adjustment disorder with mixed anxiety, depression, and insomnia.

The applicant provided a letter from a Licensed Professional Counselor, dated 29 September 2021, reflecting the applicant's diagnoses: Major Depressive Disorder, recurrent, moderate (F33.1) and Anxiety Disorder, unspecified (F41.9) with a rule out for PTSD, chronic (F43.12).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Legal Brief with all listed enclosures A through N; résumé; licensed professional counselor letter; several third-party letters; medical records; self-authored statement.

6. POST SERVICE ACCOMPLISHMENTS: The applicant has a bachelor's degree in Information Technology- Security (CompTIA A+, Net+, Project+); and has obtained employment.

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's record of service, the issues and documents submitted with the application were carefully reviewed.

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 suffering from undiagnosed PTSD at the time of misconduct, and not being offered a medical or mental evaluation before the discharge; and was diagnosed with an adjustment disorder with mixed anxiety, depression, and insomnia by the VA. The applicant provided a letter from a Licensed Professional Counselor, dated 29 September 2021, reflecting the applicant's diagnoses: Major Depressive Disorder, recurrent, moderate (F33.1) and Anxiety Disorder, unspecified (F41.9) with a rule out for PTSD, chronic (F43.12). The applicant provided a copy of a VA disability rating decision, dated 15 September 2015, reflecting the applicant was rated 50 percent disability for adjustment disorder with mixed anxiety, depression, and insomnia. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review. The AMHRR is void of a mental status evaluation. The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the victim of a climate where members of the chain of command felt pressured to react in a harsh manner against Soldiers accused of an act to be construed as sexual assault or sexual harassment. There is no evidence in the AMHRR the applicant sought assistance or reported the command climate. The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends personal problems affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends good service, including a combat tour. The Board will consider the applicant's service accomplishments and the quality of service.

The third-party statements provided with the application speak highly of the applicant and recognize the applicant's good conduct before and after leaving the Army.

The applicant contends obtaining employment and a bachelor's degree in Information Technology- Security (CompTIA A+, Net+, Project+). 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: PTSD, (Chronic) Adjustment Disorder, Major Depressive Disorder, and Unspecified Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor, for purposes of liberal consideration, found that the applicant was diagnosed in service with PTSD and an Adjustment Disorder. Applicant is also service connected by the VA for Chronic Adjustment Disorder. There is no evidence that applicant's post service diagnoses of Major Depressive Disorder and Unspecified Anxiety Disorder existed during military service.

(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 offenses of inappropriate relationship/maltreatment of a junior enlisted Soldier as there is no natural sequela between any of applicant's behavioral health conditions and these offenses.

(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, (Chronic) Adjustment Disorder, Major Depressive Disorder, and Unspecified Anxiety Disorder did not outweigh the applicant's medically unmitigated basis for applicant's separation – inappropriate relationship and maltreatment of a junior enlisted Soldier.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined that the applicant narrative reason is appropriate as there is insufficient evidence to warrant a discharge upgrade. Therefore, the applicant narrative reason, "Unacceptable Conduct," is proper and equitable in accordance with Army Regulation 635-8.

(2) The applicant contends suffering from undiagnosed PTSD at the time of misconduct, and not being offered a medical or mental evaluation before the discharge; and was diagnosed with an adjustment disorder with mixed anxiety, depression, and insomnia by the VA. The Board considered this contention and determined that the available evidence did not support a conclusion that the applicant's PTSD, (Chronic) Adjustment Disorder, Major Depressive Disorder, and Unspecified Anxiety Disorder outweighed the medically unmitigated basis for applicant's separation – inappropriate relationship and maltreatment of a junior enlisted Soldier.

(3) The applicant contends being a victim of a climate where members of the chain of command felt pressured to react in a harsh manner against Soldiers accused of an act to be construed as sexual assault or sexual harassment. The Board considered this contention and found insufficient evidence in the applicant's AMHRR or provided by the applicant, of arbitrary or capricious action taken by Command such that rebuts the presumption of government regularity. Accordingly, the Board found that the discharge was proper and equitable.

(4) The applicant contends personal problems affected behavior and ultimately caused the discharge. The Board considered this contention but determined that the Army has many legitimate avenues available to service members requesting assistance, and there is no evidence in the official records nor provided by the applicant that such assistance was pursued. The Board concluded that the nature of the applicant's misconduct was not an acceptable response to dealing with the applicant's asserted personal problems, thus the applicant was properly and equitably discharged

(5) The applicant contends good service, including a combat tour. The Board considered the totality of the applicant's service record but determined the applicant's discharge was appropriate because the quality of the applicant's service was not consistent with the Army's standards for acceptable personal conduct and performance of duty by military personnel. It

brought discredit on the Army, and was prejudicial to good order and discipline. By the nature and severity of the misconduct, the applicant diminished the quality of service below that meriting an honorable discharge at the time of separation.

(6) The applicant contends obtaining employment and a bachelor's degree in Information Technology- Security (CompTIA A+, Net+, Project+). The Board considered the applicant's post-service conduct and determined it does not outweigh the applicant's basis for separation due to the nature of the misconduct.

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, the available evidence did not support a conclusion that the applicant's PTSD, (Chronic) Adjustment Disorder, Major Depressive Disorder, and Unspecified Anxiety Disorder outweighed the medically unmitigated basis for applicant's separation – inappropriate relationship and maltreatment of a junior enlisted Soldier. The Board did not consider any issues of impropriety as the applicant did not present any impropriety issue for the Board's consideration. Further, the Board determined that there is insufficient evidence of any arbitrary or capricious action taken by Command resulting in any inequity. 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 to "Secretarial Authority" for discharge 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, due to the applicant being an Officer, no upgrade actions are required for this item.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210002432

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:

12/29/2023

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