

1. **Applicant's Name:** [REDACTED]
 - a. **Application Date:** 23 September 2020
 - b. **Date Received:** 30 September 2020
 - c. **Counsel:** None

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.

b. The applicant seeks relief contending, in effect, the chain of command was not fair. The applicant cried for help numerous of times which was turned down. As a result, the applicant lost their career. The applicant requests this change to regain their education and to be able to provide a life for themselves and their daughter. The applicant contends other mental health and sexual assault/harassment by selecting these options on their application.

c. **Board Type and Decision:** In a records review conducted on 3 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's IPV experience which mitigated the basis of separation of assault. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, Chapter 15, the narrative reason for separation to Secretarial Authority, with a corresponding separation code of JFF. The Board determined the reentry code is proper and equitable based on medical diagnosis and voted not to change it.

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:** Pattern of Misconduct / AR 635-200, Chapter 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 28 March 2019

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 26 February 2019

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

(a) On or about 4 November 2018, the applicant wrongfully cut Private Two (PV2/E-2) K__ J__ on the wrist with a knife.

(b) The applicant failed to report on multiple occasions.

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

(4) **Legal Consultation Date:** 27 February 2019

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 6 March 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 August 2017 / 3 years and 19 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 89

c. Highest Grade Achieved / MOS / Total Service: E-2 / 88M10, Motor Transport Operator / 1 year, 7 months, and 21 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Seven developmental counseling forms shows the applicant was counseled for being late to formation; failure to report and having a minor (sister) in the barracks; failure to be at appointed place of duty on two separate occasions; failure to do proper ground guide; lost identification card; and initiation of an adverse action flag between 14 June and 25 October 2018.

(2) The applicant's Sworn Statement, dated 4 November 2018, states in part, on 4 November 2018, the applicant and K__ J__ had a physical altercation after K__ J__ broke up with the applicant in the applicant's barracks room. Both had private property broken during the altercation.

(3) K__ J__'s Sworn Statement, dated 5 November 2018 at 1112hrs and 1225hrs, states in part, on 4 November 2018, K__ J__ went to the applicant's barracks room to retrieve their belongings because they were breaking up.

(4) T__ G. U__'s, Military Police, Sworn Statement, dated 5 November 2018, states in part, on 4 November 2018, they made contact with the applicant who had been assaulted. The applicant required to have glass removed from their hand that came from their phone.

(5) Receipt for Inmate or Detained Person, dated 5 November 2018, shows K__ J__ was charged with domestic assault.

(6) Receipt for Inmate or Detained Person, dated 6 November 2018, shows the applicant was charged with assault.

(7) Report of Mental Status Evaluation (MSE) page one of two only, dated 9 January 2019, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant met medical retention requirements. The applicant had been screened for PTSD, depression, TBI, and substance misuse which was negative and required no further evaluation. Behavioral health diagnoses was deferred.

(8) Law Enforcement Report - Initial - Final/Referred, dated 19 January 2019, shows an investigation established the applicant committed the offenses of Assault and Wrongful Damage of Government Property (Negligence/Willful). On 4 November 2018, (name masked) and the applicant were involved in a verbal altercation which turned physical. (Name masked) threw the applicant's Amazon fire stick at the applicant. The applicant became aggravated and damaged (name masked) television, causing (name masked) to throw the applicant's cell phone to the ground, causing damage. (Name masked) stated the applicant then got a knife to prohibit (name masked) from leaving the room, which caused a struggle, during which (name masked) sustained an (information masked). The applicant threw (name masked) cell phone to the ground, shattering the screen, before they could exit the area.

(9) CG Article 15, 20 February 2019, for:

(a) Unlawfully cutting PV2 K__ J__ on the wrist with a knife on or about 4 November 2018.

(b) Failing to go at the time prescribed to the appointed place of duty on or about 13 June 2018, 3 July 2018, 10 October 2018, and 22 October 2018.

(c) Being derelict in the performance of those duties in that the applicant willfully failed to maintain accountability for their Common Access Card (CAC) on or about 15 October 2018.

(d) The punishment consisted of a reduction from E-2 to E-1; forfeiture of \$392.00 pay; extra duty and restriction for 14 days; and an oral reprimand.

(10) On 26 February 2019, the applicant was counseled for initiation of an involuntary separation/field initiated (BA) flag. Counseling states the applicant was being investigated for falsifying a DD form 689 (Individual Sick Slip). On this same date, the commander initiated action to separate the applicant for wrongfully cutting PV2 K__ J__ on the wrist with a knife and failing to report on multiple occasions.

(11) DA Form 4833 (Commander Report of Disciplinary or Administrative Action), shows the applicant was referred on 13 March 2019, for Assault and Wrongful Damage of Government Property on 4 November 2019.

(12) The applicant's Enlisted Record Brief, dated 29 March 2019, shows the applicant was flagged for involuntary separation/field initiated (BA) flag, effective 26 February 2019, and adverse action (AA) flag, effective 26 February 2019; was ineligible for reenlistment due to pending separation (9V). The Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions. The applicant was reduced from E-2 to E-1 effective 20 February 2019.

(13) DA Form 4833 (Commander Report of Disciplinary or Administrative Action), shows the applicant was referred on 14 February 2020, for Assault Consummated by Battery on 14 January 2019. The applicant was referred to Family Advocacy and mental health on 6 February 2019. During the Incident Determination Committee meeting with Family Advocacy on 12 February 2019, it was found that the domestic violence incident did not meet criteria.

(14) Law Enforcement Report - 1st Corrected Final/Referred, dated 11 March 2020, shows an investigation established the applicant committed the offense of Assault Consummated by Battery. On 14 January 2019, the applicant and (name masked) were involved in a verbal altercation which turned physical when (name masked) shoved the

applicant. The applicant sustained injuries on the right ring finger, left upper thigh, and right big toe.

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

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

(1) **Applicant provided:** None.

(2) **AMHRR Listed:** MSE as described in previous paragraph 4h.

The ARBA's medical advisor reviewed DoD and VA medical records.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293.

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

7. **STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health

condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

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

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

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:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) 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 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.

a. The applicant requests an upgrade to honorable. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 1 year, 7 months, and 21 days. The applicant received eight developmental counseling forms for various acts of misconduct including initiation of an adverse action and involuntary separation/field initiated flags. The applicant also received a CG Record of Proceedings under Article 15. On 28 March 2019, the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12b, by reason of Pattern of Misconduct, with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, other mental health by selecting this option on their application. The applicant states on page two of the application that they did not receive any VA rating decisions, medical records, or counseling treatment records. The AMHRR contains an MSE page one of two, dated 9 January 2019, showing the applicant was cleared for any

administrative actions deemed appropriate by the command. The applicant met medical retention requirements. The applicant had been screened for PTSD, depression, TBI, and substance misuse which was negative and required no further evaluation. Behavioral health diagnoses was deferred.

d. The applicant contends, in effect, the chain of command was not fair. The applicant cried for help numerous of times which was turned down. The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

e. The applicant contends an upgrade would allow them to regain their education and to be able to provide a life for themselves and their daughter. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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.

f. The Army Review Board Agency provided the Criminal Investigation Division's reports to the applicant at the address in the application on 18 October 2021 requesting comments but received no response from the applicant.

g. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, 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: The applicant was a victim of IPV in- and post-service. She is service connected for Generalized Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was a victim of IPV in- and post-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that while the cutting appears to have occurred when blocking exit, it is as possible as not this was an act of self-defense and/or aggravation of trauma symptoms causing an extreme reaction.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's IPV experience outweighed the assault basis for separation for the aforementioned reason(s).

b. Response to Contention(s):

(1) The applicant contends, in effect, other mental health by selecting this option on their application. The Board considered this contention valid and voted to grant relief.

(2) The applicant contends, in effect, the chain of command was not fair. The applicant cried for help numerous of times which was turned down. The Board considered this contention and found no evidence of arbitrary or capricious acts by the chain of command.

(3) The applicant contends an upgrade would allow them to regain their education and to be able to provide a life for themselves and their daughter. The Board 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.

c. The Board determined the discharge is inequitable based on the applicant's IPV experience which mitigated the basis of separation of assault. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, Chapter 15, the narrative reason for separation to Secretarial Authority, with a corresponding separation code of JFF. The Board determined the reentry code is proper and equitable based on medical diagnosis and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's IPV experience outweighed the basis of separation. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

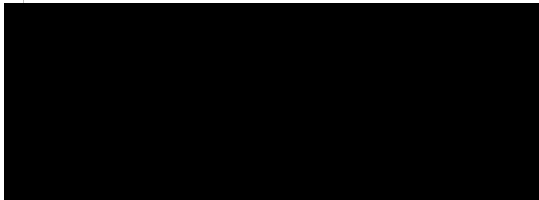
(3) The RE code will not change based on the applicant's medical diagnosis.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** AR 635-200

Authenticating Official:

4/26/2024



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