

1. Applicant's Name:

- a. **Application Date:** 7 September 2020
- b. **Date Received:** 5 October 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is under honorable conditions (general). The applicant requests an upgrade to honorable.

The applicant states in effect, they were separated from the army for misconduct when they were innocent. They were charged with domestic violence; their commander placed them in the barracks while they were waiting for court and started chapter paperwork to separate them from the army. The applicant tried to explain and prove that they were innocent but were not successful. The applicant ex had a panic attack and called the police during an argument, and the applicant ex wrote a letter to the applicant's commander and to the court explaining the situation and that they were not attacked however the commander did not take that into consideration and applicant were discharged from the army with a general discharge and afterwards the court dropped the charges.

The applicant was proud to be in the army as an infantryman and were dedicated and motivated; the applicant reenlisted twice and deployed once and hope that the applicant could do more. They have all their benefits after getting out of the army however what motivates them the most is to receive an honorable discharge because they served honorably. What frustrates them is knowing someone in their last unit who failed a drug test twice and received an honorable discharge, additionally there was another soldier who failed a drug test and received a general discharge and neither of those soldiers finished one contract and they never deployed. The applicant believes their separation from the army was not fair. They were separated with debt from the bonus they received during their second reenlistment and the situation was financially hard for them as they were not expecting to be separated from the army so soon.

b. **Board Type and Decision:** In a records review conducted on 14 February 2024, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision. (Board member names available upon request).

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200 / JKQ / RE-3 / Under Honorable Conditions (General).

b. **Date of Discharge:** 24 September 2019

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 19 August 2019

(2) Basis for Separation: The applicant wrongfully assaulted someone by smacking them in the face, punching them in the face multiple times with their first and they kicked a door with their foot; striking someone in the face on 7 August 2019.

(3) Recommended Characterization: General, under honorable conditions.

(4) Legal Consultation Date: 19 August 2019

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 27 August 2019 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 31 October 2017 / 4 years

b. Age at Enlistment / Education / GT Score: 25 / NIF / 100

c. Highest Grade Achieved / MOS / Total Service: E-4 (SPC) / 11B10 Infantryman / 5 years, 7 months, 20 days.

d. Prior Service / Characterizations: Concurrent RA 20140204 – 20171030 / Honorable

e. Overseas Service / Combat Service: None / Afghanistan; 20160602 – 20170206

f. Awards and Decorations: ARCOM, AAM, AGCM, NDSM, ACM-CS, ASR, OSR, NATOMDL

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides that the applicant reenlisted in the Army at the rank of specialist (E-4) for 4 years on 31 October 2017.

(2) On 25 September 2018, the applicant received a General Officer Memorandum of Reprimand for driving under the influence of alcohol. Their blood alcohol content level was .119.

(3) An Olympia Police Department Reporting Officer Narrative document dated 7 August 2019 provides the officer was dispatched to a domestic violence call, the victim reported the applicant hit them, kicked in the door, and would not leave. When the door was kicked open it struck a 14-year-old child. The applicant had been drinking, a verbal argument escalated at which the applicant back handed the victim across the face.

(a) The victim additionally disclosed that the applicant assaulted them a week prior; the applicant called the victim fat, in return the victim told the applicant they were a bad parent, the applicant punched them repeatedly in the face, the victim remembered being hit 3 times before blacking out; they woke up on the floor the next morning with sore ribs and a black eye. The victim also disclosed the applicant was arrested in Texas for assaulting them in 2015.

(b) Dispatch advised they could hear screaming in the background of the 911 call. In the 911 call the victim could be heard yelling at the applicant to leave them alone and they

also reported to dispatch the applicant hit them and kicked the door in. The applicant was arrested and refused to allow officers to read them their Miranda rights.

(4) An Olympia Municipal Court document provides the applicant was charged with two counts of assault in the fourth degree/domestic violence, one count of reckless endangerment and one count of malicious mischief third degree/domestic violence; alleged assaults happened on 31 July 2019 and 7 August 2019.

(5) A Report of Mental Status Evaluation document dated 13 August 2019, provides that the applicant received a risk assessment that cleared them for administrative separation. Additionally, they received a separation medical examination.

(6) A Developmental Counseling Form dated 15 August 2019 provides the applicant was informed they were flagged for involuntary separation due to being arrested and charged with assault/domestic violence. The applicant endorsed they disagreed with the counseling due to the misunderstanding by the police; they were willing to provide all proof of their innocence with letters and documents showing facts and reasons why and how the situation occurred.

(7) A memorandum, 2nd Stryker Brigade Combat Team, 2nd Infantry Division, Joint Base Lewis-McChord, Washington subject: separation under AR 635-200, Chapter 14-12c, commission of a serious offense dated 19 August 2019 provides the applicants immediate commander notified them of their intent to separate them for assault by smacking their significant other in the face with their hand, for punching their significant other in the face multiple time with their fist and for kicking a door with their foot striking someone in the face. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, their available rights, they consulted with a military counsel and submitted statements on their behalf.

- The applicant provided in a statement the domestic violence never happened; the accused never called the police to report domestic violence.
- They requested to stay in the army until trial so they could prove their innocence.

(8) A Commander's Report- proposed separation document dated 26 August 2019 provides the commander did not consider it feasible or appropriate to accomplish other disposition; "the soldier has displayed a pattern of alcohol abuse, physical violence and lack of judgement that do not reflect the army values".

(9) On 26 August 2019 the chain of command endorsed and concurred with the commander's recommendation. On 27 August 2019 the appropriate authority approved the separation under the provisions of AR 635-200 and directed a characterization of service of General, under honorable conditions.

(10) A DD Form 214 shows on 24 September 2019 the applicant was discharged accordingly, they completed total active service of 5 years, 7 months, and 20 days.

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

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

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

(2) **AMHRR Listed:** The applicant was enrolled in ASAP/SUDCC.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Discharge Review) application, a self-authored statement, and two additional enclosures in support of their application.

- An Olympia Municipal Court Case Docket Inquiry document that shows all charges were dismissed without prejudice on 28 October 2019.
- A statement from the alleged victim that provides they did not call 911 to report domestic violence, they called so the applicant could be removed from the property because they had been arguing and the noise was out of control. They requested all charges be dropped because the applicant did not hit them, the applicant stumbled into them by accident, and they overreacted. The incident from the week prior they were intoxicated and started hitting the applicant, the applicant tried to get away but they would not stop hitting them; the applicant hit them so they could remove their self from the attack against them.

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their 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), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel provides the authorized types of characterization of service or description of separation.

(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) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons. Rehabilitative requirements are not required for individuals separated under Chapter 14-12c.

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards.

(5) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

- RE-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
- 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

- 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 DD Form 214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge which is normally considered appropriate for a soldier discharged for serious misconduct.

b. Based on available evidence the applicant enlisted in the army at the age 25, they were arrested for assault/ domestic violence after their significant other called 911 on 7 August 2019. Evidence provides that was their second time being arrested for assault; 22 November 2015. The applicant was subsequently processed for administrative separation six days after they were arrested.

c. The applicant was notified of the intent to separate them for serious misconduct and acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. The applicant consulted with military counsel and submitted any statements on their behalf declaring their innocence. They received the required health and mental health separation examinations that cleared them for administrative separation. The appropriate authority approved their administrative separation, and a DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 24 September 2019.

d. Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

e. 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 [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 (50%SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for PTSD establishes it began or occurred 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 there are no mitigating BH conditions. While the applicant is service connected for PTSD by the VA, this condition does not mitigate assault/domestic violence because PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the ADRB's application 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 service connected PTSD outweighed the basis for applicant's separation for Misconduct (Serious Offense) – assault/ domestic violence the basis for separation - for the aforementioned reasons.

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable. The board considered this contention and concurred with the opinion of the Board's Medical Advisor, a voting member, and determine that despite applying liberal consideration of all the evidence before the board, the applicant's PTSD diagnoses did not excuse or mitigate the Misconduct (Serious Offense) - committing domestic violence and assault. The applicant diminished the quality of service below that meriting an honorable discharge at the time of separation. Thus, the applicant's discharge was proper and equitable.

(2) The applicant contends they were separated from the army for misconduct when they were innocent. The board considered this contention and determined the applicant was discharged under the provisions of chapter 14-2c due to Misconduct (Serious Offense) as outlined in paragraph 9a (3-4) and 9b (1). There was insufficient evidence in the file showing any charges were dropped.

c. The board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 there was insufficient mitigation of the applicant's misconduct detailed in paragraphs 9a (3-4) and 9b (1). The applicant's PTSD diagnoses did not excuse or mitigate the Misconduct (Serious Offense) - by committing the misconduct of domestic violence and assault. 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.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210005827

(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:

2/27/2024

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