

1. Applicant's Name:

- a. **Application Date:** 20 November 2020
- b. **Date Received:** 27 November 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general honorable conditions. The applicant requests a change to honorable.

(2) The applicant seeks relief stating their actions and service after the alleged incident have shown how their character and values have stayed true. They would like to receive the benefits they have worked for as they are currently in school and on their way to a promising future.

b. Board Type and Decision: In a records review conducted on 18 December 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct, (Serious Offense) / Army Regulation 635-200, Paragraph 14-12C / JKQ / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 16 October 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 22 September 2020

(2) **Basis for Separation:** on or about 24 November 2019, the applicant and a group of friends traveled to Seattle to visit the Seattle Art Museum. During the trip, the applicant consumed alcoholic beverages. Throughout the trip, they touched Private First Class (PFC) B____ R____'s buttocks, waist and legs despite them telling the applicant to stop. These actions were done without the consent of PFC R____. Additionally, the applicant assaulted Sergeant (SGT) S____ M____, by wrongfully pushing them with their hands about four times.

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

(4) **Legal Consultation Date:** 28 September 2020

(5) **Administrative Elimination Board:** NA

(6) **Separation Decision Date / Characterization:** 5 October 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

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- a. Date / Period of Enlistment:** 5 July 2017 / 4 years, 37 weeks
- b. Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 108
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 35F1O, Intelligence Analyst / 3 years, 3 months, 12 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** AAM, NDSM, ASR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) A memorandum, U.S. Army Criminal Investigation Command, subject: Law Enforcement Report – Initial, dated 3 December 2019, reflects the applicant as the named subject in violation of Article 120 (Abusive Sexual Contact (Adult)), Uniform Code of Military Justice (UCMJ) and Article 128 (Assault), UCMJ, with occurrence on or about 24 November 2019. The Report Summary states –

(a) Information in this report is based upon an allegation or preliminary investigation and may change prior to completion of the report. This office was notified that PFC R_____ reported the applicant touched them in a sexual manner.

(b) Military Police were dispatched to a disturbance, upon arrive the Military Police encountered the applicant being restrained on the floor by SGT M_____. SGT M_____ stated they were alerted to the applicant being confrontational and loud. When SGT M_____ went to the applicant's room, the applicant pushed SGT M_____ several times and SGT M_____ restrained the applicant until the Military Police arrived. SGT M_____ related that they were told the applicant was accused of touching PFC R_____ in a sexual manner. The applicant was apprehended at the scene and detained in the Directorate of Emergency Services due to their high level of intoxication. The applicant continued to be belligerent and was banging their head on the walls of the detention cell.

(c) PFC R_____ on Special Victim Counsel Services which they elected. PFC R_____ stated they and several friends, and the applicant went to a museum in Seattle, WA, where the applicant touched them several times on their buttocks, waist and legs without their consent. PFC R_____ stated the applicant continued to touch them several times during the trip a continued when they returned to the barracks on Joint Base Lewis-McChord, WA.

(d) SGT M_____ stated they were alerted to a disturbance as the applicant's assigned barracks room. SGT M_____ stated they made contact with the applicant who became verbally confrontational and asked to fight SGT M_____. SGT Moses stated the applicant made several derogatory comments towards PFC R_____ and they tried to defuse the situation, but the applicant persisted by coaxing them to fight the applicant and by pushing them several times. After being pushed about four times by the applicant, they decided to physically restrain them.

(2) A DA Form 4856 (Developmental Counseling Form) dated 3 September 2020, reflects the applicant received counseling from their first sergeant to inform them that the investigation from the incident that they were involved in on 24 November 2019 has been

closed. The findings are that there will be no charges filed against them. However, due to their conduct this counseling is informing them that the command will be initiating a chapter for separation. The applicant agreed with the information and signed the form.

(3) A DA Form 3822 (Record of Mental Status Evaluation) dated 17 September 2020, reflects the applicant has no duty limitations due to behavioral health reasons and currently meets behavioral health medical retention standards. Section IV (Diagnoses) reflects no behavioral health diagnoses. The behavioral health provider stated the applicant has already been referred to Substance Use Disorder Clinical Care for evaluation and no further referral not indicated. The applicant is mentally responsible, able to distinguish right from wrong, and has the mental capacity to understand and participate in administrative proceedings.

(4) A memorandum, Headquarters and Headquarters Battery, 2nd Battalion, 17th Field Artillery Regiment, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 22 September 2020, notified the applicant of initiating actions to separate them for Commission of a Serious Offense, for misconduct as described above in paragraph 3c(2). On the same day the applicant acknowledged receipt of notification for separation.

(5) In the applicant's memorandum, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 22 September 2022, the applicant states they have been advised by their consulting counsel of the basis of the contemplated action to separate them for Commission of a Serious Offense and its effects; of the rights available to them, and of the effect of any action taken by them in waiving their rights. They understood they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them. They further understand that as the result of issuance of a discharge that is less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected not to submit statements in their behalf.

(6) A memorandum, Headquarters and Headquarters Battery, 2nd Battalion, 17th Field Artillery Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 29 September 2020, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant's behavior is in direct conflict with the Army values. Their actions showed blatant disrespect for both peers and supervisors.

(7) A memorandum, Headquarters, 2nd Battalion, 2nd Stryker Brigade Combat Team, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 5 October 2020, the separation authority, after careful consideration of all matters, directed the applicant be separated from the Army prior to their expiration of current term of service and their service be characterized as General (Under Honorable Conditions). After reviewing the rehabilitative transfer requirements the commander determined the requirements waived, as the transfer will serve no useful purpose or product a quality Soldier.

(8) On 16 October 2020, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 3 year, 3 months, and 12 days of net active service this period and did not complete their first full term of service obligation of 4 years and 37 weeks.

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

j. **Behavioral Health Condition(s):** None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- 3rd Party Statement – Memorandum of Support

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

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

a. Title 10, U.S. Code, Section 1553, (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, Title 10 U.S. Code, Section 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 (DoD) 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; Title 10 U.S. Code; Section 1553 and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. 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. Paragraph 14-12c (Commission of a Service Offense), stated 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.

(5) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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 14-12c, 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 DoD Instruction 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):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DoD Instruction 1332.28.

b. A review of the applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received event oriented counseling for their inappropriate conduct of abusive sexual contact and assault and was involuntarily separated from the Army. The DD Form 214 provides the applicant was discharged with a character of service of General (Under Honorable Conditions), for misconduct, (serious offense). They completed 3 years, 3 months, and 12 days of net active service this period; however, they did not complete their 4 year, 37-week contractual enlistment obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members 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.

d. Published DoD 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Prior Decisions Cited:

c. Response to Contention(s):

(1) The applicant contends their actions and service after the alleged incident have shown how their character and values have stayed true. The Board considered the applicant's post service, and did not find that it outweighed the applicant's offense of Sexual Assault and Assault.

(2) The applicant contends they would like to receive the benefits they have worked for as they are currently in school and on their way to a promising future. 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

d. The Board determined: In a 5-0 vote the board determined that the current discharge is proper and equitable.

e. 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 did not did not provide evidence of impropriety or inequity nor any behavior health condition that would excuse or mitigate the offenses of sexual assault and assault. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the

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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.

(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:

1/6/2025

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