

**1. Applicant's Name:**

- a. **Application Date:** 14 April 2021
- b. **Date Received:** 20 April 2021
- 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 general (under honorable conditions) The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the applicant's discharge was inequitable because the applicant was discharged after an administrative separation board recommended the applicant be retained. The applicant desires to reenlist.

b. **Board Type and Decision:** In a records review conducted on 28 August 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:** Secretarial Authority / AR 635-200, Paragraph 5-3 / JFF / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 21 August 2020

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 22 August 2019

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 19 March 2019, the applicant was convicted for solicitation of statutory rape by the State of Tennessee and was sentenced to 11 months and 29 days probation.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 3 September 2019

(5) **Administrative Separation Board:** On 6 February 2020, an administrative separation board found the applicant conviction by the State of Tennessee for Solicitation of Statutory Rape, resulting in the sentence of 11 months and 29 days, was not supported by the preponderance of the evidence and recommended the applicant be retained.

**Separation Decision Date / Characterization:** 3 August 2020 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. Date / Period of Enlistment:** 31 August 2016 / 4 years
- b. Age at Enlistment / Education / GT Score:** 23 / HS Graduate / 127
- c. Highest Grade Achieved / MOS / Total Service:** E-6 / 19K34, M1 Armor Crewman / 10 years, 1 month, 9 days
- d. Prior Service / Characterizations:** RA, 13 July 2010 – 30 August 2016 / HD
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** ARCOM-3, AAM-5, AGCM-2, NDSM, GWOTSM, ASR
- g. Performance Ratings:** 10 April 2019 – 30 August 2020 / Qualified  
20 December 2017 – 9 April 2019 / Not Qualified  
21 June 2016 – 19 December 2017 / Qualified
- h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** On 13 March 2020, the applicant acknowledged receipt of notice informing the applicant of the basis for the contemplated action for separation under AR 635-200, Chapter 5-3, Secretarial Plenary Authority.

**(2)** Memorandum, subject: Separation Under AR 635-200, Chapter 5-3, Secretarial Plenary Authority, 7 April 2020, reflect, in part, MG M, Commanding, notified the applicant of action to separate the applicant based on the State of Tennessee court finding the applicant committed two sexual offenses of Solicitation of Statutory Rape. On 6 February 2020. The memorandum states, in part, an Administrative Separation Board found the applicant's conviction by the State of Tennessee for Solicitation of Statutory Rape, resulting in sentence of 11 months and 29 days probation was not supported by a preponderance of the evidence and recommended the applicant be retained. The board's findings were not consistent with the evidence presented. Based on the board's recommendation for retention, MG M was initiating a request for discharge for the convenience of the Government under the Secretarial Plenary authority detailed in AR 635-200, paragraph 5-3. MG M recommended a characterization of service of General (Under Honorable Conditions).

**(3)** On 3 August 2020, Assistant Secretary of the Army, E. Casey Wardynski directed the applicant separated with a general (under honorable conditions) discharge.

**(4)** On 4 August 2020, the applicant acknowledged receipt of notice informing the applicant of the Involuntary Separation under AR 635-200, Chapter 5-3, Secretarial Plenary Authority.

- i. Lost Time / Mode of Return:** None
- j. Behavioral Health Condition(s):**

**(1) Applicant provided:** None

**(2) AMHRR Listed:** None

**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), 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.

**(1)** Chapter 2, Section II, provides no separation authority will direct discharge if a board recommends retention. Neither will the separation authority authorize issuance of a discharge of less favorable character than that recommended by the board. When a board of officers has recommended retention and the separation authority believes that discharge is warranted and in the best interest of the Army, a request for discharge for the convenience of the Government per paragraph 5-3, may be forwarded to Headquarters, Department of the Army. Separation under the provisions of paragraph 5-3 is based upon different criteria from that considered by the board of officers and does not constitute overturning the board. It is the policy of HQDA not to direct separation per paragraph 5-3 when a duly constituted board has recommended retention unless sufficient justification is provided to warrant separation by the Secretary of the Army, based on all the circumstances, as being in the best interest of the Army.

**(2)** Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

**(3)** Paragraph 3-7a states 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.

**(4)** Paragraph 3-7b states 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.

**(5)** Chapter 5, Section I, paragraph 5-3 provides separation under this paragraph is 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 best interest of the Army. 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 memorandums. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers.

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 "JFF" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5, paragraph 5-3, Secretarial Authority.

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.

**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 Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the applicant's discharge was inequitable because the applicant was discharged after an administrative separation board recommended the applicant be retained. Governing regulation provides when a board of officers has recommended retention and the separation authority believes that discharge is warranted and in the best interest of the Army, a request for discharge for the convenience of the Government per paragraph 5-3, may be forwarded to Headquarters, Department of the Army. Separation under the provisions of paragraph 5-3 is based upon different criteria from that considered by the board of officers and does not constitute overturning the board. It is the policy of HQDA not to direct separation per paragraph 5-3 when a duly constituted board has recommended retention unless sufficient justification is provided to warrant separation by the Secretary of the Army, based on all the circumstances, as being in the best interest of the Army.

On 7 April 2020, the applicant was notified of action to separate the applicant under the provisions of Chapter 5-3, Secretarial Plenary Authority. On 3 August 2020, Assistant Secretary of the Army, E. Casey Wardynski directed the applicant separated with a general (under honorable conditions) discharge.

The applicant desires to reenlist. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-201, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

**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.** Response to Contention(s): The applicant contends the applicant's discharge was inequitable because the applicant was discharged after an administrative separation board recommended the applicant be retained. The board considered this contention and voted not to change the applicant's characterization of service because the applicant pled guilty and was sentenced to 11 months and 29 days of probation for solicitation of statutory rape by the State of Tennessee. On 3 August 2020, the Assistant Secretary of the Army directed a general (under honorable conditions) discharge. On 4 August 2020, the applicant acknowledged receipt of notice for Involuntary Separation under AR 635-200, Chapter 5-3, Secretarial Plenary Authority. Thus, the applicant was properly and equitably discharged.

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

**d.** Rationale for Decision:

**(1)** The board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the board, the applicant did not have a condition or experience that may excuse or mitigate the basis for separation (solicitation of statutory rape). The applicant pled guilty and was sentenced to 11 months and 29 days of probation for solicitation of statutory rape by the State of Tennessee. On 4 August 2020, the applicant acknowledged receipt of the notice for Involuntary Separation under AR 635-200, Chapter 5-3, Secretarial Plenary Authority. Therefore, 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 rationale, 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.

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210009966

## 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:

9/16/2024

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