

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 3 May 2021
- c. **Counsel:** Yes

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 Under Other Than Honorable Conditions. The applicant requests a change to honorable and a change to the narrative reason for separation and separation code.

(2) The applicant, through counsel, seeks relief stating the behavior which led to their discharge was a result of and/or mitigated by their Post Traumatic Stress Disorder (PTSD) and other mental health related conditions. Their conduct for which they were discharged did not rise to the level of "Serious Misconduct" as is defined in the Army regulations. In light of these issues, their discharge was both inequitable and improper. Their request for an honorable discharge should be given due to the extensive list of awards and accolades, in addition to the sacrifices they made on multiple deployments.

(3) The mental strain from their deployments continued to follow them and impacted their actions. In late 2018, they were charged with physically abusing their stepchild and was ultimately discharged in 2019. However, following the incident but prior to being discharged, they began seeing a psychiatrist and psychologist in recognition of their mental health concerns and was diagnosed with PTSD, anxiety, and depression. While their undiagnosed and untreated mental health concerns contributed to the unfortunate incident, their PTSD serves as a mitigating factor when evaluating their record in consideration of a discharge upgrade. Their outstanding service record and continuous post-service dedication to treatment warrant an upgrade of their discharge.

(4) The Department of Defense (DoD) memoranda instructed that "liberal consideration" be given to request for a discharge upgrade where the service member presented with symptoms of PTSD at the time of the incident. While not mandating a discharge upgrade, these memoranda present a presumption in favor of an upgrade when mental health conditions, including PTSD are present.

b. Board Type and Decision: In a records review conducted on 30 October 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 10 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / Army Regulation 635-200 / JKQ / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 23 July 2019

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) does not contain their case file for approved separation. The applicant provided several separation documents. The information in 3c(1) through (6) were derived from those documents.

(1) Date of Notification of Intent to Separate: 20 February 2019

(2) Basis for Separation: on or about 15 October 2018, committed aggravated battery to a child under 13 years of age, by striking them with a belt and leaving bruises on their legs, buttocks, back, penis, arms, and face.

(3) Recommended Characterization: Battalion Commander recommended Under Other Than Honorable Conditions.

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 January 2017 / 3 years

b. Age at Enlistment / Education / GT Score: 27 / HS Graduate / 119

c. Highest Grade Achieved / MOS / Total Service: E-6 / 79R1O, Recruiter / 11 years, 11 months, 7 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (15 May 2009 – 29 April 2010 and 30 July 2011 – 12 November 2011), Afghanistan (13 June 2013 – 27 February 2014)

f. Awards and Decorations: ARCOM-4, AAM-4, MUC-2, AGCM-3, NDSM, GWTSM, ACM-CS, ICM-2CS, NCOPDR-2, ASR, OSR-2, NATOMDL

g. Performance Ratings: 1 April 2010 – 31 March 2011 / Fully Capable
 1 April 2011 – 31 March 2012 / Fully Capable
 1 April 2012 – 31 March 2015 / Among the Best
 1 April 2015 – 18 May 2018 / Highly Qualified

h. Disciplinary Action(s) / Evidentiary Record: A DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant was discharged from the U.S. Army on 23 July 2019, shows in:

- item 4a (Grade, Rate, or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 11 years, 11 months, 7 days
- item 18 (Remarks) – in part,

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210010211**

- no entry for the applicant's CONTINUOUS HONORABLE ACTIVE SERVICE 20070823 – 20170123
- MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, paragraph 14-12c
- item 26 (Separation Code) – JKQ [Misconduct (Serious Offense)]
- item 27 (Reentry Code) – RE-3
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

i. Lost Time / Mode of Return: NA

j. Behavioral Health Condition(s):

(1) Applicant provided: Medical Record, Psychiatry Clinic, 20 February 2019, reflecting an impression/diagnosis of PTSD and problems related to other legal circumstances. Roots & Wings Counseling Consultant, Quarterly Report, 10 December 2019, reflects diagnoses of PTSD, Generalized Anxiety, Unspecified Depressive Disorder.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Brief in Support of Application with eight exhibits –
 - Exhibit A – DD Form 214
 - Exhibit B – Excerpts from their AMHRR
 - Exhibit C – Spouse's Personal Statement
 - Exhibit D – Deployment Document/Order
 - Exhibit E – Department of Veterans Affairs (VA) Form 21-0781 (Statement in Support of Claim for Service Connection for PTSD)
 - Exhibit F – Traumatic Brain Injury (TBI) and PTSD Checklists
 - Exhibit G – Service Treatment Records
 - Exhibit H – Roots & Wings Counseling Consultants – Quarterly Report
- Excerpts of Case Files for Approved Separation
- VA Letter, reflects the VA certifies the applicant's military service
- Circuit Court Order, 21 July 2022, reflects –
 - the applicant has successfully completed all the terms and requirements of their Domestic Violence Deferred Prosecution
 - by agreement of the parties, the applicant's previous guilty plea is vacated
 - all previous fines and costs collected remain in effect
 - State's motion to Dismiss the case is granted
 - Vacate all other court dates
 - Close file

6. POST SERVICE ACCOMPLISHMENTS: None submitted with 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. 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.

c. Office, Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder), 3 September 2014, directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

d. Office, Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017 issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

e. Office, Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations), 25 July 2018 issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

(1) This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, DRBs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

(2) Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

f. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence 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. 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.

g. 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).

h. Army Regulation 635-8 (Separation Processing and Documents) dated 10 March 2014, prescribed policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

i. 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.

j. Manual for Courts-Martial, United States (2019 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 128 (Assault consummated by a battery upon a child under 16 years).

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 available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation. Due to the lack of evidence the specific facts and circumstances surrounding the misconduct to

be discharged under the provision on Army Regulation 635-200, paragraph 14-12c are unknown. However, the available evidence does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which provides the applicant was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of General (Under Honorable Conditions). They completed 11 years, 11 months, and 7 days of net active service this period and completed their first full term of service of 4 years; however, they did not complete their 3-year reenlistment contractual 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. The applicant's AMHRR does not reflect documentation reflecting diagnoses of PTSD, TBI, or other mental health; however, the applicant did provide evidence of a behavioral health documents reflecting diagnoses of PTSD, Generalized Anxiety, Unspecified Depressive Disorder and problems related to other legal circumstances.

e. 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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. **The applicant submitted the following additional document(s):** None

b. **The applicant presented the following additional contention(s):** None

c. **Counsel / Witness(es) / Observer(s):** None

10. 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: PTSD with subsumed MDD, General Anxiety Disorder (GAD), and Unspecified Depressive Disorder

(2) Did the condition exist, or experience occur during military service? **Yes.** PTSD

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that child abuse is not a secondary effect of trauma.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's conditions outweighed the basis for separation.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends the behavioral which led to their discharge was a result of and/or mitigated by their PTSD and other mental health related conditions. The Board considered this contention, concurred with the Board's Medical Advisor, and determined that child abuse is not a secondary effect of trauma.

(2) The applicant contends their conduct for which they were discharged did not rise to the level of "Serious Misconduct" as is defined in the Army regulations. The Board acknowledged this contention and determined that there is no medical mitigation for child abuse. The applicant's medical records also revealed the applicant received two felony charges of child abuse of his five-year-old stepson and the wounds, cuts, bruises and abrasions revealed severe physical abuse that warranted arrest.

(3) The applicant contends their discharge was both inequitable and improper. Their request for an honorable discharge should be given due to the extensive list of awards and accolades, in addition to the sacrifices they made on multiple deployments. The Board acknowledged this contention and the totality of the applicant's records, however the Board determined that the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(4) The applicant contends the mental strain from their deployments continued to follow them and impacted their actions. Their undiagnosed and untreated mental health concerns contributed to the unfortunate incident; their PTSD serves as a mitigating factor when evaluating their record in consideration of a discharge upgrade. The Board considered this contention and determined that child abuse is not a secondary effect of trauma, and the medical diagnoses do not mitigate the basis for separation.

(5) The applicant contends their outstanding service record and continuous post-service dedication to treatment warrant an upgrade of their discharge. The Board acknowledged this contention and the totality of the applicant's records and determined that the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(6) The applicant contends DoD memoranda instructed that "liberal consideration" be given to request for a discharge upgrade where the service member presented with symptoms of PTSD at the time of the incident. While not mandating a discharge upgrade, these memoranda present a presumption in favor of an upgrade when mental health conditions, including PTSD are present. The Board applied liberal consideration and opined that child abuse is not a secondary effect of trauma.

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

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, there is no medical mitigation for the basis of separation (committed aggravated battery to a child under 13 years of age). The applicant's medical records also revealed the applicant received two felony charges of child abuse of his five-year-old stepson. The Board noted the wounds, cuts, bruises, and abrasions the child received were severe, and the applicant was arrested. 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 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.

11. 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:

11/6/2024

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