

1. Applicant's Name:

- a. **Application Date:** 19 December 2020
- b. **Date Received:** 28 December 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, separation code change, reentry code change and a narrative reason change.

(1) The applicant states in effect their discharge was inequitable, and they feel regret and remorse for the event that took place that led them to lose everything they worked hard for. Joining the Army has always been their goal, they knew they wanted to serve their country and go to school. They are wiser now and realize the consequences of their actions, and it has been a lesson that they will never forget.

(2) Their spouse was drinking, and their actions were a reaction of their spouse being unaware that they had choked the applicant. It happened because the applicant would not give their spouse the car keys, and even though they were mad and angry at their spouse they did what they thought was right by not letting their spouse drive intoxicated. The incident with another person happened after the situation with their spouse, the applicant was full of anger, depressed and worried. They realize that they get defensive anytime someone has their hands in their face or if they feel threatened which is not an excuse. They were always a stellar soldier, and many of their peers and chain of command spoke highly of them. They attended anger management and went to marriage counseling with their spouse with a focus on doing better. After completing their punishment, they were notified of their separation.

(3) They had a mental breakdown and were going through a lot with their spouse at the time, they were having panic attacks and episodes daily and they felt like no one could help them. They tried to seek help for counseling, but they were not successful. A female invaded their personal space and touched them which set them off.

b. **Board Type and Decision:** In a records review conducted on 15 November 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:** 18 May 2016

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

(2) Basis for Separation: On 11 February 2015 the applicant committed the act of assault consummated by battery against Ms. Harris and on 15 March 2015 they committed the act of assault consummated by battery against Mr. Leger.

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

(4) Legal Consultation Date: 20 January 2016

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 9 March 2016 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 November 2012 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 88

c. Highest Grade Achieved / MOS / Total Service: E-4 (Specialist) / 92A1P Automated Logistical Specialist / 3 years, 6 months, 13 days.

d. Prior Service / Characterizations: N/A

e. Overseas Service / Combat Service: Alaska / None.

f. Awards and Decorations: AAM, AGCM, NDSM, ASR, OSR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) A Narrative statement indicates on 11 February 2015 the applicant was a passenger in a vehicle, when the vehicle stopped at a stop sign, the applicant exited the vehicle, approached another vehicle and punched the driver on the left cheek.

(2) Record of Proceedings UCMJ document signed 5 May 2015 provides the applicant received a NJP for violating three specifications of Article 128 of the UCMJ. On 11 February 2015, they unlawfully hit Ms. Harris in the face. On 15 March 2015 they unlawfully hit Mr. Ledger on the back with a pool cue and hit them in the face with a soda can. Punishment consisted of reduction to E-2, forfeiture of \$867 pay for two months, extra duty for 45 days and an oral reprimand.

(3) A Report of Medical Examination document dated 18 December 2015 provides the applicant received a separation medical examination.

(4) Report of Mental Status Evaluation document dated 12 January 2016, provides the applicant received a separation mental health evaluation that cleared them. The applicant was offered ongoing treatment through the Embedded Behavioral Health clinic, but they denied interest or desire in services.

(5) On or around 20 January 2016 the applicant's immediate commander notified them of their intent to separate them for Commission of a Serious Offense. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they consulted with counsel, completed their election of rights.

(6) On 3 February 2016 the command endorsed and concurred with the commander's discharge recommendation and on 9 March 2016 the appropriate authority approved the separation and directed a general, under honorable conditions characterization of service.

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

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

(1) **Applicant provided:**

(2) **AMHRR Listed:**

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Record Review) application, DD Form 214, two page statement, Associates of Arts certificate, education transcripts, resume, two SF-50, and four letters of recommendation in support of their application.

6. POST SERVICE ACCOMPLISHMENTS: The applicant graduated and received their associate degree in 2016, bachelor's degree in 2020 and they are currently enrolled at the University of Maryland for their master's degree in acquisitions and supply chain management. They have maintained employment and currently work as a Supply Technician supporting the Army.

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) 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.

(5) 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-214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTHC) discharge which is normally considered appropriate for a soldier discharged for serious misconduct.

b. Based on the available evidence, the applicant enlisted in the army at the age of 18, on 11 February 2015 they assaulted a motorist, one month later they assaulted their spouse. They were found guilty of violating three specifications of Article 128 of the UCMJ, they received a NJP and were subquality processed for administrative separation.

c. The applicant was notified of the intent to separate them for commission of a serious offense and acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c, they consulted with counsel, received the required separation medical examinations and the appropriate authority approved the separation. A properly constituted DD Form 214, authenticated by the applicant's signature indicates they were discharged under the provisions of AR 635-200, CH 14-12c, by reason of misconduct (Serious Offense) with a general, under honorable conditions characterization of service on 18 May 2016.

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 A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences IPV; PTSD due to MST-50%SC.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found IPV occurred during active service. VA service connection for PTSD due to MST establishes nexus with active 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 has been diagnosed with PTSD due to MST by the VA, this

condition and experience do not mitigate the offense of assault consummated by battery as PTSD and MST do not affect one's ability to distinguish right from wrong and act in accordance with the right. Medical record review also indicates that the applicant was involved in Intimate Partner Violence (IPV) and was identified as the offender. While liberal consideration was applied given h/o IPV, there is no mitigation given that the applicant was the identified offender and not the victim.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the Board's application of liberal consideration, the board determined the applicant's IPV; PTSD due to MST did not outweigh the applicant's assault consummated by battery - basis of separation.

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable, separation code change, reentry code change and a narrative reason change.

The board considered the applicant's request and determined that a change to the applicant's current characterization of service, separation code, reentry code, and a narrative reason change is not currently warranted because the misconduct of assault consummated by battery was not consistent with the Army's standard for honorable service.

(2) The applicant contends their discharge was inequitable.

The board considered this contention and the applicant's assertion of inequity, however the board determined that there is no evidence of said inequity in official records, and the applicant did not provide supporting documentation to overcome the presumption of irregularity in the discharge process. Ultimately, the board determined that the assertion alone did not outweigh the misconduct of assault consummated by battery - the basis of separation.

c. 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.

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's PTSD due to MST did not excuse or mitigate the offense of assault consummated by battery. 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.

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:

11/20/2024

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