

1. Applicant's Name:

- a. **Application Date:** 4 April 2021
- b. **Date Received:** 14 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 Under Other than Honorable Conditions. The applicant requests an upgrade to Honorable, a narrative reason change, and changes to their separation and reenry codes.

b. The applicant seeks relief contending, they are requesting a change in their discharge because of how this has impacted their life since the applicant has been out. Their military experience has had a positive impact on their life, as it has taught them many skills such as leadership, stability, and teamwork. They were very fortunate to have such a positive experience; however, the past incident has completely changed their future. They have held a steady and stable job working an average of 60 hours a week at a well-known business in their area. Since the applicant's discharge, they have worked very hard and have had no incidents that would affect their life. During the decision-making process for their incident, the applicant had a positive outcome with the Summary Court Martial, however, the battery commander made the decision to initiate their chapter process for discharge. This has negatively impacted their life significantly, regarding healthcare and future opportunities. Upgrading the applicant's discharge would help them in pursuit of reaching their many goals successfully.

c. **Board Type and Decision:** In a records review conducted on 27 September 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Board Discussion and Determination 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, Chapter 14-12C / JKQ / RE-4 / Under Other than Honorable Conditions

b. **Date of Discharge:** 13 March 2020

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 11 December 2019

(2) **Basis for Separation:** The applicant grabbed the intimate partner with unlawful force or violence, held their arms without consent, and covered their mouth affecting the partner's breathing.

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

(4) **Legal Consultation Date:** 19 December 2019

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 27 February 2020 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 June 2017 / 3 years, 21 weeks

b. Age at Enlistment / Education / GT Score: 23 / High School Diploma / 98

c. Highest Grade Achieved / MOS / Total Service: E-4 (SPC) / 13F10 Fire Support Specialist / 2 years, 9 months, 8 days.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM-5, NDSM, GWOTSM, ASR, SMB-CB

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 6 June 2017, the applicant enlisted in the Regular Army for 3 years and 21 weeks as a PV2 (E-2). The Enlisted Record Brief provides on 6 June 2018, they promoted to PFC (E-3) and on 1 May 2019, to SPC (E-4). On 7 April and 5 June 2019, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and law enforcement investigation (MA).

(2) On 7 April 2019, the intimate partner notified Fort Drum Police of an altercation they were involved in with the applicant regarding relationship issues. The altercation turned physical when the applicant pushed the partner and their head against the floor. The applicant prevented the partner from calling the Police, by taking their cell phone. Then, the applicant placed their hand over the partner's mouth to prevent them from shouting for help. The partner sustained injuries consisting of bruising and a bump to the right side of their forehead. The partner refused medical treatment and the applicant sustained no injuries from the altercation. The applicant was apprehended and transported to the Provost Marshall Office (PMO) where they were advised of their rights, which the applicant invoked. The applicant was released. The record provides further details, including sworn statements from the officers who encountered the intimate partner, their statement, and photos taken of them and the location of the incident.

(3) On 5 June 2019, charges were preferred to Summary Court-Martial, for the following violations: two specifications of Article 128, UCMJ: at or near Fort Drum, NY, on 7 April 2019, the applicant unlawfully pushed the victim (their intimate partner) on the torso with their hand and unlawfully touched the victim on the mouth with their hand; Article 131b: the same day, the applicant wrongfully took the victim's cellphone to prevent them from calling emergency services, impeding the due administration of justice.

(a) On 10 July 2019, in a pretrial agreement, the applicant plead "guilty" to the two specifications of assault and "not guilty" for the obstruction of justice charge, which was

accepted by their battalion commander, the convening authority.

(b) On 30 September 2019, at the Summary Court-Martial, the applicant was found guilty of two specifications of Article 128, UCMJ. They elected to waive their right to counsel and declined to submit matters on their behalf. Their sentence imposed two weeks restriction to the limits of their company. On 12 November 2019, an appellate review confirmed the findings of guilty and the sentence.

(4) On 4 November 2019, a Medical Evaluation Board (MEB) Proceedings provides their diagnosis of right knee patellofemoral pain syndrome, which is medically unacceptable IAW AR 40-501, Chapter 3-35b (1). Their case was referred to a Physical Evaluation Board (PEB), the findings was approved, and the applicant requested an Impartial Medical Review (IMR).

(5) On 11 December 2019, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), due to the applicant having grabbed their intimate partner with unlawful force or violence, held down the partner's arms without consent and covered their mouth, which affected their breathing on or about 7 April 2019. Their company commander recommended an Under Other than Honorable Conditions, in which both the battalion and the commander concurred. The applicant acknowledged receipt of their separation notice, elected to consult with counsel, and declined to submit a statement on their behalf. Defense counsel counseled the applicant on the possible effects of their separation and their rights available to them.

(6) On 27 February 2020, the separation approval authority approved the discharge, with an Under Other than Honorable Conditions and as a result, the applicant was reduced to the lowest enlisted grade. On 13 March 2020, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly the same day, with 2 years, 9 months, and 27 days of total service. The applicant provided their electronic signature and has not completed their first full term of service.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; Two Enlisted Record Briefs; Certificate for Release or Discharge from Active Duty; Medical Records; Leave and Earning Statement

a. The applicant provided a letter from Highlands County Sheriff's Office, dated 17 December 2020, indicating the applicant has "no local record found" for this county only.

b. Eight Character Letters from former colleagues and leadership describe the applicant had no previous incidents; has been someone who conducts themselves with respect; has been forward leaning and trustworthy and has demonstrated an ease for leadership, even with their peers; they have continued to perform their duties downrange during live fire exercises, even while facing their punishment; performed above their paygrade and was recognized by the

battalion executive officer for their performance, awarded an Achievement Medal.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this 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 (Active Duty Enlisted Administrative Separations), 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) 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 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.

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 14-12C, 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:

(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.

g. Manual for Courts-Martial (2019 Edition), United States, states 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 orders and discipline in the Armed Forces. Article 128 (assault consummated by battery) states in the subparagraph, the maximum punishment consists of forfeiture of two-thirds pay and allowances and confinement for six months.

h. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered, medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

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, a narrative reason change, and changes to their separation and reentry codes. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The available evidence provides the applicant enlisted in the RA, promoted to SPC, and served for 1 year and 10 months, prior to the misconduct which led to their separation. Charges were preferred to a Summary Court-Martial for commission of a serious offense, which imposed a two-week restriction. Subsequently, separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12C, Misconduct (Serious Offense), with an Under Other than Honorable Conditions, resulting in a reduction to the lowest enlisted paygrade. The

applicant consulted with defense counsel and was advised of the rights available to them. Although they elected to submit remarks on their behalf, the record does not provide any statements.

(1) The applicant completed a MEB and the diagnosis of their right knee patellofemoral pain syndrome, was found medically unacceptable IAW AR 40-501, Chapter 3-35b (1). Their case was referred to a Physical Evaluation Board (PEB), in which the findings were approved, and the applicant further requested an Impartial Medical Review (IMR).

(2) They completed 2 years, 9 months, and 8 days of their 3 year 21-day 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. 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? **No.** The Board's Medical Advisor, reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service 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):

(1) The applicant seeks relief contending, they are requesting a change in their discharge because of how this has impacted their life since the applicant has been out. Their military experience has had a positive impact on their life, as it has taught them many skills such as leadership, stability, and teamwork. They were very fortunate to have such a positive experience; however, the past incident has completely changed their future. They have held a steady and stable job working an average of 60 hours a week at a well-known business in their area. Since the applicant's discharge, they have worked very hard and have had no incidents that would affect their life. During the decision-making process for their incident, the applicant

had a positive outcome with the Summary Court Martial, however, the battery commander made the decision to initiate their chapter process for discharge. This has negatively impacted their life significantly, regarding healthcare and future opportunities. Upgrading the applicant's discharge would help them in pursuit of reaching their many goals successfully. The Board liberally considered this contention and acknowledges that since the applicant's discharge, the applicant asserted they have worked very hard and have had no incidents that would affect their life, however this contention does not outweigh the misconduct based on the offense of Misconduct (Serious Offense) in which the applicant grabbed the intimate partner with unlawful force or violence, held their arms without consent, and covered their mouth affecting the partner's breathing.

(2) Eight Character Letters from former colleagues and leadership describe the applicant had no previous incidents, and has been someone who conducts themselves with respect, forward leaning and trustworthy, and has demonstrated an ease for leadership, even with their peers; they have continued to perform their duties downrange during live fire exercises, even while facing their punishment; performed above their paygrade and was recognized by the battalion executive officer for their performance, awarded an Achievement Medal. The Board liberally considered this contention and acknowledges the applicant's eight character letters from former colleagues and leadership, however this does not outweigh the misconduct based on the Misconduct (Serious Offense) in which the applicant grabbed the intimate partner with unlawful force or violence, held their arms without consent, and covered their mouth affecting the partner's breathing.

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 was not found to hold an in-service behavioral health condition that would mitigate or excuse the Misconduct (Serious Offense), unacceptable conduct of Intimate Partner Violence (IPV). The Board considered the applicant's contention regarding eight character letters from former colleagues and leadership and found that the totality of the applicant's record does not warrant a discharge upgrade. 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. Therefore, the applicant's Under Other than Honorable discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to an Honorable discharge.

(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

AR20210013780

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:

10/1/2024

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