

1. Applicant's Name:

- a. **Application Date:** 17 December 2020
- b. **Date Received:** 21 June 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.

b. The applicant seeks relief contending, in effect, the one-time incident does not accurately reflect the applicant's 6 years of honorable service between the Army National Guard (ARNG) and being in the Regular Army. The less than honorable discharge provides an undue lifelong punishment for this situation. The applicant is married to the soldier that the applicant was accused of fraternizing with. The applicant's spouse continues to serve in the military and never received any punishment.

c. **Board Type and Decision:** In a records review conducted on 17 July 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:** Unacceptable Conduct / AR 600-8-24, Chapter 4-2B and 4-2C / BNC / General (Under Honorable Conditions)

b. **Date of Discharge:** 9 December 2019

c. **Separation Facts:**

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

(2) **Basis for Separation:** The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraphs 4-2b and c for misconduct, moral, or professional dereliction, and for derogatory information filed in the AHMRR in accordance with AR 600-37, due to the following reasons:

(a) Substantiated derogatory activity resulting from a General Officer Memorandum of Reprimand (GOMOR), 14 February 2019, which is permanently filed in the applicant's AMHRR.

(b) Conduct unbecoming an officer, as indicated in the GOMOR, 14 February 2019.

(3) **Legal Consultation Date:** 15 July 2019

(4) **Board of Inquiry (BOI):** On 15 July 2019, the applicant waived consideration of the case before a BOI.

(5) GOSCA Recommendation Date / Characterization: On 21 August 2019, the GOSCA recommended approval of the applicant's request to resign in lieu of elimination proceedings. / General (Under Honorable Conditions)

(6) DA Board of Review for Eliminations: NA

(7) Separation Decision Date / Characterization: 5 November 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Appointment: 19 May 2016 / Indefinite

b. Age at Appointment: / Education: 21 / Bachelor Degree

c. Highest Grade Achieved / MOS / Total Service: O-2 / 88A, Transportation Officer / 6 years, 9 months, and 18 days

d. Prior Service / Characterizations: ARNG, 29 November 2012 - 19 May 2016 / HD
IADT, 20 May 2013 - 6 September 2013 / HD
(Concurrent Service)

e. Overseas Service / Combat Service: SWA / Iraq (28 November 2017 - 5 June 2018)

f. Awards and Decorations: ARCOM-C, NDSM, GWOTEM, GWOTSM, ASR, OSR

g. Performance Ratings: 19 August 2016 - 1 September 2017 / Highly Qualified
2 September 2017 - 1 July 2018 / Highly Qualified
2 July 2018 - 15 November 2018 / Highly Qualified
16 November 2018 - 16 December 2019 / Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) 2nd Battalion, 4th Infantry Regiment, 3d Brigade Combat Team, 10th Mountain Division (Light Infantry), memorandum (AR 15-6 Investigating Officer Investigating Allegations of an Inappropriate Relationship between the applicant and Sergeant (SGT) N__ M__, 15 January 2018, shows:

(a) Findings:

- Based on the photograph provided by Staff Sergeant M__, the investigating officer found that the applicant and SGT M__ had an inappropriate relationship that created an actual or clearly predictable perception of undue familiarity in violation of AR 600-20, chapter 4-14
- Although the investigating officer found insufficient evidence of a sexual relationship between the applicant and SGT M__, there was sufficient evidence to show that, more likely than not, the relationship between them was inappropriate

(b) Recommendations:

- That appropriate administrative action be taken against the applicant
- That appropriate administrative action be taken against SGT M__

- That the company receive a class on inappropriate relationships

(2) GOMOR, 14 February 2019, shows the applicant engaged in an inappropriate relationship with SGT M___, a noncommissioned officer in their company. The relationship was open, publicized, and known in the company. This inappropriate relationship created an actual or clearly predictable perception of undue familiarity in violation of Army Regulation 600-20, paragraph 4-14. In furtherance of this undue familiarity, a photo was posted publicly wherein the applicant and Sergeant M___ were in close embrace, in civilian clothes, touching tongue-to-tongue.

(3) On 20 February 2019, the applicant was flagged for adverse action (AA), effective 20 February 2019, and

(4) On 23 February 2019, the applicant submitted a rebuttal to the GOMOR stating when the applicant became the Family Readiness Liaison, SGT M___ was already the appointed Family Readiness Group leader. They tried to create an active family readiness group program by attending as many company and battalion events as possible. They sought opportunities to show a unified leadership team and publicized it. On 22 November 2018, while attending a Thanksgiving dinner at SGT M___'s house amongst other soldiers, the applicant and SGT M___ took a whimsical photo (see enclosed photo), wherein their tongues never touched in the photo. The applicant accepted responsibility for their actions that led to the perception of undue familiarity with SGT M___ and regrets allowing their relationship to progress to the point of an AR 15-6 being initiated.

(5) On 25 June 2019, the applicant was flagged for Involuntary Separation (WA), effective 25 June 2019. On this same date, the applicant had to show cause for retention on active duty under the provisions of AR 600-8-24, subparagraphs 4-2b and c, for substantiated derogatory activity in GOMOR, 14 February 2019 which was conduct unbecoming of an officer.

(6) On 15 July 2019, the applicant elected to submit a resignation in lieu of elimination proceedings and waived appearance before a board of officers.

(7) On 21 August 2019, the GOSCA recommended the applicant's request for resignation in lieu of elimination proceedings be approved with a general (under honorable conditions) characterization of service.

(8) On 5 November 2019, the Deputy Assistant Secretary of the Army (Army Review Boards) accepted the applicant's request for resignation with a general (under honorable conditions) characterization 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: DD Form 293; NGB Form 22; DD Form 214; self-authored letter; Service School Academic Evaluation Report; three officer evaluation reports (OER); and 13 character letters.

6. POST SERVICE ACCOMPLISHMENTS: Initially worked as a Freight Specialist for Valiant Integrated Services, under the Marton Technologies Contract at Fort Riley. After this job, the applicant was hired as a police officer at the Riley County Police Department.

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), 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 600-8-24 (Officer Transfers and Discharges), sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(2) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation; Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.

(3) Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.

(4) Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.

(5) Paragraph 4-2c, states reasons (or ones similar) that require an officer's record to be reviewed for consideration of terminating appointment. Standing alone, one of these conditions may not support elimination, however, this derogatory information combined with other known deficiencies form a pattern that, when reviewed in conjunction with the officer's overall record, requires elimination.

- Punishment under Uniform Code of Military Justice, Article 15
- Conviction by court-martial
- The final denial or revocation of an officer's Secret security clearance by appropriate authorities acting pursuant to DODD 5200.2-R and AR 380-67
- A relief for cause OER (DA Form 67-9, (OER)) under AR 623-105, paragraph 3-32
- Adverse information filed in the OMPF in accordance with AR 600-37
- Failure of a course at a service school

(6) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.

e. Army Regulation 635-5-1 (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 "BNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct.

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 AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's two DD Forms 214 shows the applicant served 6 years, 9 months, and 18 days between the ARNG and the Regular Army. The applicant was discharged for substantiated derogatory activity in GOMOR, 14 February 2019 which was conduct unbecoming of an officer. The applicant was discharged on 9 December 2019 under the provisions of AR 600-8-24, paragraphs 4-2 and 4-24, by reason of Unacceptable Conduct, with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, the one-time incident does not accurately reflect the applicant's 6 years of honorable service between the ARNG and the Regular Army. The less than honorable discharge provides an undue lifelong punishment for this situation. The applicant is married to the soldier that the applicant was accused of fraternizing with. The applicant's spouse continues to serve in the military and never received any punishment. Army Regulation 600-8-24, paragraph 1-23 (previously 1-22), in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

d. The applicant contends to have initially worked as a Freight Specialist for Valiant Integrated Services, under the Marton Technologies Contract at Fort Riley. After this job, the applicant was hired as a police officer at the Riley County Police Department. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

e. The third party statements provided with the application states that the actions of the applicant was out of character for the applicant. The applicant has been a leader of honor and integrity who lives the Army Values and the Warrior Ethos. The applicant is a motivated and hard-working individual who has achieved numerous milestones in their life. The applicant's commitment and dedication were clearly demonstrated when the applicant graduated from the Police Academy after serving the military. A general discharge (under honorable conditions), is a gross mis-categorization and does not reflect the true nature of the applicant's service.

f. 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 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:

(1) The applicant contends, in effect, the one-time incident does not accurately reflect the applicant's 6 years of honorable service between the ARNG and the Regular Army. The less than honorable discharge provides an undue lifelong punishment for this situation. The applicant is married to the soldier that the applicant was accused of fraternizing with. The applicant's spouse continues to serve in the military and never received any punishment. The Board considered this contention and determined there is insufficient evidence in the file to support an upgrade. There is sufficient evidence in the file to support the applicant's conduct unbecoming due to fraternizing with an NCO, whom the applicant married upon discharge from service. The discharge is proper and equitable.

(2) The applicant contends to have initially worked as a Freight Specialist for Valiant Integrated Services, under the Marton Technologies Contract at Fort Riley. After this job, the applicant was hired as a police officer at the Riley County Police Department. The Board considered this contention and determined that the applicant's employment and past employment does not outweigh the misconduct based on the seriousness of the applicant's offense of derogatory information in their file, moral or professional dereliction and, conduct unbecoming due to fraternizing with an NCO. The discharge is proper and equitable.

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 did not have any BH conditions that could excuse or mitigate the offenses of derogatory information in their file, moral or professional dereliction and, conduct unbecoming due to fraternizing with an NCO. 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 General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same reasons, and 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:

8/7/2024

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