

1. Applicant's Name:

- a. Application Date:** 6 April 2021
- b. Date Received:** 11 June 2021
- c. Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues: The current characterization of service the period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable.

b. The applicant seeks relief contending, they have served Honorably and have never received a court-martial, even though, they requested one. The applicant believes their discharge was unjust and there was nothing they could do about it. They are requesting to receive a corrected discharge and to receive all of their VA benefits. The applicant was sexually harassed by one of the Senior Noncommissioned Officers (NCOs) within their ranks and believe that was a big reason why the applicant was wrongfully discharged from the Army. They were affected badly by this experience and every day, the applicant stayed up at night thinking about everything that they had endured. It is hard going from day to day trying hard not to think about the sexual trauma and the negative attention they received while serving. They went through every resource that was there and nobody was willing to help them and they have honestly cried about the treatment they received. The applicant was tossed out of the Army without a court-martial, that the applicant requested.

c. Board Type and Decision: In a records review conducted on 31 July 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / AR 635-200, Chapter 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 6 April 2021

c. Separation Facts:

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

(2) Basis for Separation: NIF

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: 22 February 2021

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 25 June 2018 / 6 years
- b. Age at Enlistment / Education / GT Score:** 18 / High School Diploma / 105
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 68E10 Dental Specialist / 2 years, 9 months, 12 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** NDSM, GWOTSM, ASR, EMB-CB
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) On 25 June 2018, the applicant enlisted in the Regular Army for 6 years as a PVT. The Enlisted Record Brief provides they promoted up to SPC (1 January 2020) and on 23 November 2020, was flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and field-initiated involuntary separation (BA).

(2) On 1 February 2021, the applicant was charged with the following Articles and demanded trial by court-martial.

(a) Article 89, UCMJ: On 20 August 2020, for having behaved themselves with disrespect toward CW2 R., a superior warrant officer, by saying to [them], "Do ya thing playa";

(b) Article 134, UCMJ: On or about 1 February – 1 March 2020, for having engaged in an inappropriate relationship with Mrs. R., and that such conduct was to the prejudice of good order and discipline in the Armed Forces

(c) Article 92, UCMJ: On 7 September 2020, for having knowledge of a lawful order issued by SFC B. M., not to make any contact with Mrs. R., in which the applicant failed to obey the same, by wrongfully arriving to Grace Community Church, knowing that Mrs. R.'s vehicle was parked outside.

(3) On 22 February 2021, the defense counsel requested the applicant be retained and the separation action against them be closed without adverse action, as the allegations upon which the separation action is based – disobeying a lawful order and disrespecting a warrant officer – are not supported by the facts. Moreover, the separation action is the product of a flawed 15-6 investigation and a last ditch effort to separate the applicant, after they demanded a trial by court-martial in response to the Article 15, arising out of the same 15-6 investigation and no prosecution was ever undertaken.

(a) The No-Contact Order to which the applicant was subject, states only that "[the applicant] will not make any contact with Mrs. R. from here until [they] are told [they] can by First Sergeant or the Commander," DA Form 4856, 5 September 2020 (15-6 Report, Ex. 85). Thus, a determination that the applicant disobeyed the No-

Contact Order requires a finding that [the applicant] “made contact with Mrs. R.” The facts do not support this. As the 15-6 Report states, it was Mrs. R. who “attempted to talk with [the applicant], but [the applicant] informed [Mrs. R.] that [they] were not allowed to.” 15-6 Report, para. 3.w(3). This is plainly not the applicant making contact with Mrs. R., and therefore, there is no basis to find that the applicant disobeyed the No-Contact Order of 5 September 2020.

(b) The 15-6 Report improperly finds that the applicant broke the No-Contact Order based on the fact that the applicant “arrived after Mrs. R. to the church on Labor Day; instead of leaving or calling Mr. Ri., the applicant continued into the building. 15-6 Report, para. 4.f. However, being at the same church as Mrs. R. is not a violation of the order, which was to “not make contact” with [them]. The evidence is clear that the applicant did not do so and abided by that order in informing Mrs. R. that they could not speak with [them] when Mrs. R. attempted to make contact with [the applicant]. Thus, contrary to the 15-6 Report, there was no violation of the No-Contact Order.

(c) Article 91, UCMJ defines the offenses of disrespect toward a warrant officer. Proving the offense requires establishing, among other required elements, that the warrant officer was “then in the execution of office” and that “under the circumstances the accused, by such behavior or language, treated with contempt or was disrespectful to said warrant officer. The Manual for Courts Martial (MCM) explains that an officer is “in the execution of office” when “engaged in any act or service required or authorized by treaty, statute, regulation, the order of a superior, or military usage. The alleged disrespect by the applicant here is that in texts exchanged between the applicant and CW2 R. on Facebook Messenger in which CW2 R. sought to have the applicant meet [them] somewhere to “talk like men” after CW2 R. had followed their spouse to the applicant’s residence the day prior, the applicant was insufficiently professional in their responses. Specifically, after CW2 R. texted that “if [CW2] wanted to set [the applicant] up then they would not even be having this conversation with [the applicant] now or asking to talk. [CW2] would have just called the MPs and [their] commander already” and “[CW2] don’t have time for games. Like [CW2] said [the applicant] can talk to [them] or [CW2] will take it somewhere else. [CW2] was trying to give [the applicant] an opportunity but if [the applicant] does not want to [talk] [CW2] is ok with that.” The applicant responded with, “Do ya thing playa.” 15-6 Report, Ex. 23-26.

(d) This exchange does not satisfy the requirements of Article 91. First, seeking to have the applicant meet CW2 to discuss the applicant’s friendship with Mrs. R. is plainly not an “act or service required or authorized by treaty, statute, regulation, the order of a superior, or military usage.” Thus, CW2 was not in the execution of office. Second, the applicant’s language, occurring in the informal setting of Facebook Messenger in a private conversation, having nothing to do with official military matters, was not disrespectful under the circumstances. This is especially so where CW2’s own language was unequivocally threatening to the applicant, as indeed [the applicant] informed the 15-6 investigator. While the 15-6 investigator found that CW2 was not threatening, this can only be if threats are limited to physical violence-CW2’s statements are clearly a threat that if the applicant did not speak with [them], CW2 would “take it somewhere else”-i.e., to the MPs and the applicant’s commander, who CW2 had referenced moments earlier. Accordingly, they cannot be found to have disrespected a warrant officer.

(e) The two specifications for disobeying the No-Contact Order and disrespecting a warrant officer are the only bases alleged for the applicant’s contemplated separation under AR 635-200, Chapter 14-12C. In the absence of factual

evidence to support those allegations, there is no basis to maintain the separation action against the applicant, and the separation action should be closed without any adverse action taken.

(4) On 25 March 2021, the applicant waived their rights and provided the following answers to the Investigating Officer (IO) in regard to the allegations of "SSG W. sexually harassing [the applicant] via explicit text messages."

(a) Q: "Prior to the text messages received from SSG W. on [22 December 2020], were there any other incidents of unwanted sexual advances, comments, and/or behaviors that made you uncomfortable?" A: "No."

(b) Q: "Did you receive any unwelcome or inappropriate text messages from SSG W. in or around Thanksgiving 2020?" A: "No."

(c) Q: "Did SSG W.'s husband W01 W. contact you in or around Thanksgiving 2020?" A: "31 Dec[ember] 20[20]."

(d) Q: "Have you ever spoken directly to W01 W.?" A: "No."

(e) Q: "Did you work the week of Christmas 2020 from [21-23 December]?" A: "Yes."

(f) Q: "Was SSG W. working during the week of Christmas 2020 from [21-23 December]?" A: "Yes."

(5) Notwithstanding the missing records, on 22 March 2021, their separation orders were issued and amended (6 April). A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects they were discharged accordingly on 6 April 2021, with 3 years, 7 months, and 8 days of service, noting the following:

- Authority: AR 635-200, Chapter 14-12C
- Narrative: Misconduct (Serious Offense)
- SPD Code: JKQ
- Reentry Code: RE-3
- Service Characterization: General (Under Honorable Conditions)
- Total NET Active Service This Period:
- Remarks: Member has not completed their first full term of service.
- Lost Time: None
- Signature: Electronically signed by the applicant

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 (Application for the Review of Discharge); Partial Separation Package; Charge Sheet

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 provides the basic authority for the separation of enlisted personnel.

(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.

(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 14-12C, 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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. 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 review of the records provides there was administrative irregularity in the proper retention of the official military records, specifically, the separation package, and their medical/mental separation examinations. Based on this, the specific facts and circumstances surrounding their separation, are unknown.

(1) The available evidence provides the applicant enlisted in the Regular Army for 6 years as a PVT, promoted up to SPC, and served 2 years, 4 months, and 28 days prior to having been flagged for involuntary separation. Notwithstanding the missing documents, the applicant received their separation orders, and was separated under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), with a General (Under Honorable Conditions) characterization of service. The applicant consulted with defense counsel.

(2) They served 2 years, 9 months, and 12 days of their 6 year contractual obligation.

b. 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.

c. 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: the applicant held in-service diagnoses of Adjustment Disorder and Generalized Anxiety Disorder and post-service connected for Mood Disorder. MST is noted in- and post-service.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder and Generalized Anxiety Disorder and MST noted.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that if the basis is disrespect/inappropriate relationship and breaking a no contact order the MST is partially mitigating. The MST mitigates disrespect given the nexus between traumatic events and difficulty with authority. However, there is no nexus between MST or any known diagnosis and inappropriate relationships and violating no contact orders.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the

condition or experience did not outweigh the basis of separation; "Disobeying a lawful order, engaging in an inappropriate relationship, disrespecting a superior officer (warrant officer), breaking a no-contact order."

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant seeks relief contending, they have served Honorably and have never received a court-martial, even though, they requested one. The applicant believes their discharge was unjust and there was nothing they could do about it. They are requesting to receive a corrected discharge and to receive all of their VA benefits. The applicant was sexually harassed by one of the Senior Noncommissioned Officers (NCOs) within their ranks and believe that was a big reason why the applicant was wrongfully discharged from the Army. They were affected badly by this experience and every day, the applicant stayed up at night thinking about everything that they had endured. It is hard going from day to day trying hard not to think about the sexual trauma and the negative attention they received while serving. They went through every resource that was there and nobody was willing to help them and they have honestly cried about the treatment they received. The applicant was tossed out of the Army without a court-martial, that the applicant requested.

The Board considered this contention and determined that there was insufficient evidence in the applicant's official record or provided by the applicant to warrant an upgrade. The Board also determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare, or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(2) Defense counsel contends, the applicant should be retained and the separation action against them, should be closed without adverse action, as the allegations upon which the separation action is based – disobeying a lawful order and disrespecting a warrant officer – are not supported by the facts. Moreover, the separation action is the product of a flawed 15-6 investigation and a last ditch effort to separate the applicant, after they demanded a trial by court-martial in response to the Article 15, arising out of the same 15-6 investigation and no prosecution was ever undertaken.

(a) The No-Contact Order to which the applicant was subject, states only that "[the applicant] will not make any contact with Mrs. R. from here until [they] are told [they] can by First Sergeant or the Commander," DA Form 4856, 5 September 2020 (15-6 Report, Ex. 85). Thus, a determination that the applicant disobeyed the No-Contact Order requires a finding that [the applicant] "made contact with Mrs. R." The facts do not support this. As the 15-6 Report states, it was Mrs. R. who "attempted to talk with [the applicant], but [the applicant] informed [Mrs. R.] that [they] were not allowed to." 15-6 Report, para. 3.w(3). This is plainly not the applicant making contact with Mrs. R., and therefore, there is no basis to find that the applicant disobeyed the No-Contact Order of 5 September 2020.

(b) The 15-6 Report improperly finds that the applicant broke the No-Contact Order based on the fact that the applicant "arrived after Mrs. R. to the church on Labor Day; instead of leaving or calling Mr. Ri., the applicant continued into the building. 15-6

Report, para. 4.f. However, being at the same church as Mrs. R. is not a violation of the order, which was to “not make contact” with [them]. The evidence is clear that the applicant did not do so and abided by that order in informing Mrs. R. that they could not speak with [them] when Mrs. R. attempted to make contact with [the applicant]. Thus, contrary to the 15-6 Report, there was no violation of the No-Contact Order.

(c) Article 91, UCMJ defines the offenses of disrespect toward a warrant officer. Proving the offense requires establishing, among other required elements, that the warrant officer was “then in the execution of office” and that “under the circumstances the accused, by such behavior or language, treated with contempt or was disrespectful to said warrant officer. The Manual for Courts Martial (MCM) explains that an officer is “in the execution of office” when “engaged in any act or service required or authorized by treaty, statute, regulation, the order of a superior, or military usage. The alleged disrespect by the applicant here is that in texts exchanged between the applicant and CW2 R. on Facebook Messenger in which CW2 R. sought to have the applicant meet [them] somewhere to “talk like men” after CW2 R. had followed their spouse to the applicant’s residence the day prior, the applicant was insufficiently professional in their responses. Specifically, after CW2 R. texted that “if [CW2] wanted to set [the applicant] up then they would not even be having this conversation with [the applicant] now or asking to talk. [CW2] would have just called the MPs and [their] commander already” and “[CW2] don’t have time for games. Like [CW2] said [the applicant] can talk to [them] or [CW2] will take it somewhere else. [CW2] was trying to give [the applicant] an opportunity but if [the applicant] does not want to [talk] [CW2] is ok with that.” The applicant responded with, “Do ya thing playa.” 15-6 Report, Ex. 23-26.

(d) This exchange does not satisfy the requirements of Article 91. First, seeking to have the applicant meet CW2 to discuss the applicant’s friendship with Mrs. R. is plainly not an “act or service required or authorized by treaty, statute, regulation, the order of a superior, or military usage.” Thus, CW2 was not in the execution of office. Second, the applicant’s language, occurring in the informal setting of Facebook Messenger in a private conversation, having nothing to do with official military matters, was not disrespectful under the circumstances. This is especially so where CW2’s own language was unequivocally threatening to the applicant, as indeed [the applicant] informed the 15-6 investigator. While the 15-6 investigator found that CW2 was not threatening, this can only be if threats are limited to physical violence-CW2’s statements are clearly a threat that if the applicant did not speak with [them], CW2 would “take it somewhere else”-i.e., to the MPs and the applicant’s commander, who CW2 had referenced moments earlier. Accordingly, they cannot be found to have disrespected a warrant officer.

(e) The two specifications for disobeying the No-Contact Order and disrespecting a warrant officer are the only bases alleged for the applicant’s contemplated separation under AR 635-200, Chapter 14-12C. In the absence of factual evidence to support those allegations, there is no basis to maintain the separation action against the applicant, and the separation action should be closed without any adverse action taken.

The Board considered this contention in its entirety and determined that there was insufficient evidence in the applicant official record or provided by the applicant to support an upgrade.

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, despite applying liberal consideration of all the evidence before the Board, the applicant's MST experience did not excuse or mitigate the offenses of inappropriate relationships and violating no contact orders. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found insufficient evidence of in-service mitigating factors. The Board's Medical Advisor stated that MST mitigates disrespect but does not mitigate inappropriate relationships and violating no contact orders. The Board's Medical Advisor opined the major offenses are not medically mitigated. The Board members agreed there was a lack of medical mitigation and in-service factors in the applicant's file to outweigh the major offenses. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation was proper and equitable. 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:

9/23/2024

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs