

1. Applicant's Name:

- a. **Application Date:** 27 June 2021
- b. **Date Received:** 16 July 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general honorable conditions. The applicant requests an upgrade to honorable.

(2) The applicant seeks relief contending, they were discharged before their court case was finalized and the court case ended up getting dismissed. During the court proceedings, they were ordered to get an examination and they were diagnosed with depression and other mental disabilities.

b. **Board Type and Decision:** In a records review conducted on 06 December 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:** Pattern of Misconduct / Army Regulation 635-200, Paragraph 14-12B / JKA / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 14 August 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 1 June 2020

(2) Basis for Separation:

- between on or about 1 September 2017 and on or about 28 February 2018, wrongfully engaged in extramarital sexual conduct, with Ms. B____ D____, a person who was not their spouse
- between on or about 1 September 2019 and on or about 23 October 2019, wrongfully engaged in extramarital sexual conduct, with Specialist (SPC) Y____ V____, a person not their spouse
- on or about 15 November 2019, unlawfully struck SPC [Redacted] on the face with an open hand

(3) **Recommended Characterization:** General (Under Honorable Conditions)

(4) **Legal Consultation Date:** 2 July 2020

(5) **Administrative Separation Board:** NA

(6) Separation Decision Date / Characterization: 24 July 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 February 2017 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / HS Diploma / 106

c. Highest Grade Achieved / MOS / Total Service: E-4 / 12N1O, Horizontal Construction Engineer / 3 years, 6 months, 9 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 11 March 2019, reflects the applicant received nonjudicial punishment for three violations of Article 91 (Insubordinate Conduct Toward a Noncommissioned Officer (NCO)), UCMJ on 20 February 2019. Their punishment consisted of a reduction in rank/grade from SPC/E-4 to private first class/E-3, forfeiture of \$491.00 pay, extra duty and restriction for 14 days, and an oral reprimand. The applicant elected not to appeal.

(2) A memorandum, 557th Engineer Construction Company, 864th Engineer Battalion, subject: Appointment as Investigating Officer for Preliminary Inquiry, dated 6 December 2019, reflects an Investigating Officer was appointed to conduct a preliminary inquiry into the facts and circumstances surrounding an allegation that the applicant engaged in extramarital sexual conduct with SPC V____.

(3) A memorandum, 557th Engineer Construction Company, 864th Engineer Battalion, subject: Findings and Recommendations of the Commander's Inquiry into Extramarital Sexual Conduct of [Applicant], dated 22 January 2020, the Investigating officer states –

(a) They find that the applicant was in a relationship with SPC V____ from September 2019 to early November 2019. Their relationship was sexual but abusive in nature. SPC V____ is single and the applicant is legally married and the father of SPC V____'s unborn child. The applicant willfully withheld information regarding their marriage from SPC V____ throughout the duration of the relationship. In the past month, the applicant has initiated another Extramarital Sexual Conduct with another unnamed person.

(b) They find that the applicant's behavior constitutes an offense under the UCMJ, as it is directly prejudicial to good order and discipline.

(c) They recommend the commander take into account the applicant's previous Extramarital Sexual Conduct investigative findings filed against the applicant [not in evidence], their persistent adulterous behavior, and the potential detrimental impact the applicant's actions had on the effect of organizational teamwork when determining appropriate punitive action.

(4) A DA Form 3822 (Report of Mental Status Evaluation), dated 17 April 2020, reflects the applicant has no duty limitations due to behavioral health reasons and currently meets behavioral health retention standards. Section IV (Diagnoses) reflects the applicant has no behavioral health diagnosis for this evaluation. The Behavioral Health Provider states the applicant was seen for a mental status evaluation in preparation for administrative separation proceedings. There is no psychiatric condition that warrants disposition through medical channels. The applicant is psychiatrically cleared for chapter separation.

(5) A memorandum, 557th Engineer Construction Company, 864th Engineer Battalion, subject: Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], dated 1 June 2020, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, with a recommended characterization of service general (under honorable conditions) for adverse action described in previous paragraph 3c(2). On the same day, the applicant acknowledged the basis for the separation and of the rights available to them.

(6) On 2 July 2020, the applicant completed their election of rights signing they had been advised by counsel of the basis for the contemplated action to separation them for a pattern of misconduct under Army Regulation 635-200, paragraph 14-12b, and its effects and of the rights available to them; and of the effect of any action taken by them in waving their rights. They elected not to submit statements in their behalf. They understood that they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them and further understand that if they receive a discharge/character of service that is less than honorable, they may be ineligible for many, or all benefits as a veteran under both Federal and State laws. They requested consulting counsel and elected not to submit statements in their behalf.

(7) A memorandum, 557th Engineer Construction Company, 864th Engineer Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 9 July 2020, reflects the applicant's company commander's recommendation to separate them from the Army prior to the expiration of current term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant does not display potential for continued service.

(8) A memorandum, 557th Engineer Construction Company, 864th Engineer Battalion, 555th Engineer Brigade, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 24 July 2020, the separation authority reviewed the separation packet of the applicant and after careful consideration of all matters, directed the applicant be separated from the Army prior to the expiration of their current term of service. The separation authority directed the applicant's service be characterized as General (Under Honorable Conditions). After reviewing the rehabilitative transfer requirements, they determined the requirements are waived, as the transfer will serve no useful purpose or produce a quality Soldier. The applicant has not filed an unrestricted report of sexual assault within 24 months of initiation of this separation action.

(9) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 14 August 2020, with 3 years, 6 months, and 9 days of net active service this period. The DD Form 214 shows in –

- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12B
- item 26 (Separation Code) – JKA
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Pattern of Misconduct

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Clinical Mental Health Assessment, dated 17 March 2021, reflecting diagnoses of Major Depressive Disorder and Generalized Anxiety Disorder.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Forms 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Clinical Mental Health Assessment
- Department of Veterans Affairs Form 10-5345 (Request For and Authorization to Release Health Information)

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, Title 10, U.S. Code, Section 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, 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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

(5) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(6) Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

(7) Chapter 15 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, (Pattern of Misconduct).

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 DoD Instructions 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, United States (2019 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 134 (Extramarital Sexual Conduct).

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DoD Instruction 1332.28.

b. A review of the available evidence provides a Commander's Inquiry found the applicant was in violation of Article 134 (Extramarital Sexual Conduct), UCMJ, and was involuntarily separated. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b (Pattern of Misconduct) with a character of service of general (under honorable conditions). They completed 3 years, 6 months, and 9 days of net active service; however, they did not complete their first full term of service of their 4-year contractual enlistment obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. The applicant's AMHRR reflects no documentation of a behavioral health diagnoses during the applicant's military service. The applicant provided a Clinical Mental Health Clinic Assessment reflecting diagnoses of Major Depressive Disorder and Generalized Anxiety Disorder.

e. Published DoD guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. 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: Adjustment Disorder with depressed mood; Mild TBI (40%SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found Adjustment Disorder with depressed mood was diagnosed during military service. VA Service connection for mild TBI establishes nexus with military 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 Adjustment Disorder with depressed mood, this condition does not mitigate his misconduct as this condition does not affect one's ability to tell right from wrong and act in accordance with the right. The applicant has also been diagnosed with Concussion and has been service connected (40%) by the VA for Traumatic Brain Disease. While brain injury can, in severe cases, lead to disinhibited, aggressive behavior, this is not the case with this discharge upgrade request given that the head injury occurred after they engaged in the misconduct which resulted in their separation from the Army. The applicant was separated for misconduct occurring between Sep 2017 to Feb 2018, Sep 2019 to Oct 2019 and Nov 2019. Health records indicate that he was diagnosed with Concussion after being elbowed in the head during a basketball game on 28 Jan 2020. Prior to this date, he denied any TBI as per his 20 Nov 2019 Psychiatric Intake Assessment which states, "Medical Considerations: History of TBI: Denies; no hx History of Seizure: Denies; no hx Significant Medical History: some back pain r/t recent car accident no acute medical concerns."

(4) Does the condition or experience outweigh the discharge? **No.** The Board concurred with the Board's Medical Advisor that the applicant's medical condition does not outweigh the basis for separation and the applicant's misconduct.

b. Prior Decisions Cited:

c. Response to Contention(s):

(1) The applicant contends they were discharged before their court case was finalized and the court case ended up getting dismissed. The Board considered this contention but did not find any evidence of impropriety.

(2) The applicant contends during the court proceedings; they were ordered to get an examination and they were diagnosed with depression and other mental disabilities. The Board considered this contention with the Medical Advisor and did not find any impropriety.

d. he 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 Adjustment Disorder did not excuse or mitigate the offenses of adultery and assault as these events occurred prior to any behavior health concerns. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, as the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

1/30/2025

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