

**1. Applicant's Name:**

- a. **Application Date:** 2 August 2022
- b. **Date Received:** 8 August 2022
- 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 Honorable Conditions. The applicant requests an upgrade to an Honorable or General (Under Honorable Conditions) characterization of service.

b. The applicant seeks relief contending, they have 20 years of active-duty service, have been released from jail on 15 June 2022, and has paid their debt to society. A self-authored letter states the applicant was advised by Fort Knox retirement services for them to submit a request to have their discharge changed to a retirement, in order to receive their pension.

c. **Board Type and Decision:** In a records review conducted on 4 October 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more detail regarding the Board's decision.  
(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Misconduct (Civil Conviction) / AR 635-200, Chapter 14-11 / JKB / RE-4 / Under Other than Honorable Conditions

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

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 11 June 2018

(2) **Basis for Separation:** for conviction by civil court, guilty of a crime that has a punitive discharge authorized for the same or closely related offense under the MCM 2002, as amended, and/or the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation.

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

(4) **Legal Consultation Date:** NIF

(5) **Administrative Separation Board:** A Report of Proceedings by Board of Officers, dated 21 August 2018, provides the board, having carefully considered the evidence before them, found the allegations of being found guilty of a crime that has a punitive discharge authorized for the same or closely related offense under the MCM 2002, as amended, and/or the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation, in the notification of proposed separation is supported by a

preponderance of the evidence. This finding warranted the separation of the applicant, with an Under Other than Honorable Conditions characterization of service.

**(6) Separation Decision Date / Characterization:** 9 April 2019 / Under Other than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 1 October 2009 / Indefinite (3rd Reenlistment)

**b. Age at Enlistment / Education / GT Score:** 45 / Bachelor's Degree / 130

**c. Highest Grade Achieved / MOS / Total Service:** SSG (E-6) / 12P10 Prime Power Production Specialist

**d. Prior Service / Characterizations:**

**(1)** United States Air Force, (29 July 1981 – 14 December 1984) / NIF

**(2)** Regular Army, (07 February 2002 – 30 September 2009) / Honorable (2nd Reenlistment)

**e. Overseas Service / Combat Service:**

- SWA / Iraq, 21 February – 14 June 2003
- SWA / Iraq, 28 September 2006 – 15 April 2007
- SWA / Afghanistan, 15 March – 20 May 2012

**f. Awards and Decorations:**

**(1)** Below are the awards listed on their DD Form 214 (Certificate of Release or Discharge from Active Duty):

- Army Achievement Medal (6th Award)
- Joint Meritorious Unit Award
- Valorous Unit Award
- Army Good Conduct Medal (5th Award)
- United States Air Force Good Conduct Medal
- National Defense Service Medal (2nd Award)
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal w/Two Campaign Stars
- Iraq Campaign Medal w/Campaign Star
- Army Service Ribbon
- Overseas Service Ribbon (3rd Award)
- United States Air Force Longevity Service Award Ribbon
- Gold Recruiter Badge w/Three Star Sapphires
- Driver and Mechanic Badge w/Driver-Wheeled Vehicle(s) Clasp

**(b)** Additionally, the following awards are listed on the Enlisted Record Brief [and on the commander's report within the previous case's supporting documents], which are **NOT** displayed on their DD Form 214:

- Army Commendation Medal (2nd Award)
- Noncommissioned Officer Personal Development Ribbon (2nd Award)
- Air Force Training Ribbon

**g. Performance Ratings:**

**(1)** Prime Power Production Specialist Course, 14 February 2005 – 24 February 2006 / Exceeded Course Standards, which is limited to 20% of class enrollment and received a “Superior” rating in their “written communication.”

**(2)** SGT (E-5), 25 February 2007 – 29 November 2008 / Fully Capable; They were marked “Excellence” exceeding the standard in “Responsibility and Accountability” for having kept \$250,000 worth of MTOE tools and equipment; and was recognized by the company commander for having excelled in safety during rating period resulting in 100% accident free days.

**(3)** SSG (E-6), 18 August 2011 – 18 April 2012 / Marginal; They were relieved for cause with the following areas needing improvement:

**(a)** For “Competence” the applicant needed some improvement as they utilized no judgement while interacting with outgoing NCO in the role of COR/COTR NCOIC role at FOB Shank, Afghanistan leading to the applicant’s removal by their command; demonstrated the lack of technical knowledge and skills during electrical assessments in Afghanistan resulting in someone having to do their job for them; and made no effort in using external resources to solicit assistance and guidance.

**(b)** For “Leadership” they needed some improvement for having failed to provide purpose, direction, or motivation to a NCO under their direct supervision; disregarded orders and regulations provided by the Contracting Officer as stated on their appointment letters as COTR for FOB Shank, Afghanistan; and ignored advice from fellow NCOs and Mission Command resulting in project delays.

**(c)** For “Responsibility and Accountability” the applicant needed much improvement, noting the applicant has been notified of the reason for relief. They failed the Army, the Company, and fellow Soldiers by placing the applicant’s own needs ahead of their Soldiers, the NCO creed, and the Army Values; and neglected their duties as COTR and NOCIC by leaving work early and having USACE personnel escort contractors to their sleeping area during duty hours.

**(d)** Their overall performance noted not to promote or send to senior leadership courses at this time; they did not have the potential to lead/train Soldiers; they needed to be assigned in positions with minimal responsibility and with constant guidance; and performed all tasks to substandard with indissoluble supervision.

**(4)** SSG (E-6), 14 September 2014 – 13 September 2015 / Fully Capable; They were rated “Excellence” exceeding the standard in the following areas:

**(a)** For “Competence” the applicant demonstrated superior technical knowledge outside of their field as a Strong Bonds Program Manager for the United States Army Corps of Engineers; coordinated, planned, and executed 120 hours of Strong Bonds training, having produced more resilient NCO’s, Soldiers, and family members; executed flawlessly in the coordination of the post chapel and operator of the sound board at Memorial Ceremony for a

fallen Soldier in the battalion.

(b) For "Leadership" the applicant served as the Prime Power Supervisor, a SFC position, for four months; led section during the Prepare to Deploy on Order upcoming power mission; supervised 13 Soldiers during loading of eight containers which supported the NSF Deveselu mission; ensured accountability and security of over \$100,000 of equipment; and promoted the principles of sexual harassment/assault response program and ensured the application of those skills, were embedded in everyday awareness in the workplace.

(5) SSG, 14 September 2015 – 13 September 2016 / Qualified; Their senior rater provided for the applicant's overall potential the following statement: "[The applicant] performs at the minimum of what is required for [their] rank. This NCO requires tremendous development, grooming and does not currently display the potential to perform at a higher grade; [they] should not be in charge of Soldiers. Promote at the convenience of the Army and send to SLC when available."

#### **h. Disciplinary Action(s) / Evidentiary Record:**

(1) On 1 October 2009, the applicant reenlisted in the Regular Army indefinitely as a SSG. Their Enlisted Record Brief provides in their previous enlistment, they were deployed to Iraq for nearly four months in 2003 and over six months from 2006 – 2007; and in 2012, they were deployed to Afghanistan for just over two months; on 22 February 2017, they were demoted to SGT (E-5). On 18 May and 14 June 2017, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and field-initiated involuntary separation (BA).

(2) On 16 September 2010, their battalion officer disqualified the applicant for the Army Good Conduct Medal for the period between 6 September 2007 – 6 September 2010, in accordance with AR 600-37, paragraph 3-6. The applicant acknowledged having read and understood the unfavorable information and elected not to submit a statement on their behalf.

(3) On 9 November 2016, the appointed Investigating Officer (IO) concluded their investigation and provided the findings and recommendations which determined the applicant had engaged in harassment against the Engineer Battalion (Prime Power) Soldiers, which contributed to a hostile work environment.

(a) On 1 August 2016, SSG W\_ submitted a sworn statement to MSG, as part of a commander's inquiry, recounting four separate incidents of the applicant having displayed behavior that they considered sexual harassment, to include the two incidents the applicant squeezed their OCP breast pocket, their having made references to SSG W\_ having "tits," and the inappropriate comment the applicant made concerning them having a cyst repacked. The IO attempted to interview the applicant on 4 August; however, they did not want to speak to MSG until the applicant had a lawyer present. A memorandum was placed in the applicant's record on 9 August 2016 documenting the incidents detailed below concerning SSG W\_.

(b) On 10 October 2016, the IO was appointed by the commanding officer (LTC); On 17 October, the applicant submitted a sworn statement stating that they felt the SHARP training with their company and the Army was sufficient and "there are not usually any problems within [their] organization." SSG W\_ also stated they did not believe the applicant intended to be offensive.

(c) On 24 October 2016, MSG submitted a sworn statement stating they have not witnessed any activities outside of the four incidents described by SSG W\_, in which the

applicant engaged in sexual harassment.

- MSG made note of the operations sergeant (SSG N\_) having felt uncomfortable when the applicant made a comment about young girls/women, however, SSG N\_ declined to submit a sworn statement.
- MSG also stated SSG W\_ was unable to recall or there were no other witnesses, to either of the incidents of the applicant having grabbed SSG W\_'s breast pocket.
- MSG additionally stated, the applicant has alienated themselves from their peers and Soldiers describe them as "creepy," "awkward," and/or "annoying."

(d) On 4 November 2016, SGT S\_ submitted a sworn statement stating that most of Charlie Company ignores the applicant and they have made comments that "cross the line"; SGT does not believe there are any conditions in which their company tolerates sexual harassment and they did not respect the applicant as a noncommissioned officer (NCO).

(e) On 7 November 2016, the applicant waived their rights to be interviewed with a lawyer and submitted a sworn statement and stated they did not recall the incidents of having grabbed SSG W\_'s breast pocket; they admitted to making comments which are unusual but claims they never intended to make people uncomfortable; they admitted to making the cyst-packing comment, but stated it was joking banter and the Soldier they were speaking to (SGT G\_) found the statement to be "funny"; the applicant expressed concern of SSG W\_ possibly embellishing their stories in an attempt to discredit the applicant, since it is their opinion that SSG W\_ considers the applicant competition for promotion to Sergeant First Class (SFC).

(f) The IO concluded many Soldiers found the applicant's comments inappropriate and unprofessional; however, they found no evidence during the course of their investigation suggesting the applicant made comments or performed actions that were explicitly sexual but depending on the audience, the applicant's comments could be perceived as crossing the line. The applicant's behavior created an intimidating, hostile, or offensive work environment for multiple Soldiers in Charlie Company. Most of the Soldiers interviewed, generally ignored the applicant due to their abundant use of unprofessional comments. All of the Soldiers interviewed during this investigation did not believe of any circumstances that contributed to, encouraged, or condoned sexual harassment. Their recommendation was for the applicant to be counseled on their professionalism, annotating their unprofessional conduct while speaking to/engaging Soldiers on their next evaluation, and for the applicant to be removed from any leadership positions until their command team has assessed their professionalism in those positions.

(4) On 22 February 2017, the applicant accepted nonjudicial punishment (NJP) in violation of Article 134, UCMJ, for having orally communicated to SSG W\_, SGT S\_, and SGT G\_, certain indecent language, to wit: "oh, you need to go get you're a\*\* packed," or words to that effect, at or near Fort Belvoir, VA, on or about 30 August 2016. They appealed the charge and submitted a statement, denying the offensive nature of the comment, maintaining it was a response to a previous comment made by SGT G\_ in their workspace and was not in violation of the UCMJ or community standards. The appeal was denied and the punishment imposed a reduction to SGT (E-5), to be automatically remitted if not vacated on or before 23 May 2017; and extra duty for 45 days.

(5) In reviewing their previous case with the ABCMR (Army Board for Correction of Military Records) AR2020011353, the supporting documents provides on 4 April 2017, the applicant was arrested in violation of Virginia Code §18.2-374.3 (electronic communication to

facilitate offenses involving children) after arranging to meet with a 14-year-old child to commit a sexual offense, who was undercover law enforcement posing as a minor. They were arrested and held without bond.

(a) On 7 June 2017, a Criminal Investigation Division (CID) Report provides Fort Myer CID Office reported the applicant arrested (4 April) by civilian law enforcement for soliciting a minor via the internet. The applicant contacted the uncover law enforcement officer who was posing as a minor online, for sex at a pre-arranged location and upon arrival, they were arrested. The police department executed a search warrant on the applicant's iPad and found multiple images of child pornography, and with a subsequent search warrant, County Police executed a search warrant on the applicant's home and seized electronic devices to search for additional child pornography.

(b) On 3 November 2017, the Office of the Deputy Chief of Staff, G-1 waived the requirement for the applicant to receive a separation history and physical examination, as they were in the custody of the Police Department and was not under the control of the Secretary of the Army. This was in accordance with DODI 6046.46, paragraph 2.3 and directed their administrative separation action to proceed.

(c) On 11 June 2018, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14, Section II, Misconduct (Civil Conviction), for their having been found guilty of a crime which has a punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended, and the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation. They recommended their service be characterized as Under Other than Honorable Conditions and allowed a 30-day suspension of the process in order to grant the applicant time to submit matters on their behalf, since the applicant was incarcerated. After 11 July 2018, would constitute a waiver of their rights.

(d) The paralegal from the judge advocate's office prepared this statement for the applicant's record which provided the applicant was notified for administrative separation and to appear before an administrative separation board, by certified mail on three occasions (return receipts dated 25 June, 6 and 8 August 2018. The applicant was notified at their last known prisons.

(e) The Office of the Deputy Chief of Staff, G-1, on 28 August 2018, authorized an exception to policy (ETP) to retain the applicant beyond their ETS for 180 days, in order to allow time for the command to complete their administrative separation processing, with the option to extend this waiver upon resubmission of another request.

(f) On 4 September 2018, the judge advocate provided a memorandum for record which indicated the applicant having pled guilty in Circuit Court to electronic solicitation of a minor under fifteen, being at least seven years and sentenced to six years of confinement. A duly appointed administrative separation board recommended they be separated with an UOTHHC characterization of service. Before confinement, their ETS was 30 September 2018 and was adjusted IAW AR 635-200, para 2-13, ensuring they did not accrue service creditable for completion of their period of enlistment, while in civilian confinement, therefore, the applicant's original ETS was adjusted to reflect the amount of service time they still owed. The same day, the brigade judge advocate conducted a comprehensive review of the separation package and found it to be legally sufficient and their intermediate commander concurred with the above recommendations.

(6) On 9 April 2019, the Assistance Secretary of the Army for Manpower, and Reserve Affairs (ASA, M&RA) directed the applicant's service be characterized as Under Other than Honorable Conditions, which reduced them to the lowest enlisted grade. All of the required separation exams (medical and mental) were waived. Their separation orders were issued (after the fact on 25 April 2019). A DD Form 214 provides the applicant was discharged accordingly on 9 April 2019, with the following:

(a) Block 25, Authority: AR 635-200, Chapter 14, Section II

- Block 28, Narrative Reason: Misconduct (Civil Conviction)
- Block 26, SPD Code: JKB
- Block 27, Reentry Code: RE-4
- Block 24, Service Characterization: Under Other than Honorable Conditions
- Block 12c, **Total NET Active Service Period: 20 years, 7 months, 3 days\***
- Block 18, Remarks: Member has completed full term of service.
- Block 29, Lost Time: Although it says "None", it should read 1 year, 1 month, and 2 days, from 8 March 2018 – 9 April 2009.
- Block 21a, Signature: Not Available to Sign.

(b) Although the Air Force DD Form 214 is not in the record, their reenlistment documents reference the applicant having completed over three years of service. As such, their DD Form 214 from the Army, may need to be amended to properly reflect their correct periods of service:

(7) In their previous case documents, A Certificate of Incarceration Period, dated 13 June 2022, provides the applicant was incarcerated beginning 8 March 2018 – 15 June 2022.

i. **Lost Time / Mode of Return:** 1 year, 1 month, and 2 days (8 March 2018 – 9 April 2019)

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** Application for the Review of Discharge; Application for Correction of Military Record; Self-Authored Sworn Statement

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has been released from jail and has paid their debt to society.

**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.

**(5)** Chapter 14-5, Section II (Conviction by Civil Court). A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one or more of the following conditions are present: (a) A punitive discharge authorized for the same or a closely related offense under the M.C.M., as amended. (b) The sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation.

**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 "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, Section II, Misconduct (Civil Conviction).

**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 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.** 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 134 (Indecent Conduct) states in the subparagraph, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years. Article 134 (Indecent language communicated to child under the age of 16 years) states in the subparagraph, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for two years.

**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 or General (Under Honorable Conditions). The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

**b.** A review of the available evidence provides the applicant completed an indefinite reenlistment (third) as a SSG, with 13 years, 8 months, and 8 days of total prior active and inactive service. Two and a half years later, they were relieved for cause and given a marginal NCOER for reason(s) unknown. In September 2016, a memorandum which documented four incidents of sexual harassment towards a fellow SSG was placed in their record. They received NJP for having orally communicated indecent language in violation of Article 134, UCMJ. They were reduced to SGT; however, it was suspended, to be automatically remitted if not vacated on or before 23 May 2017; along with 45 days extra duty. They self-authored an appeal and after consideration, it was denied. On May 18 May and 14 June 2017, they were flagged for adverse action and for field initiated involuntary separation. As a result, the suspension of their demotion was vacated and executed, reducing them to SGT.

**(1)** In April 2017, the applicant was arrested and convicted by Civil Court for having been found guilty of a crime which had a punitive discharge authorized for the same or closely related offenses under the Manual for Court-Martial 2002, as amended, and the sentence by civil authorities included confinement for six months or more, without regard to suspension or probation. The applicant was sentenced to six years and served from 8 March 2018 – 15 June 2022 in a state correctional prison. An administrative separation board found a preponderance of evidence to separate them with an Under Other than Honorable Conditions characterization of service. Separation proceedings were initiated under the provisions of AR 635-200, Chapter 14, Section II, Misconduct (Civil Conviction) with the above characterization. G-1 authorized an extension of their ETS for 180 days for the processing of their separation.

(2) M&RA waived their medical and mental evaluations as they were incarcerated and was no longer under the authority of the Army. Less the 1 year, 1 month, and 2 days of LOST time, while on duty, the applicant served 18 years, 8 months, and 15 days of total service. There appears to be discrepancies on the applicant's DD Form 214, related to their time as it references over 17 years of inactive service, although, their record does not provide supporting documentation.

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: Anxiety Disorder (DO) Not Otherwise Specified (NOS), Depressive DO NOS, Episodic Mood DO. Note: Adjustment DO is subsumed under diagnosis of Depressive DO NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found military medical documentation indicates that the diagnoses of Anxiety DO NOS, Depressive DO NOS and Episodic Mood DO were made during active 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 the applicant does not have a mitigating behavioral health (BH) condition. While in the Army, the applicant was diagnosed with Anxiety DO NOS, Depressive DO, Episodic Mood Disorder, and Adjustment DO. He also reported being diagnosed with Bipolar Disorder prior to service. While on active duty, the applicant was closely followed and seen monthly by psychiatry for medication management. Psychiatric notes consistently indicate relatively stable mood and intact psychosocial functioning (when not actively drinking alcohol) with no documentation of any hypomanic, manic, or psychotic episodes. Neuropsychological testing results and brain MRI scan were obtained in early 2017 and both were within normal limits. Given these factors, there is no nexus between the applicant's various psychiatric conditions and the applicant's sexually based misconduct given that none of the applicant's BH diagnoses affects one's ability to distinguish right from wrong and act in accordance with the right. Of note, while Bipolar Disorder can lead to manic/psychotic behavior manifested by poor judgment and hypersexuality, there is no indication in the applicant's military medical records that the applicant ever suffered a hypomanic, manic or psychotic episode while on active duty.

(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 did not outweigh the basis of separation.

b. Response to Contention(s): The applicant seeks relief contending, they have 20 years of active-duty service, have been released from jail on 15 June 2022, and has paid their debt to

society. A self-authored letter states the applicant was advised by Fort Knox retirement services for them to submit a request to have their discharge changed to a retirement, in order to receive their pension. The Board liberally considered this contention and acknowledges the applicant was released from jail on 15 June 2022, and the applicant's assertion that they have paid their debt to society, however this does not outweigh the basis for separation and the seriousness of the applicant's offenses of soliciting a minor via internet, possessing child pornography, and making inappropriate statements toward women in the unit.

**c.** The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

**d.** Rationale for Decision:

**(1)** The Board voted not to change the applicant's characterization of service because despite applying liberal consideration of all the evidence before the Board, the applicant's Anxiety DO NOS, Depressive DO NOS and Episodic Mood DO did not excuse or medically mitigate the multiple acts of misconduct in the applicant's file (soliciting a minor via internet, possessing child pornography, and making inappropriate statements toward women in the unit).

**(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:**

10/6/2024

**X**

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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