

**1. Applicant's Name:**

- a. **Application Date:** 4 November 2021
- b. **Date Received:** 4 November 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 under other than honorable conditions. The applicant requests a change to honorable and a change of their narrative reason for separation.

(2) The applicant seeks relief stating they are diagnosed with Post-Traumatic Stress Disorder (PTSD). They tried to let the Administrative Elimination Board know of their PTSD diagnosis, but the personnel on the board already made their decision. They were a good noncommissioned officer (NCO) with good ethics.

(3) They made a mistake and they worked hard to get help through military behavioral health system and other programs. Plenty of people that did worse things than them were only punished with only a slap on the wrist. They completed 4 years out of the 5 years of their service without incident. They regret their mistake and wish they could take it back. A person never knows what one would do when a spouse has been cheating, they were crushed and had a mental breakdown. They have apologized for their actions, and they continue to receive help.

**b. Board Type and Decision:** In a records review conducted on 22 March 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) / Army Regulation 635-200, Paragraph 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 4 June 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:** NIF

(5) **Administrative Elimination Board:** An administrative separation board convened, and found –

- the allegation of on or about 23 August 2020, the applicant assaulted their spouse, by striking them in the face and body, and strangling them by placing their right hand around their throat while applying pressure; is supported by a preponderance of the evidence
- the allegation of on or about 23 August 2020, it was discovered the applicant provided deplorable residential living conditions for their son, resulting in their son's removal from the home by Child Protective Services due to child neglect and child endangerment, is supported by a preponderance of the evidence
- the findings do warrant separation with respect to the applicant

**(6) Separation Decision Date / Characterization:** 6 May 2021 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** The applicant extended the most recent enlistment by a period of 12 months on 4 August 2020, giving the applicant a new Expiration of Term of Service of 30 January 2023.

**b. Age at Enlistment / Education / GT Score:** 23 / AED / 96

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 91B1O, Wheeled Vehicle Mechanic / 5 years, 2 months, 10 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Iraq (1 November 2017 – 7 July 2018)

**f. Awards and Decorations:** AAM-C, AGCM, NDSM, GWTSM, ICM-CS, NCOPDR, ASR

**g. Performance Ratings:** 1 September 2019 – 31 August 2020 / Highly Qualified

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

**(1)** A DA Form 2166-9-1 (NCO Evaluation Report (SGT)), covering the period 1 September 2019 through 31 August 2020, reflects in –

- Part IVc (Character) – their rater marked "Did Not Meet Standard" and stated, in part, "failed to uphold the Army values; investigation found acts of domestic violence and child neglect"
- Part V (Senior Rater Overall Potential) – their senior rater rated their potential as "Highly Qualified" and commented

- "[Applicant is rated one of two NCOs that I currently senior rate
- [Applicant] potential as an NCO and leader is unmatched and should be exploited
- [Applicant's] hard work and dedication excels his peers
- send to Advanced Leader Course and promote ahead of peer"

**(2)** A document titled Findings and Recommendation, reflects an Administrative Elimination Board convened to determine whether the applicant should be separated from the Army prior to the expiration of their current term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c, Commission of a Serious Offense. The board, having carefully considered the evidence before it finds –

- the allegation of on or about 23 August 2020, the applicant assaulted their spouse, by striking them in the face and body, and strangling them by placing their right hand around their throat while applying pressure; is supported by a preponderance of the evidence
- the allegation of on or about 23 August 2020, it was discovered the applicant provided deplorable residential living conditions for their son, resulting in their son's removal from the home by Child Protective Services due to child neglect and child endangerment, is supported by a preponderance of the evidence
- the findings do warrant separation with respect to the applicant

(3) A memorandum, Headquarters, 3rd Corps and Fort Hood, subject: Separation Under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 6 May 2021, the separation authority, having reviewed the applicant's separation packet, directed that the applicant be separated from the Army prior to the expiration of current term of service. The commanding general directed the applicant's service be characterized as General (Under Honorable Conditions) and the applicant be reduced to the rank/grade of private/E-1. The commanding general states, after reviewing the rehabilitative transfer requirements, they determined the requirements do not apply to this action.

(4) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 4 June 2021 and shows in:

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 5 years, 2 months, 10 days
- item 12f (Effective Date of Pay Grade) – 6 May 2021
- item 18 (Remarks) – in part,
  - CONTINUOUS HONORABLE ACTIVE SERVICE 20160328 - 20190131
  - Member has Completed First Term of Service
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12c
- item 26 (Separation Code) – JKQ [Misconduct, Commission of a Serious Offense]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

(5) An Enlisted Record Brief dated 7 June 2021, reflects the applicant was promoted to the rank/grade of sergeant/E-5 on 1 September 2019 and was reduced to private/E1 on 6 May 2021. Additionally, the Enlisted Record Brief reflects the applicant has two suspensions of favorable personnel actions (Flag) for a commander's investigation dated 24 August 2020, and for removal from selection list (field initiated) dated 20 January 2021.

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

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

(1) **Applicant provided:** Medical Records and Psychologist Medical Record reflecting the applicant's behavioral health conditions, including a diagnosis of PTSD and Adjustment Disorder with Depressed Mood.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- four 3rd Party Character Statements
- Medical Records
- Psychologist Medical Record

**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 DoD 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 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. 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. Paragraph 14-12c (Commission of a Service Offense), stated 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 (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 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

**f.** 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, paragraph 14-12c, misconduct (serious offense).

**g.** 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 Instruction 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.

**h.** Manual for Courts-Martial, 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 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 119b (Child Endangerment) and Article 128 (Assault).

**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 an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the documents of the applicant's case files for approved separation reflecting the adverse actions leading to their separation; however, the AMHRR does contain the Administrative Elimination Board findings and the separation authority memorandum directing the applicant's separation and reduction in rank/grade to private/E-1. The DD Form 214 provides the applicant was discharged with a character of service of under other than honorable conditions, for misconduct, (serious offense). They completed 5 years, 2 months, and 10 days of net active service this period; however, they only completed 2 years, 4 months, and 5 days of their 4-year contractual reenlistment 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 does not reflect any documentation of a diagnosis of PTSD or Other Mental Health diagnoses during the applicant's military service. The applicant provided medical records which reflect diagnoses of Adjustment Disorder with mixed anxiety and depressed mood, and Adjustment Disorder, unspecified; and a Psychologist Medical Record reflecting the applicant's diagnoses of PTSD and Adjustment with Depressed Mood, documented during the applicant military service.

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: the applicant was diagnosed in-service with an Adjustment Disorder secondary to the legal issues. The applicant is service connected for PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** He was diagnosed in-service with an Adjustment Disorder secondary to the legal issues.

(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 condition of the home, leading to child neglect charges and removal from the home, occurred over time with opportunities to intervene or obtain assistance not indicative of a trauma reaction. Additionally, the IPV was chronic, occurring over time with opportunities for intervention. Moreover, the individual events occurred over time with awareness of actions incongruent with misconduct secondary to trauma reactions.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD outweighed the medically unmitigated IPV and Child Neglect.

**b. Response to Contention(s):**

(1) The applicant contends they are diagnosed with PTSD. They tried to let the Administrative Elimination Board know of their PTSD diagnosis, but the personnel on the board already made their decision. The Board considered this contention and determined the applicant's PTSD did not outweigh the severity of the IPV and child neglect misconduct.

(2) The applicant contends they were a good NCO with good ethics. The Board considered this contention and determined the applicant's PTSD did not outweigh the severity of the IPV and child neglect misconduct.

(3) The applicant contends they made a mistake and they worked hard to get help through military behavioral health system and other programs. They completed 4 years out of the 5 years of their service without incident. The Board considered this contention and determined the applicant's PTSD did not outweigh the severity of the IPV and child neglect misconduct.

**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 PTSD did not excuse or mitigate the offenses of IPV or child neglect. 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 pretexts, as the reason the applicant was discharged was both proper and equitable.

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



**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20220000569**

**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:**

4/18/2024

**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