

**1. Applicant's Name:**

- a. **Application Date:** 5 September 2021
- b. **Date Received:** 15 September 2021
- c. **Counsel:** Yes

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

**a. Applicant's Requests and Issues:** The current characterization of service for the period under review is Under Other Than Honorable Conditions. The applicant requests an upgrade to honorable, a change of the narrative reason for separation, and a personal appearance before the Board.

(1) The applicant, through counsel, seeks relief contending during their service they suffered from symptoms of PTSD and in 2020 they were service connected with a diagnosis of PTSD by the Department of Veterans Affairs (VA) and given a 100-percent combined service-connected evaluation.

(2) In 2018, the applicant began experiencing marital problems and their spouse physically and mentally abused them. In May 2019, the couple were involved in a verbal altercation related to their child's medication, in which the applicant's spouse escalated the argument to physical abuse by scratching them and cutting their face. Therefore, the applicant held their spouse's arms to prevent their spouse assaulting them. The applicant's spouse called the police and the applicant was removed from the home, confined to the barracks, and issued a No Contact Order. On 5 June 2019, the applicant's spouse recanted their previous statement accusing the applicant of misconduct. They explained they did it because they were mad and wanted to get the applicant in trouble. However, the Staff Judge Advocate opined that sufficient probable cause existed to believe the applicant committed the offense of Assault Consummated by Battery. Based on the totality of all the circumstances, the applicant's spouse assaulted them and they were trying to restrain their spouse. The applicant did violate the lawful No Contact Order but only to ensure their child received the necessary medication.

(3) After they were discharged from the U.S. Army they have regained custody of their two children and the applicant takes care of them as a single parent. They support their family as they cope with and receive treatment for PTSD and Traumatic Brain Injury (TBI).

(4) In considering whether to upgrade their characterization of service, they respectfully request consideration of Department of Defense Instruction 1332.28 (Discharge Review Board Process) factors to include, their service history, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings, awards and achievements, and combat service. They also request consideration of Supplemental Department of Defense Guidance considering discharge upgrade requests by veterans claiming PTSD and consideration of the Kennedy Stipulation and Agreement Settlement.

**b. Board Type and Decision:** In a records review conducted on 13 January 2025, and by a 3-2 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 10 of this document for more detail regarding the Board's decision.*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / Army Regulation 635-200, Paragraph 14-12C / JKQ / RE-4 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 25 February 2020

**c. Separation Facts:** The applicant's case separation file is void from the Army Military Human Resource Record (AMHRR); however, the applicant provided their case separation files. The information in 3c(1) through (6) were derived from those documents.

**(1) Date of Notification of Intent to Separate:** 27 November 2019

**(2) Basis for Separation:** between on or about 16 July 2019 and on or about 13 August 2019, failed to obey a no contact order by wrongfully calling their spouse, and attempting to contact their spouse through their child; and wrongfully assaulted their spouse by grabbing their arms and restraining them on or about 29 May 2019.

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

**(4) Legal Consultation Date:** 17 December 2019

**(5) Administrative Separation Board:** On 17 December 2019, the applicant requested consideration of their case by an administrative separation board. [Note: the administrative separation board proceedings are not in evidence for review.]

**(6) Separation Decision Date / Characterization:** NIF

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 17 March 2016 / 6 years

**b. Age at Enlistment / Education / GT Score:** 40 / Baccalaureate Degree / 114

**c. Highest Grade Achieved / MOS / Total Service:** E-6 / 31C3O, Criminal Investigation Division Special Agent / 10 years, 4 months, 5 days

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

**e. Overseas Service / Combat Service:** SWA / Afghanistan (1 November 2012 – 20 July 2013))

**f. Awards and Decorations:** ARCOM-2, AAM, MUC, AGCM-3, NDSM, NDSM, GWTSM, ACM-CS, NCOPDR-2, ASR, NATOMDL

**g. Performance Ratings:** 1 July 2014 – 30 June 2015 / Among the Best  
1 July 2015 – 30 June 2016 / Highly Qualified  
1 July 2016 – 30 April 2019 / Qualified  
1 May 2019 – 12 February 2020 / Not Qualified

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

**(1)** A memorandum, Department of the Army, Fort Belvoir, subject: Law Enforcement Report – Final, dated 30 July 2019, reflects the applicant as the named subject in violation of Article 128b (Assault Consummated by Battery (Domestic Violence)), Uniform Code of Military Justice (UCMJ). The Report Summary states –

**(a)** On 29 May 2019, an investigation revealed the applicant and their spouse were involved in a verbal altercation over their child's medication. The altercation turned physical when the applicant prevented their spouse from leaving the residence by restraining their spouse's wrist with their hands. Further investigation by Fort Belvoir LEI Office revealed that on 5 June 2019, the applicant's spouse made a verbal statement recanting their statement, related that they had initiated a police report because they were mad at the applicant, and just wanted to get the applicant in trouble with their command. The applicant's spouse further related that at no time did the verbal altercation turn physical and they had not been contacted by the applicant and was not recanting their statement under duress.

**(b)** On 5 June 2019, Captain (CPT) S\_\_\_\_ W\_\_\_\_, Staff Judge Advocate Office, Fort Belvoir, VA was fully briefed on all aspects of this investigation and opined that insufficient probable cause exists to believe the applicant's spouse committed any offense.

**(c)** On 24 June 2019, CPT F\_\_\_\_, Trial Counsel, Staff Judge Advocate Office, Fort McNair, DC, was fully brief on all aspects of this investigation and opined that sufficient probable cause exists to believe the applicant committed to offense of Assault Consummated by Battery.

**(2)** A DA Form 2627 (Record of Proceedings under Article 15, UCMJ), dated 5 September 2019, reflects the applicant received nonjudicial punishment for, did, at or near Fort Belvoir, VA, between on or about 29 May 2019, unlawfully assaulted their spouse, by grabbing them by their arms and wrongfully restraining them, in violation of Article 128 (Assault), UCMJ; and having knowledge of a lawful order issued by a superior noncommissioned officer (NCO), not to contact their spouse, an order which was their duty to obey, did, at or near Fort Belvoir, VA between on or about 16 July 2019 and on or about 13 August 2019, failed to obey the same by wrongfully calling their spouse on divers occasions and attempting to contact them through their child, in violation of Article 92, UCMJ. The applicant's punishment consisted of a reduction in rank/grade from staff sergeant/E-6 to sergeant/E-5, forfeiture of \$1,603.00 pay for two months, extra duty and restriction for 45 days. The applicant elected not to appeal.

**(3)** A DA Form 3822 (Report of Mental Status Evaluation) dated 30 September 2019, reflects the applicant shows no evidence of an impairing behavior health condition, is cleared for advanced military training, has no duty limitations due to behavioral health reasons, currently meets medical retention standards. Section IV (Diagnoses) reflects a behavioral health diagnosis of Adjustment Disorder with mixed disturbances of emotions and conduct. Section VI (Recommendations and Comments for Commander) the behavioral health provider checked "[Applicant] can understand and participate in administrative proceedings and appreciate the difference between right and wrong" and "ensure [Applicant attends all follow-up appointments."

**(4)** A memorandum, Protective Services Battalion, U.S. Army Criminal Investigation Command (USACIDC), subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], dated 27 November 2019, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct described above in paragraph 3c2. The company commander recommended the applicant's characterization of service as Under Other Than Honorable Conditions. On the same date, the applicant acknowledged the basis for the separation and of the right available to them.

(5) On 17 December 2019, the applicant completed their election of rights signing they have been advised by their consulting counsel of the basis for the contemplated action to separate them for Commission of a Serious Offense and its effects; of the rights available to them, and of the effect of any action taken by them in waiving their rights. They requested consideration of their case by an administrative separation board, requested consulting counsel, and a personal appearance before the administrative separation board. They understand they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them. They further understand that a result of issuance of a discharge Under Other Than Honorable Conditions, they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected to submit statements on their behalf [Note: statements in their behalf are not in evidence for review.] They do not believe that they suffer from PTST or TBI as a result of deployment overseas in support of a contingency operation during the previous 24 months.

(6) A memorandum, Protective Services Battalion, U.S. Army Criminal Investigation Command, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], undated, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as any other disposition would be considered inappropriate to the case of this matter.

(7) A memorandum, 701st Military Police Group (CID), USACIDC, subject: Separation under Army Regulation 635-200, Paragraph 14-12c, Commission of a Serious Offense, [Applicant], undated, the applicant's group commander submitted a request to separate them prior to their expiration term of service. They recommended the applicant's service be characterized as Under Other Than Honorable Conditions.

(8) A memorandum, USACIDC, subject: Elimination from the CID Special Agent Program – [Applicant], dated 16 January 2020, the commanding general directed the applicant's elimination from the CID Special Agent Program without convening an Accreditation Review Board. The decision is based on the applicant assaulting their spouse and their failure to obey a lawful order not to contact their spouse.

(9) A DA Form 2166-9-2 (NCO Evaluation Report) covering the period 1 May 2019 through 12 February 2020, reflects in –

- Part II(d)2 (Rated NCO's Signature) – No Entry
- Part IV(c) (Character) – "DID NOT MEET STANDARD" and commented –
  - displayed a lack of regard for the Army values through both word and deed
  - did not display the character traits required of a CID Special Agent
  - failed to follow orders when not supervised; lacked discipline
- Part IV(d) (Presence) - "DID NOT MEET STANDARD" with comments –
  - lacked the professional demeanor and composure expected in a Soldier of [applicant's] rank, experience, and time in service
  - insulted and regularly made disparaging remarks toward [applicant's] command team and the U.S. Army
  - failed to uphold the standards of conduct in the NCO Corps
- Part IV(e) (Intellect) – "DID NOT MEET STANDARD" with comments –

- exhibited poor judgement in [applicant's] action; negatively impacted unit readiness and cohesion
- displayed poor interpersonal tact
- disrupted Detachment operations through [applicant's] attitude and actions at the office
- Part IV(f) (Leads) – "DID NOT MEET STANDARD" and commented "did not live the Army Values; failed to set the example for [applicant's] peers and Soldiers by violating SHARP"
- Rater Overall Performance – "DID NOT MEET STANDARD" with comments –
  - set a poor example for junior Soldiers; did not meet the standard expected of a Staff Sergeant
  - demonstrated unprofessional behavior and attitude; removed from a position of special trust due to [applicant's] actions
  - required direct supervision and constant guidance at all times to accomplish the most basic tasks
- Part IV(g) (Develops) – "DID NOT MEET STANDARD" with comments
  - degraded unit morale; essential manpower was diverted from mission availability to ensure [applicant's] compliance with orders
  - disregarded the standards of conduct expected of an Army CID Special Agent
  - unable to fulfill [applicant's] duty description
- Rater Overall Performance - "DID NOT MEET STANDARD" with comments –
  - Private [Applicant's] performance is in the bottom 20-percent of Soldiers I have worked with in 12 years of service
  - displayed a lack of judgement and character that is expected of a Special Agent in [applicant's] position
  - may be more suited for a different Military Occupational Specialty and position; does exhibit the desire to succeed but was unsuccessful
- Part V(c) (Senior Rater – Overall Performance) – "NOT QUALIFIED" with comments –
  - Rated NCO unavailable for signature
  - Private [Applicant] continuously needed to be reminded of [applicant's] uncontrollable temper
  - Private [Applicant] requires supervision; however, continues to please in positions of responsibility to challenge and improve [applicant's] hidden potential
  - Do not promote

**(10)** A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 25 February 2020, with 10 years, 4 months, and 25 days of net active service this period. The DD Form 214 shows in:

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 21 February 2020
- item 18 (Remarks) –
  - no entry for the applicant's CONTINUOUS HONORABLE ACTIVE SERVICE – "20091021 - 20160316"
  - MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 26 (Separation Code) – JKQ
- item 27 (Reentry Code) - 4
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

**i. Lost Time / Mode of Return:** NA

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

**(1) Applicant provided:** VA Staff Psychiatrist statement reflecting the applicant's treatment at the VA Medical Center for PTSD stemming from their combat deployments.

**(2) AMHRR Listed:** Report of Mental Status Evaluation as described in previous paragraph 4h(3).

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's 21-page Petition, with 26 Exhibits
- Counsel's Response for Request for Separation Files, with enclosures

**6. POST SERVICE ACCOMPLISHMENTS:** none submitted with 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 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. This regulation provided the authority and general provisions governing the separation of Soldiers before expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

**(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) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence 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. 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 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).

**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 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.

**g.** Army Regulation 635-8 (Separation Processing and Documents) dated 10 March 2014, prescribed policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

**h.** 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 Article 92 (Failure to Obey Order or Regulation) and Article 128b (Assault Consummated by Battery (Domestic Violence)).

**i.** Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

## **8. SUMMARY OF FACT(S):**

**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 case files for approved separation and the administrative separation board proceedings are not in evidence for review. A review of the available evidence provides the applicant received a nonjudicial punishment for unlawfully assaulting their spouse by grabbing their arms and wrongfully restraining them, violating a No Contact Order, and was involuntarily discharged. The DD Form 214 provides the applicant was discharged with a character of service of Under Other Than Honorable Conditions for misconduct (serious offense), which is normally considered appropriate. They completed 10 years, 4 months, and 5 days of net active service and completed their first full term of service; however, they did not complete their 6-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 documentation of a diagnosis of PTSD during their military service. The applicant provided a VA Summary of Benefits letter reflecting a combined service-connected evaluation of 100-percent and a VA Staff Psychiatrist email reflecting the applicant treatment of PTSD stemming from their combat deployment.

**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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE:** In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

**a. The applicant submitted the following additional document(s):** Resume and Admissions decision letter.

**b. The applicant presented the following additional contention(s):** N/A

**c. Counsel / Witness(es) / Observer(s):** Mr. Donald Gordon, Counsel

**10. 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 the applicant has the following potentially-mitigating diagnoses/experiences: In-service ADHD, GAD, Adjustment Disorders, Alcohol Abuse, and ongoing support for Antisocial Personality Disorder. In-service, multiple FAP cases starting in 2012 in which he was the Offender. Post-service, TBI, PTSD, GAD, and MDD.

**(2)** Did the condition exist, or experience occur during military service? **Yes.** In-service ADHD, GAD, Adjustment Disorders, Alcohol Abuse, and ongoing support for Antisocial Personality Disorder. In-service, multiple FAP cases starting in 2012 in which he was the Offender.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that documentation reflects intact functioning with the applicant admitting to spousal mistreatment until consequences increased resulting in varying stories and subsequent invalid Neuropsychological testing with a goal of a MEB. Post-service, VA documentation continues to support the applicant is not impaired by a psychiatric or cognitive condition.

**(4)** Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all evidence before the Board, the ADRB determined the condition or experience did not outweigh the basis of separation. The Board concurred with the Medical Advisor's opine

that documentation reflects intact functioning with the applicant admitting to spousal mistreatment. Additionally, post-service, VA documentation supports the applicant is not impaired by a psychiatric or cognitive condition.

**b. Prior Decisions Cited: N/A**

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

(1) The applicant contends during their service they suffered from symptoms of PTSD and in 2020 they were service connected with a diagnosis of PTSD by the VA and given a 100-percent combined service-connected evaluation.

The Board considered the applicant's contention during deliberations. The Board concurred with the Board's Medical Advisor that the applicant's medical conditions are not mitigating. Post-service, VA documentation continues to support the applicant is not impaired by a psychiatric or cognitive condition.

(2) The applicant contends In 2018, they began experiencing martial problems and their spouse physically and mentally abused them. In May 2019, they were involved in a verbal altercation related to their child's medication, in which their spouse escalated the argument to physical abuse by scratching them and cutting their face. Therefore, they held their spouse's arms to prevent their spouse from assaulting them. Their spouse called the police and they were removed from the home, confined to the barracks, and issued a No Contact Order. The Board considered the applicant's contention during deliberations. The Board concurred with the Medical Advisor's opine that documentation reflects the applicant admitted to spousal mistreatment until consequences increased resulting in varying stories and subsequent invalid Neuropsychological testing with a goal of a MEB.

(3) The applicant contends on 5 June 2019; their spouse recanted their previous statement accusing them of misconduct. Their spouse explained they did it because they were mad and wanted to get them in trouble. However, the Staff Judge Advocate opined that sufficient probable cause exist to believe they committed the offense of Assault Consummated by Battery.

The Board considered this contention during deliberations, however noted the Staff Judge Advocates opine that probable cause existed to believe the applicant committed the offense.

(4) The applicant contends based on the totality of all the circumstances, their spouse assaulted them and they were trying to restrain their spouse. They did violate the lawful No Contact Order but only to ensure their child received the necessary medication.

The Board considered this contention during deliberations.

(5) The applicant contends after they were discharged from the U.S. Army they have regained custody of their two children and they take care of them as a single parent. They support their family as they cope with and receive treatment for PTSD and Traumatic Brain Injury (TBI).

The Board considered this contention and found it positive that the applicant regained custody of his two children and is taking good care of them.

(6) The applicant contends in considering whether to upgrade their characterization of service, they respectfully request consideration Department of Defense Instruction 1332.28 (Discharge Review Board Process) factors, consideration of Supplemental Department of Defense Guidance considering discharge upgrade request by veterans claiming PTSD and consideration of the Kennedy Stipulation and Agreement Settlement.

The Board considered this contention during deliberations.

d. The Board determined the discharge is, at this time, proper and equitable, in light of the current evidence of record.

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 BH diagnoses did not excuse or mitigate the offenses of failed to obey a no contact order, attempting to contact their spouse through their child; and wrongfully assaulted their spouse by grabbing their arms and restraining them. 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. The Board determined the applicant's misconduct fell below the level of meritorious service warranted for an upgrade to Honorable discharge.

(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.

**11. BOARD ACTION DIRECTED:**

a. Issue a New DD-214 / Separation Order:

b. Change Characterization to:

c. Change Reason / SPD code to:

d. Change RE Code to:

e. Change Authority to:

**Authenticating Official:**

1/16/2025

**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  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs