

Applicant's Name:

- a. **Application Date:** 21 October 2021
- b. **Date Received:** 1 November 2021
- c. **Counsel:** None

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 or general (under honorable conditions).

The applicant seeks relief contending, in effect, the applicant was the victim of repeated sexual abuse by SFC C. The sexual abuse caused the applicant to suffer with severe mental damage, including post-traumatic stress disorder (PTSD). The applicant also suffered a fall which was not properly treated. After leaving the Army, SFC C was court-martialed for the sexual offenses against the applicant and several other young male Soldiers.

b. **Board Type and Decision:** In a records review conducted on 22 November 2023, and by a 3-2 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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 20 November 2009

c. **Separation Facts:**

(1) **Date DD Form 458 (Charge Sheet):** On 6 November 2009, the applicant was charged with: Wrongful possession of a controlled substances (3 specifications); Striking a noncommissioned officer, aggravated assault, Disrespectful toward a superior commissioned officer, and disrespect toward superior noncommissioned officers.

(2) **Legal Consultation Date:** On 6 November 2009, the applicant voluntarily requested discharge in lieu of trial by court-martial under AR 635-200, Chapter 10, for charges preferred against the applicant under the Uniform Code of Military Justice and admitted to being guilty of one or more of the charges.

(3) **Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

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

(5) **Separation Decision Date / Characterization:** 12 November 2009 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 25 September 2007 / 3 years, 18 weeks
- b. **Age at Enlistment / Education / GT Score:** 17 / HS GED / NIF
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 2 years, 1 day, 26 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) The applicant provides a letter from LTC C. H., US Army Judge Advocate, 1 June 2021, which states, in part, the abuse the applicant suffered as a young Soldier at the hands of then SFC C.T. who was serving as the applicant's first sergeant had lasting and damaging effects on the applicant's life and military career. SFC C.T. used the position and power to prey upon a specific and vulnerable population of Soldiers. He abused five different victims over the course of several years, all of whom were junior enlisted males, relatively new to the Army and between the ages of 18 and 20 years old. The applicant and the other victims never had a chance at a "normal" Army career and the conviction and sentence SFC C.T. received did not reflect the true nature of the egregious conduct. The applicant deserves a chance to receive treatment and benefits after the abuse the applicant endured at the hands of the applicant's first sergeant. Whatever the underlying misconduct behind the applicant's administrative separation, the applicant did not deserve the maltreatment and abuse the applicant received as a brand new 17-year-old private at the first duty station.

(2) The applicant provides DA Form 4430 (Department of the Army Report of Result of Trial), pertaining to SFC C.T. The report reflects, in part, SFC C.T. was tried by a general court-martial on 30 November 2011. The applicant was found guilty on several specifications of sexual misconduct and prohibited relationships involving several Soldiers, including the applicant. SFC C.T. was reduced to the grade of sergeant/E-5 and confinement for 6 months.

(3) Memorandum, subject: CID Report of Investigation – Final, 11 February 2011, reflects an investigation established probable cause to believe the applicant was the victim of abusive sexual contact, indecent acts, cruelty and maltreatment, and forced sodomy.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** The applicant provides a letter from the Department of Veteran Affairs (VA), 16 December 2020, which reflects the applicant was granted service connection for treatment purposes only for PTSD.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Legal Memorandum from D. C., personal statement, medical documents, VA decision Letter, Letter from LTC C.H., letter of support, CID Report, DA For 4430, pertaining to SFC C.T., VA Form 21-0781a (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault) (92 total pages)

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

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

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

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of

service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(4) Paragraph 3-7c states 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.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II).

(7) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

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.

The applicant contends the applicant was the victim of repeated sexual abuse by SFC C. T. and the sexual abuse caused the applicant to suffer with severe mental damage, including PTSD. The applicant also suffered a fall which was not properly treated. The applicant's AMHRR is void of a mental health diagnosis. The applicant provides a letter from VA., 16 December 2020, which reflects the applicant was granted service connection for treatment purposes only for PTSD.

The applicant states, after leaving the Army, SFC C. T. was court-martialed for the sexual offenses against the applicant and several other young male Soldiers. The applicant provides a letter from LTC C. H., US Army Judge Advocate, 1 June 2021, which states, in part, the abuse the applicant suffered as a young Soldier at the hands of then SFC C.T. who was serving as the applicant's first sergeant had lasting and damaging effects on the applicant's life and military career. SFC C.T. used the position and power to prey upon a specific and vulnerable population of Soldiers. He abused five different victims over the course of several years, all of whom were junior enlisted males, relatively new to the Army and between the ages of 18 and 20 years old. The applicant and the other victims never had a chance at a "normal" Army career and the conviction and sentence SFC C.T. received did not reflect the true nature of the egregious conduct. The applicant deserves a chance to receive treatment and benefits after the abuse the applicant endured at the hands of the applicant's first sergeant. Whatever the underlying misconduct behind the applicant's administrative separation, the applicant did not deserve the maltreatment and abuse the applicant received as a brand new 17-year-old private at the first duty station.

The applicant also provides DA Form 4430 (Department of the Army Report of Result of Trial), pertaining to SFC C.T. The report reflects, in part, SFC C.T. was tried by a general court-martial on 30 November 2011. The applicant was found guilty on several specifications of sexual misconduct and prohibited relationships involving several Soldiers, including the applicant. SFC C.T. was reduced to the grade of sergeant/E-5 and confinement for 6 months.

Memorandum, subject: CID Report of Investigation – Final, 11 February 2011, reflects an investigation established probable cause to believe the applicant was the victim of abusive sexual contact, indecent acts, cruelty and maltreatment, and forced sodomy.

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: In-service diagnoses included Adjustment Disorder, Antisocial Personality Disorder, and ADHD. The applicant was the found offender of IPV and child abuse x2. Post-service, he is service connected for treatment purposes for PTSD due to Military Sexual Trauma (MST).

(2) Did the condition exist or experience occur during military service? **Yes.** In-service diagnoses included Adjustment Disorder, Antisocial Personality Disorder, and ADHD. The applicant was the found offender of Intimate Partner Violence (IPV) and child abuse x2. The applicant experienced MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the MST occurred prior to and during the misconduct and nexus between trauma and substance use, the basis is partially mitigated. Specifically, drugs are mitigated. However, given the disrespect charges involved threats to life to individuals that were not his perpetrators, this is not mitigated. Additionally, IPV and child abuse are not mitigated.

(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, Adjustment Disorder, Antisocial Personality Disorder, and ADHD outweighed the applicant's medically unmitigated disrespect to officers involving threats to life, striking an NCO, IPV, and child abuse.

b. Response to Contention(s): The applicant contends the applicant was the victim of repeated sexual abuse by SFC C. T. and the sexual abuse caused the applicant to suffer with severe mental damage, including PTSD. The applicant also suffered a fall which was not properly treated. The Board considered the contention of PTSD due to MST to be valid, however PTSD did not outweigh the offenses of disrespect to officers involving threats to life, striking an NCO, IPV, and child abuse. The Board also considered the contention of improper treatment, but did not find sufficient evidence to support the contention.

c. The Board determined that the applicant's MST occurred prior to and during the misconduct and a nexus between trauma and substance use mitigates the use of controlled substances listed in the basis of separation, however disrespect to officers involving threats to life, striking an NCO, IPV, and child abuse are not mitigated. Thus, the applicant's record does not warrant a discharge upgrade.

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 PTSD, Adjustment Disorder, Antisocial Personality Disorder, and ADHD did not excuse or mitigate the offenses of disrespect to officers involving threats to life, striking an NCO, IPV, and child abuse. 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. Therefore, the applicant's Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or 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 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

AR20220002626

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

1/15/2025

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