

1. Applicant's Name:

- a. **Application Date:** 11 February 2022
- b. **Date Received:** 16 February 2022
- 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, through counsel, an upgrade to honorable and a narrative reason change.

The applicant's counsel seeks relief contending, in effect, the applicant is requesting an upgrade for reasons of propriety and equity. The applicant's counsel contends an error of discretion was made in discharging the applicant with an under other than honorable characterization of service and one incident should not define the service of an honorable Soldier. The applicant's counsel contends the applicant was told the applicant may have had some cognitive impairment due to prescribed medications. The applicant's counsel further contends the applicant has been improperly stigmatized and harmed by the discharge status. The applicant's counsel further contends the made a mistake and was simply trying to protect family and kids' future. Counsel states the applicant served with dignity and received high regards from other during the almost seven years of service. Counsel further states the applicant struggles with numerous medical and behavioral health issues and had been receiving treatment for depression, anxiety, and back pain.

b. **Board Type and Decision:** In a records review conducted on 12 February 2025, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

*Please see **Board Discussion and Determination** section for more detail regarding the Board's decision.*

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 9 March 2020

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** The applicant was informed of the following reasons: NIF

(3) **Recommended Characterization:** NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: Memorandum, subject: Legal Review of administrative Separation Board...., 23 January 2020, reflects, on 11 December 2019, an administrative separation board concluded, by a preponderance of the evidence the applicant attempted to unlawfully enter the dwelling house of First Lieutenant B. The board found the misconduct warranted separation and recommended the applicant characterization of service be characterized as under other than honorable conditions.

(6) Separation Decision Date / Characterization: 10 February 2020 / Under Other Than Honorable Conditions (The separation authority determined the applicant's medical condition was not the direct or substantial contributing cause of the conduct which led to the recommendation for separation)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 14 July 20216 / 3 years

b. Age at Enlistment / Education / GT Score: 28 / HS Graduate / NIF

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92F10, Petroleum Supply Specialist / 6 years, 8months, 1 days

d. Prior Service / Characterizations: RA, 9 July 2013 – 13 July 2016 / HD

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM-2, AGCM, NDSM, NCOPDR, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: FG Article 15, 26 April 2019, reflects the applicant attempted to, in the nighttime, unlawfully break and enter the dwelling of Lieutenant B, with intent to commit damage of property other than military property of the United States of less than \$500. The punishment consisted of reduction to specialist/E-4; forfeiture of \$1,277 pay, suspended, to be automatically remitted if not vacated on or before 25 July 2019; extra duty for 45 days; and an oral reprimand.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant provides medical records pertaining to the applicant's physical and mental problems.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Legal Brief with 24 Exhibits (133 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 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.

(6) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(7) Paragraph 14-12c, states 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.

(8) Chapter 15 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 12c, misconduct (serious offense).

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, through counsel, an upgrade to honorable and a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's service AMHRR is void of the complete facts and circumstances concerning the events which led to his discharge from the Army. The applicant's record does contain Memorandum, subject: Legal Review of administrative Separation Board..., 23 January 2020, reflects, on 11 December 2019, an administrative separation board concluded, by a preponderance of the evidence the applicant attempted to unlawfully enter the dwelling house of First Lieutenant B. The applicant found the misconduct warranted separation and recommended the applicant characterization of service be characterized as under other than honorable conditions. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged under the provisions of AR 635-200, paragraph 14-12C, by reason of Misconduct (Serious Offense), with a characterization of service of Under Other Than Honorable Conditions.

The applicant's counsel requests the applicant's narrative reason for the separation be changed. The applicant was discharged under the provisions of AR 635-200, paragraph 14-12C. The narrative reason specified by Army Regulations for a discharge under this chapter is "Misconduct (Serious Offense)." Army Regulation 635-8, Separation Documents governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation be entered in block 28. There is no provision for any other reason to be entered under this regulation.

The applicant's counsel contends the applicant is requesting an upgrade for reasons of propriety and equity.

The applicant's counsel contends an error of discretion was made in discharging the applicant with an under other than honorable characterization of service and one incident should not define the service of an honorable Soldier.

The applicant's counsel contends the applicant was told the applicant may have had some cognitive impairment due to prescribed medications.

The applicant's counsel contends the applicant has been improperly stigmatized and harmed by the discharge status.

The applicant's counsel further contends the made a mistake and was simply trying to protect family and kids' future.

The applicant's counsel states the applicant served with dignity and received high regards from other during the almost seven years of service.

The applicant's counsel further states the applicant struggles with numerous medical and behavioral health issues and had been receiving treatment for depression, anxiety, and back pain.

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 by MTF providers included Adjustment Disorder, Factitious Disorder, Malingering, Other Personality Disorder, and Alcohol Use Disorder. Off-post diagnoses included PTSD, Major Depressive Disorder (MDD), Alcohol Use Disorder, Panic, Generalized Anxiety Disorder (GAD), and Borderline Personality Disorder. The VA, during the MEB, diagnosed PTSD and Mild Neurocognitive Disorder (November 2018 MVA) although has not service connected him for these raising possibility they have been removed. The applicant has reported 2016 MST.

(2) Did the condition exist, or experience occur during military service? **Yes.** In-service diagnoses by MTF providers included Adjustment Disorder, Factitious Disorder, Malingering, Other Personality Disorder, and Alcohol Use Disorder. Off-post diagnoses included PTSD, Major Depressive Disorder (MDD), Alcohol Use Disorder, Panic, Generalized Anxiety Disorder (GAD), and Borderline Personality Disorder. The VA, during the MEB, diagnosed PTSD and Mild Neurocognitive Disorder (November 2018 MVA) although has not service connected him for these raising possibility they have been removed. The applicant has reported 2016 MST.

(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 conditions diagnosed in-service are not mitigating and there is no evidence his mental status was altered during the interview in which he admitted guilt. Specifically, the diagnoses do not impact one's ability to make conscious statements understanding the ramifications to include PTSD. Additionally, there is no indication the misconduct was secondary to a trauma trigger or otherwise related to PTSD or MST. Rather, the misconduct and unsupported assertions are more indicative of a Personality Disorder which engaged feigning related conditions after the fact to avoid consequences. While a Personality Disorder provides context, it is also not mitigating as an individual is fully aware of social norms and rules and related consequences and able to make a conscious decision to adhere or not.

(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 applicant's Adjustment Disorder, PTSD, Major Depressive Disorder (MDD), Alcohol Use Disorder, Panic, Generalized Anxiety Disorder (GAD), and Borderline Personality Disorder do not outweigh the applicant's Misconduct (Serious Offense - Unlawful entry of home with intent to damage property, stalking, and violation of a protective order) to warrant any change to the applicant's discharge.

b. Response to Contention(s):

(1) The applicant's counsel contends the applicant is requesting an upgrade for reasons of propriety and equity.

The board considered the totality of the applicant's record, to include the applicant's contentions

that the discharge was not proper and equitable. However, the board determined that, given the seriousness of the misconduct and the absence of medical mitigation, an upgrade to the characterization and narrative reason is not justified at this time.

(2) The applicant's counsel contends an error of discretion was made in discharging the applicant with an under other than honorable characterization of service and one incident should not define the service of an honorable Soldier.

The board considered this contention and determined that the seriousness of the applicant's offenses (unlawful entry with the intent to damage property, stalking, and violation of a protective order), with no medical mitigation, constitutes circumstances where the conduct or performance of duty demonstrated by a single incident justifies a characterization. Furthermore, Army Regulation 635-200 outlines specific situations where a service member's single incident, conduct or duty performance can serve as the basis for separation and characterization. As a result, an upgrade to the discharge is not justified.

(3) The applicant's counsel contends the applicant was told the applicant may have had some cognitive impairment due to prescribed medications.

The board concurred with the Medical Advisor's opinion and determined that the conditions diagnosed during service do not qualify as mitigating factors. Moreover, there is no evidence indicating that the applicant's mental state was impaired during the interview in which the applicant admitted to the wrongdoing. Specifically, the diagnoses at hand do not diminish a person's ability to make informed statements while understanding the consequences of their actions, even in cases involving PTSD. Furthermore, there is no evidence linking the misconduct to a trauma trigger associated with PTSD or Military Sexual Trauma (MST). Instead, the behavior and unsubstantiated claims seem to align more closely with a Personality Disorder, manifesting as the feigning of related conditions afterward to avoid accountability.

(4) The applicant's counsel further contends they made a mistake and was simply trying to protect their family and kids' future.

The board considered this contention during its deliberations.

c. The board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 based on the lack of mitigating factors for the board to consider. Since the applicant was discharged for serious misconduct (unlawful entry with the intent to damage property, stalking, and violation of a protective order), an Under Other Than Honorable Conditions discharge, is both proper and equitable. 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 rationale, as the reason the applicant was discharged was both proper and equitable.

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AR20220005353

(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:

3/3/2025

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