

1. Applicant's Name:

- a. **Application Date:** 31 January 2022
- b. **Date Received:** 3 February 2022
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is general (under honorable conditions). The applicant requests an upgrade to honorable along with a reentry (RE) code, separation program designator (SPD) code, and a narrative reason change.

The applicant seeks relief contending, in effect, the applicant was falsely accused of sexual harassment. The applicant was a good soldier, reenlisted, and received awards. The applicant was supposed to go to a medical evaluation board due to rhabdomyolysis for which the applicant was hospitalized for.

b. **Board Type and Decision:** In a records review conducted on 6 December 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 17 September 2019

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

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 21 March 2017 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 85

c. Highest Grade Achieved / MOS / Total Service: E-4 / 12B10, Combat Engineer / 4 years, 10 months, 15 days

d. Prior Service / Characterizations: RA, 3 November 2014 – 20 March 2017 / HD

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: AAM, AGCM, NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) DA Form 3947 (Medical Evaluation Board Proceedings), 17 May 2019, reflects the applicant's diagnosis of rhabdomyolysis did not meet medical retention standards.

(2) A search of the Army criminal file indexes revealed no records pertaining to the applicant.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, DA Form 3947 (Medical Evaluation Board Proceedings), Department Veteran Affairs (VA) Rating Decision (pages 1 and 2), Memorandum; subject: Art. 15 ..., 22 May 2019, Memorandum; subject: Art.15....., 30 May 2019, DA Forms 2823 (Sworn Statement)-10

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) 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.

(5) 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.

(6) 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.

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).

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

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.

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.

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 along with a RE code, SPD code, 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 a properly

constituted DD Form 214 (Certificate of Release or Discharge from Active Duty). The DD Form 214 indicates 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 General (Under Honorable Conditions).

The applicant requests the RE code, SPD code, and narrative reason be changed. The applicant was separated under the provisions of AR 635-200, Chapter 14-12c, with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this chapter is "Misconduct (Serious Offense)" and the separation code is "JKQ." Army Regulation 635-5, Separation Documents governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason or SPD code to be entered under this regulation. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

The applicant contends the applicant was falsely accused of sexual harassment. 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 was supposed to go to a medical evaluation board due to rhabdomyolysis for which the applicant was hospitalized for. The applicant provides DA Form 3947 (Medical Evaluation Board Proceedings), 17 May 2019, reflects the applicant's diagnosis of rhabdomyolysis did not meet medical retention standards.

The applicant states the applicant was a good soldier, reenlisted, and received awards. The Board will consider the applicant service accomplishments and the quality of service according to the DODI 1332.28.

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, found that the applicant asserted Sexual Harassment. After review of DoD and VA medical records, no mitigating BH diagnosis was found on the applicant. The applicant provided testimony of an experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant claimed Sexual Harassment and the claim was reported to be during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** Based on the available information, it is the Medical Advisor's opinion that no determination of medical mitigation can be made at this time. VA records indicate that, on 24 September 2020, the applicant reported to the VA BH provider that he was "falsely accused of sexual harassment when I was in the military." Commander's memorandum dated 22 May 2019 documents that the applicant made no sexual gestures toward another soldier, however the IO findings were inconclusive for the reason of separation. The Applicant himself has also self-asserted he was

falsely accused of sexual harassment while in the military. The Applicant has not been diagnosed with any Behavioral Health conditions by the Army or the VA.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's claimed experience did not outweigh the basis of separation.

b. Prior Decisions Cited: N/A

c. Response to Contention(s):

(1) The applicant contends he was falsely accused of sexual harassment. The Board considered this contention. However, the Board determined the applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention that the discharge was improper or inequitable. In light of the current evidence of record, the Board determined the applicant's discharge was proper and equitable.

(2) The applicant contends he was supposed to go to a medical evaluation board due to rhabdomyolysis for which the applicant was hospitalized for.

The Board considered this contention. There is one medical note in AHLTA. On 22 March 2019, the applicant was admitted to the hospital with bilateral arm pain and swelling. The applicant had a past history of rhabdomyolysis in 2017. The applicant denied alcohol or illicit drug use. Creatinine kinase levels were significantly increased: 3832 (30-225 normal range). Diagnosis was Exertional Rhabdomyolysis. The applicant was admitted to internal medicine inpatient unit. VA medical records indicate the applicant is 100% service connected for multiple non-Behavioral Health conditions involving orthopedic, GI and skin issues.

d. 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 that the discharge was improper or inequitable.

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 did not have a condition or experience that may excuse or mitigate the offense of Sexual Harassment. 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.

(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

AR20220005410

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:

1/6/2025

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