

1. **Applicant's Name:** [REDACTED]
- a. **Application Date:** 2 November 2022
- b. **Date Received:** 7 November 2022
- c. **Counsel:** [REDACTED]

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 and a narrative reason change to secretarial authority.

b. The applicant through counsel is seeking equity.

Board Type and Decision: In a telephonic personal appearance hearing conducted on 8 January 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the applicant's length of service, to include combat service, and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the RE code was proper and equitable and voted not to change it.

c. 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.*

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 14 December 2007

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 29 August 2007

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant between on or about 3 December 2006 and 7 January 2007 violated General Order Number 1 by having a relationship with a commissioned officer; between on or about 7 January 2007 and 1 May 2007 disobey a lawful order from Lieutenant Colonel (LTC) M__ A.H__ by corresponding with Captain (CPT) A__ D__; on or about 7 January 2007 make to Major (MAJ) B__ three false official statements; and between on or about 1 March 2007 and 30 April 2007 wrongfully have sexual intercourse with CPT D__, a married man not the applicant's husband.

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

(4) Legal Consultation Date:

- On 10 July 2007, the applicant received legal counsel for the pretrial agreement
- On 29 August 2007, the applicant waived legal counsel for the notification of initiation of separation

(5) Administrative Separation Board: On 29 August 2007, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than other than honorable.

(6) Separation Decision Date / Characterization: 31 August 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 February 2005 / 4 years

b. Age at Enlistment / Education / GT Score: 19 / High School Graduate / 106

c. Highest Grade Achieved / MOS / Total Service: E-3 / 68W10, Health Care Specialist / 2 years, 10 months, and 14 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Kuwait/Iraq (31 October 26 - 12 September 2007)

f. Awards and Decorations: NDSM, GWTSM, ICM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Charge Sheet, 9 March 2007, reflects the applicant was charged with:

(a) Violation of the UCMJ, Article 92, for:

- Specification 1: At or near Forward Operating Base (FOB) Marez, Iraq, on divers occasions between on or about 3 December 2006 and 7 January 2007, wrongfully engaged in a prohibited relationship with CPT D__
- Specification 2: Disobeying a lawful order issued by LTC H__ not to have any contact with CPT D__, or words to that effect, an order in which it was the applicant's duty to obey, did, at or near FOB Marez, Iraq, on divers (occasions) between on or about 7 January 2007, to present, fail to obey the same by corresponding with CPT D__ through electronic mail messages

(b) Violation of the UCMJ, Article 107, for:

- Specification 1: At or near FOB Marez, Iraq, on or about 7 January 2007, with intent to deceive, make to MAJ S__ B__ an official statement, to wit: a written statement on DA Form 2823 (Sworn Statement) indicating the applicant never had a physical relationship (with) CPT D__, and was then known by the applicant to be so false

- Specification 2: At or near FOB Marez, Iraq, on or about 7 January 2007, with intent to deceive, make to MAJ B__ an official statement, to wit: a written statement on DA Form 2823 indicating that the applicant never climbed out of CPT D__'s CHU window, which was false in that the applicant had climbed out of CPT D__'s CHU window, and was then known by the applicant to be so false
 - Specification 3: At or near FOB Marez, Iraq, on or about 7 January 2007, with intent to deceive, make to MAJ B__ an official statement, to wit: a written statement on DA Form 2823 indicating that the applicant never had a key to CPT D__'s CHU, which was false in that the applicant did have a key to CPT D__'s CHU, and was then known by the applicant to be so false
- (c) Violation of the UCMJ, Article 134, for:
- Specification 1: The applicant, U.S. Army, a married woman, did, at or near FOB Marez, Iraq, on divers occasions, between on or about 3 December 2006 and 7 January 2007, wrongfully have sexual intercourse with CPT D__, a married man not the applicant's husband
 - Specification 2: The applicant, U.S. Army, did, at or near FOB Marez, Iraq, on or about 10 December 2006, wrongfully commit an indecent act with CPT D__ by fondling CPT D__'s genital area through clothing with the applicant's hand and kissing CPT D__ in front of Specialist R__ C__
- (2) On 10 July 2007, the applicant entered into a pretrial agreement as follows:
- (a) To Specification 1 of Charge I: Guilty.
- (b) To Specification 2 of Charge I: Guilty, except the words "to present," substituting therefor the words and figures "and 1 May 2007";
- To the excepted words and figures, Not Guilty;
 - To the substituted words and figures, Guilty;
 - To Charge I, Guilty.
- (c) To the Specifications of Charge II and Charge II: Guilty.
- (d) To Specification 1 of Charge III: Guilty, except the words and figures "3 December 2006 to 7 January 2007," substituting therefor the words and figures "1 March 2007 to 30 April 2007";
- To the excepted words: Not Guilty;
 - To the substituted word: Guilty;
 - To Specification 2 of Charge III: Not Guilty.
 - To Charge III: Guilty.
- (e) The applicant offered to plead guilty to the Charges and Specifications as stated above provided that the Government took the action set forth in Enclosure 1 and dismissed excepted words and figures and Specification 2 of Charge III with prejudice upon acceptance of the applicant's plea by the court-martial.
- (f) As part of this offer: The applicant agreed to enter a stipulation of fact with the Trial Counsel setting forth the essential facts and circumstances of the offenses to which the applicant was pleading guilty. The applicant understood that this stipulation may be used by the summary court-martial to determine if the applicant was in fact guilty and would be considered,

along with any other evidence presented, in determining a sentence; should the Government decide to separate the applicant from the service, the applicant agreed to waive consideration of the applicant's case before an administrative separation board provided Government complied with the terms of the pretrial agreement; and the applicant agreed to testify against CPT D__ in any criminal prosecution that the Army may bring against CPT D__.

(g) On this same date, the applicant received legal counsel for the pretrial agreement and the separation authority accepted this agreement.

(3) On 23 August 2007, the applicant was notified that the summary court martial would convene on 29 August 2007, for the following preferred charges:

(a) Violating Article 92, UCMJ for:

- Specification 1: Violating a lawful general regulation
- Specification 2: Disobeying a lawful order of a superior commissioned officer

(b) Violating Article 107, UCMJ for three specifications of rendering a false official statement.

(c) Violating Article 134, UCMJ for:

- Specification 1: Adultery
- Specification 2: Committing an indecent act

(4) Memorandum, Notification of Separation under provisions of AR 635-200, Chapter 14, paragraph 14-12c (2), commission of a serious offense, 28 August 2007, shows the company commander initiated separation action with an other than honorable characterization of service. On the same date the applicant acknowledged receipt of the referred charge sheet and allied papers. The chain of command recommended an other than honorable characterization of service.

(5) On 29 August 2007, the applicant acknowledged receipt of notification of separation, waived legal counsel, and conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than other than honorable.

(6) Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 29 August 2007. The applicant was charged with seven specifications. The summary of offenses, pleas, and findings:

(a) Violation of Article 92:

- On divers occasions between on or about 3 December 2006 and 7 January 2007, wrongfully engaged in a prohibited relationship with CPT D__; guilty, consistent with the plea
- On divers (occasions) between on or about 7 January 2007, to present, failed to obey a lawful order issued by LTC H__ not to have any contact with CPT D__, or words to that effect by corresponding with CPT D__ through electronic mail messages; guilty, consistent with the plea
- Guilty, except to the words "to present", substituting therefore the words and figures "and 1 May 2007"
- To the excepted words Not Guilty

- To the substituted words and figures Guilty

(b) Violation of Article 107, for three specifications of rendering a false official statement; guilty, consistent with the plea

(c) Violation of Article 134

- On divers occasions, between on or about 3 December 2006 and 7 January 2007, wrongfully have sexual intercourse with CPT D___, a married man not the applicant's husband; guilty, consistent with the plea
- Guilty, except the words and figures "3 December 2006 to 7 January 2007," substituting therefore the words and figures "1 March 2007 to 30 April 2007"
- To the excepted words and figures Not Guilty
- To the substituted words and figures Guilty
- On or about 10 December 2006, wrongfully commit an indecent act; dismissed

(d) Sentence: Reduction from E-3 to E-1 effective 5 September 2007; forfeiture \$867.00 pay per month for one month; and confinement for 30 days.

(7) On 31 August 2007, the separation authority approved the applicant's separation with an under other than honorable conditions discharge.

(8) The applicant's Enlisted Record Brief, 10 December 2007, shows the applicant was flagged for elimination - field initiated (BA), effective 29 August 2007, and adverse action (AA), effective 11 January 2007.

(9) The applicant's DD Form 214, reflects the applicant was reduced from E-3 to E-1 effective 31 August 2007.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 9 August 2007, shows the applicant was psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; responsible; and met medical retention requirements. There was no evidence of a mental disorder that would require separation through medical channels. The applicant was diagnosed with occupational problem.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293

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), 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) 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) An 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.

(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 prescribes 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:

(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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

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

a. The applicant requests an upgrade to honorable and a narrative reason change to secretarial authority. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 2 years, 10 months, and 14 days during which the applicant served 10 months and 12 days between Kuwait and Iraq. The applicant was found guilty of six specifications during a summary court martial. The applicant was discharged with a under other than honorable conditions characterization of service on 14 December 2007.

c. The applicant through counsel requests the narrative reason for the discharge be changed to Secretarial Authority. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8, Separation Processing and 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, SPD Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. Analyst notes an administrative irregularity in block 12h (Effective Date of Pay Grade), shows 31 August 2007. Report of Result of Trial reflects the applicant was reduced from E-3 to E-1 effective 5 September 2007. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

e. Published Department of Defense 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):** N/A

b. **The applicant presented the following additional contention(s):** The applicant (Ms. [REDACTED], applicant and Mr. [REDACTED]) and counsel provided oral arguments in support of the

contentions they provided in their written submissions and in support of their documentary evidence.

a. Counsel / Witness(es) / Observer(s): [REDACTED]

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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s): None

c. The Board determined the discharge is inequitable based on the applicant's length of service, to include combat service, and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the RE code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to grant relief by upgrading the applicant's characterization of service to Honorable. Although the Board found there were no behavioral health diagnoses which mitigated the misconduct to warrant relief, it was found that the discharge has served its purpose. Thus, making the current reason for discharge improper.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will not change, the Board determined the RE code was proper and equitable and voted not to change it.

11. BOARD ACTION DIRECTED:

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

b. Change Characterization to: Honorable

c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

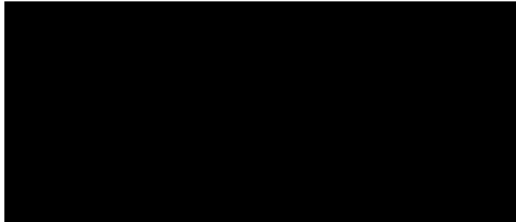
AR20230001026

d. Change RE Code to: No Change

e. Change Authority to: AR 635-200

Authenticating Official:

1/31/2024



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