

1. Applicant's Name: [REDACTED]**a. Application Date:** 31 January 2023**b. Date Received:** 7 February 2023**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, through counsel, an upgrade to honorable along with a narrative reason and separation program designator (SPD) code change.

The applicant's counsel seeks relief contending, in effect, the applicant was court-martialed which resulted in a conviction of only one specification of disrespecting an officer. All other charges were dismissed prior to the trial, or the applicant was found not guilty. The applicant was not separated as a part of the court-martial. The applicant was only ordered to serve 60 days of hard labor and issued a written reprimand. An administrative separation board was initiated for the single specification of disrespect as well as numerous other allegations of sexual assault, harassment, and adultery that were dismissed prior to the court-martial. The administrative separation board unsubstantiated most of the allegations but voted to separate the applicant with under other than honorable conditions characterization of service. The alleged victim refused to cooperate at the separation board hearing and was never questioned by defense counsel or other reviewing authority or board. The allegations were unchecked and unquestioned. Since the separation the applicant has been gainfully employed and support family. Equitable relief is warranted in view of the applicant's years of service, combat deployments, and performance. The applicant was targeted to by command to remove the applicant from a position.

b. Board Type and Decision: In a personal appearance review conducted on 22 January 2024, and by a 3-2 vote, the Board determined the discharge is inequitable based on the basis of the issues with the court-martial case (lack of testimony), inconsistencies in the packet, the applicant's service record (length, quality) and post service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General. The Board determined the narrative reason, SPD code and reentry code were proper and equitable and voted not to change them.

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, Paragraph 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 11 February 2022

c. Separation Facts: The applicant's AMHRR is void of the separation packet.

(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: Report of Proceedings by Board of Officer, provided by applicant's counsel, reflects an administrative separation board found the applicant did commit a commission of a serious; the applicant was convicted at a special court-martial for disrespect towards a commissioned officer on or about 29 April 2021; the applicant did engage in multiple acts of adultery; and the applicant did harass another noncommissioned officer on or about 27 June 2017 by surreptitiously recording the NCO from behind while the NCO performed PT in order to record the NCO buttocks, stalked the NCO as the NCO went home, made numerous inappropriate comments towards the NCO in an attempt to initiate a sexual relationship. The administrative separation board found the above findings warranted separation and recommended the applicant receive an under other than honorable conditions characterization of service.

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 5 March 2015 / 6 years

b. Age at Enlistment / Education / GT Score: 41 / HS Graduate / 98

c. Highest Grade Achieved / MOS / Total Service: E-7 / 42A48, Human Resource Specialist / 25 years, 1 month

d. Prior Service / Characterizations: ARNG, 13 January 1993 - 7 June 1995 / GD
RA, 5 August 1993 – 11 November 1993 / HD
(Concurrent Service) (IADT)
ARNG, 14 March 2000 - 13 February 2010 / NIF
AGR, 14 February 2010 – 4 March 2015 / NIF

e. Overseas Service / Combat Service: NIF

f. Awards and Decorations: ARCOM-2, AAM, ASUA, AGCM-3, ARCAM, NDSM, GWOTSM, NCOPDR-3, ASR, ARCOTR-3, AFRM, Air Assault Badge, Master Recruiter Badge, Driver and Mechanic Badge-Driver Wheeled Vehicle(s)Clasp

g. Performance Ratings: 20 October 2014 – 19 October 2015 / Among The Best
20 October 2015 – 2 May 2016 / Highly Qualified
3 May 2016 - 3 October 2016 / Qualified
4 October 2016 – 10 March 2017 / Qualified
1 October 2017 – 10 March 2018 / Qualified
11 March 2018 – 21 May 2019 / Highly Qualified

h. Disciplinary Action(s) / Evidentiary Record: Statement of Trial Results Finding Worksheet, 29 April 2021, reflects at Special Court-Martial the applicant was found guilty of behaving with disrespect towards a commissioned officer by interrupting the commissioned officer while the officer was speaking, failing to stand at attention, and contemptuously slamming the office door after being dismissed. The applicant was found not guilty of other charges and other charges were withdrawn and dismissed. The punishment consisted of two months of hard labor without confinement and a reprimand.

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, Legal Brief with six attachments (98 total pages)

6. POST SERVICE ACCOMPLISHMENTS: Since the separation the applicant has been gainfully employed and supports a family.

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.

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 along with a narrative reason and separation program designator (SPD) code 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 the 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, Chapter 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 narrative reason and SPD code be changed. The applicant was separated under the provisions of AR 635-200, Chapter 14-12c, with an under other than 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 635-8, 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.

The applicant contends, in effect, the SPD code should be changed. SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services

to assist in the collection and analysis of separation data. SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 to track types of separations.

The applicant's counsel contends, in effect, the applicant was court-martialed which resulted in a conviction of only one specification of disrespecting an officer. All other charges were dismissed prior to the trial, or the applicant was found not guilty. The applicant was not separated as a part of the court-martial. The applicant was only ordered to serve 60 days of hard labor and issued a written reprimand.

The applicant's counsel contends, in effect, an administrative separation board was initiated for the single specification of disrespect as well as numerous other allegations of sexual assault, harassment, and adultery that were dismissed prior to the court-martial. The administrative separation board unsubstantiated most of the allegations but voted to separate the applicant with under other than honorable conditions characterization of service.

The applicant's counsel contends, in effect, the alleged victim refused to cooperate at the separation board hearing and was never questioned by defense counsel or other reviewing authority or board. The allegations were unchecked and unquestioned.

The applicant's counsel contends, in effect, equitable relief is warranted in view of the applicant's years of service, combat deployments, and performance. The Board will consider the applicant service accomplishments and the quality of service according to the DODI 1332.28

The applicant's counsel contends, in effect, the applicant was targeted to by command to remove the applicant from a position. The record does not contain any indication or evidence of arbitrary or capricious actions by the command and all requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process.

The applicant's counsel states since the separation the applicant has employed and supports a family. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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):** None
- b. **The applicant presented the following additional contention(s):** None
- c. **Counsel / Witness(es) / Observer(s):** Counsel

10. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD

and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment DO with mixed anxiety and depressed mood; Other Specified Trauma- and Stressor-Related Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found both the diagnosis of Adjustment DO and the diagnosis of Other Specified Trauma and Stressor Related DO were made during active military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the officer has been diagnosed with Adjustment DO with mixed anxiety and depressed mood and with Other Specified Trauma and/or Stressor-Related DO, neither of these conditions mitigates the offenses of multiple acts of adultery; harassment of another NCO by surreptitiously recording her from behind while she performed PT in order to record her buttocks, stalking her as she went home, and making numerous inappropriate comments towards her in an attempt to initiate a sexual relationship as outlined in his 20 Apr 2021 Administrative Board of Separation given that neither BH condition affects one's ability to distinguish right from wrong and act in accordance with the right.

(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 Adjustment DO with mixed anxiety and depressed mood; Other Specified Trauma- and Stressor-Related Disorder outweighed the medically unmitigated offenses of multiple acts of adultery; harassment of another NCO by surreptitiously recording her from behind while she performed PT in order to record her buttocks, stalking her as she went home, and making numerous inappropriate comments towards her in an attempt to initiate a sexual relationship.

b. Response to Contention(s):

(1) The applicant's counsel contends, the applicant was court-martialed which resulted in a conviction of only one specification of disrespecting an officer. All other charges were dismissed prior to the trial, or the applicant was found not guilty. The applicant was not separated as a part of the court-martial. The applicant was only ordered to serve 60 days of hard labor and issued a written reprimand. The Board considered this contention and determined relief was warranted based on issues with the court-martial case (lack of testimony), inconsistencies in the packet, the applicant's service record (length, quality) and post service accomplishments.

(2) The applicant's counsel contends an administrative separation board was initiated for the single specification of disrespect as well as numerous other allegations of sexual assault, harassment, and adultery that were dismissed prior to the court-martial. The administrative separation board unsubstantiated most of the allegations but voted to separate the applicant with under other than honorable conditions characterization of service. The Board considered this contention and determined relief was warranted based on issues with the court-martial case (lack of testimony), inconsistencies in the packet, the applicant's service record (length, quality) and post service accomplishments.

(3) The applicant's counsel contends the alleged victim refused to cooperate at the separation board hearing and was never questioned by defense counsel or other reviewing authority or board. The allegations were unchecked and unquestioned. The Board considered this contention and determined relief was warranted based on issues with the court-martial case

(lack of testimony), inconsistencies in the packet, the applicant's service record (length, quality) and post service accomplishments.

(4) The applicant's counsel contends equitable relief is warranted in view of the applicant's years of service, combat deployments, and performance. The Board considered this contention and determined relief was warranted based on issues with the court-martial case (lack of testimony), inconsistencies in the packet, the applicant's service record (length, quality) and post service accomplishments.

(5) The applicant's counsel contends the applicant was targeted to by command to remove the applicant from a position. The Board considered this contention and found no corroborating evidence was presented by the applicant and there was no evidence on record of capricious acts by the command.

c. The Board determined the discharge is inequitable based on the basis of the issues with the court-martial case (lack of testimony), inconsistencies in the packet, the applicant's service record (length, quality) and post service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to General. The Board determined the narrative reason, SPD code and reentry code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to General based on the issues with the court-martial case (lack of testimony), inconsistencies in the packet, the applicant's service record (length, quality) and post service accomplishments. Thus, the prior characterization is no longer appropriate.

(2) The Board determined the reason for discharge and corresponding SPD code were proper and equitable and voted not to change them.

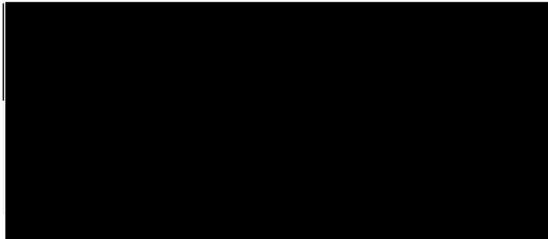
(3) The Board determined the current reentry code is proper and equitable and voted not to change it.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

1/31/2024



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

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