

1. Applicant's Name:

- a. **Application Date:** 30 March 2023
- b. **Date Received:** 18 April 2023
- 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.

The applicant seeks relief contending, in effect, the discharge was inequitable and based only on a small period of service. The applicant also contends the demotion was unreasonable. The applicant was accused of sexual harassment and then the accusation was changed to rape. An investigation found the applicant was not guilty.

b. **Type and Decision:** In a records review conducted on 12 February 2024, and by a 5-0 vote, the 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, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 21 April 2009

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 24 March 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 22 August 2008, the applicant received a Field Grade Article 15 for violating Article 93 of the Uniformed Code of Military Justice in that the applicant wrongfully maltreated SGT H, a person subject to the applicant orders. In addition, the applicant was counseled on three separate occasions for failing to report for 0630 accountability formation.

(3) **Recommended Characterization:** General (Under Honorable Conditions)

(4) **Legal Consultation Date:** On 26 March 2009, the applicant waived the right to consult with counsel.

(5) **Administrative Separation Board:** The applicant waived the right to have the case heard by an administrative separation board.

(6) **Separation Decision Date / Characterization:** 13 April 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 23 May 2006 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 27 / HS Graduate / 101
- c. **Highest Grade Achieved / MOS / Total Service:** E-6 / 68w2L, Health Care Specialist / 10 years, 6 months
- d. **Prior Service / Characterizations:** 22 October 1998 – 22 May 2006 / HD
- e. **Overseas Service / Combat Service:** SWA / Iraq (1 October 2005 – 22 September 2006), 16 October 2007 – 20 November 2008)
- f. **Awards and Decorations:** ICM-CS-2, ARCOM-3, JSAM, AAM-5, MUC, AGCM-3, NDSM, GWOTSM, NCOPDR-2, ASR, OSR-3, CMB
- g. **Performance Ratings:** 1 March 2006 – 28 February 2007 / Among The Best
1 March 2007 – 29 February 2008 / Among The Best
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Memorandum, subject: Separation Under AR635-200, Chapter 14, paragraph 14-12c, commission of a Serious Offense, 24 March 2009, reflects in part, the applicant received a Field Grade Article 15 on 22 August 2008, for violating Article 93 of the Uniformed Code of Military Justice. In that the applicant wrongfully maltreated SGT H, a person subject to the applicant's orders. In addition, the applicant was counseled on three separate occasions for failing to report for 0630 accountability formation. The punishment consisted of reduction to sergeant/E-5; forfeiture of \$1,400 (suspended); and extra duty and restriction for 45 days (suspended)

(2) The applicant was counseled on multiple occasions for misconduct.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation (MSE), 6 February 2009, reflects the applicant was psychiatrically cleared for any administrative action deemed appropriate by command. It was recommended the applicant be discharged under the provisions Chapter 5-17 due to mental health issues/concerns.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, Letters of Support-3, ERB, DD Form 214, NCOER, Documents from separation packet (46 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) 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.

(7) 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.

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. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the discharge was inequitable and based only on a small period of service.

The applicant contends the demotion was unreasonable.

The applicant contends the applicant was accused of sexual harassment and then the accusation was changed to rape. An investigation found the applicant was not guilty. The applicant's AMHRR is void of an investigation pertaining to an accusation against the applicant, nor did the applicant provide evidence of an investigation.

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 request, available records and/or submitted documents in support of the request.

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):** N/A
- c. **Counsel / Witness(es) / Observer(s):** N/A

10. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] 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: In-service Adjustment Disorder, service connected for PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** In-service Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma and avoidance, the FTRs are mitigated. However, mistreating a Soldier is not.

(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 in service Adjustment Disorder and post service PTSD diagnosis did not outweigh the basis of separation.

- b. **Prior Decisions Cited:** None - Applicant was a no show for PA on 12 February 2024
- c. **Response to Contention(s):**

(1) The applicant contends the discharge was inequitable and based only on a small period of service. The Board considered this contention during board proceedings along with the totality of the applicant's service record but determined these factors did not outweigh the reason for separation.

(2) The applicant contends the demotion was unreasonable. The Board considered this contention non-persuasive during its deliberations.

(3) The applicant contends the applicant was accused of sexual harassment and then the accusation was changed to rape. An investigation found the applicant was not guilty. The Board considered this contention during board proceedings along with the totality of the applicant's service record but determined these factors did not outweigh the reason for separation.

d. 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 all available 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.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service based on the following reasons. The applicant has an In-service diagnosis of Adjustment Disorder. The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma and avoidance, the FTRs are mitigated. However, mistreating a Soldier is not. The Board discussed the applicant's contentions and carefully considered the applicant's request, supporting documents and medical review. Although the BH diagnosis of PTSD mitigates the FTRs, neither the diagnosis or his record of service mitigates his mistreatment of Soldiers and adultery. Based on the non-mitigation, the Board concurred the current discharge is appropriate. 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 pretexts, as the reason the applicant was discharged was both proper and equitable.

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(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. 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:

2/27/2024

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