

1. Applicant's Name:

- a. **Application Date:** 14 October 2023
- b. **Date Received:** 14 October 2023
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general honorable conditions. The applicant requests an upgrade to honorable and a change to the narrative reason for separation.

(2) The applicant seeks relief stating they would like the Board to grant them clemency. They had mental issues while in the military that affected their conduct, performance and decision making. These issues also had a bearing on their discharge. They are unable to support themselves and their family. They need an upgrade of their characterization of service and a change to the narrative reason for separation so it will not affect them from finding gainful employment and to improve their overall quality of life.

b. Board Type and Decision: In a records review conducted on 20 November 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / Army Regulation 635-200 / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 1 October 2023

c. Separation Facts: The applicant's case separation file is void from the Army Military Human Resource Record (AMHRR); however, the applicant provided the case separation file. The information in 3c(1) through (6) were derived from those documents.

(1) Date of Notification of Intent to Separate: 29 June 2023

(2) Basis for Separation: on or about February 2022, sexually harassed SPC O____ by making unwanted sexual advances and on or about 3 October 2022, sexually harassed SPC B____, by making unwanted sexual advances.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 11 July 2023

(5) Administrative Separation Board: On 3 August 2023, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: NIF**4. SERVICE DETAILS:**

- a. Date / Period of Re-enlistment:** 22 October 2018 / 6 years
- b. Age at Re-enlistment / Education / GT Score:** 23 / HS Graduate / 114
- c. Highest Grade Achieved / MOS / Total Service:** E-6 / 91B3P, Wheeled Vehicle Mechanic / 10 years, 1 month, 26 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** Germany, Poland / None
- f. Awards and Decorations:** ARCOM, AAM-7, AGCM-3, NDSM, GWTSM, ASR, OSR, NCOPDR-2, NATOMDL
- g. Performance Ratings:** 1 August 2018 – 26 April 2019 / Qualified
27 April 2019 – 26 April 2020 / Highly Qualified
29 April 2020 – 28 April 2020 / Highly Qualified
29 April 2021 – 28 April 2022 / Qualified
29 April 2022 – 1 October 2023 / Qualified
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ), dated 5 January 2018, reflects the applicant received nonjudicial punishment, in that, as a married person, between on or about 15 May 2016 and on or about 2 December 2016, wrongfully had sexual intercourse with SPC J____ F____, a person not their spouse, bring prejudicial to good order and discipline in the Armed Forces, in violation of Article 134, (Extramarital Sexual Conduct) UCMJ. The applicant's punishment consisted of a reduction in rank/grade from sergeant (SGT)/E-5 to SPC/E-4 and an oral reprimand. The applicant elected not to appeal.

(2) A DA Form 4187 (Personnel Action) dated 9 January 2018 reflects the applicant's reduction in rank/grade from SGT/E-5 to SPC/E-4 with a date of rank of 5 January 2018.

(3) A memorandum, Headquarters, 82nd Airborne Division, subject: General Officer Memorandum of Reprimand under Provisions of Army Regulation 600-37 (Unfavorable Information), undated, reflects the applicant was reprimanded in writing for violating Army Regulation 600-20 (Army Command Policy and Procedures) while in Poland. The commanding general states, specifically, in violation of paragraph 4-14(b) (Relationships Between Soldiers of Different Grades), the applicant made a comment to a Soldier of a junior grade, and that comment was suggestive of their interest in an unduly familiar relationship with them. The applicant's comment created an adverse impact on discipline, authority, and morale. On 29 August 2022, the applicant acknowledged receipt of the Memorandum of Reprimand and elected to submit a written statement(s) or document(s) on their behalf. [Note: statement(s) or document(s) in their behalf are not in evidence for review.]

(4) A memorandum, Bravo Company, 82nd Brigade Support Battalion, subject: Notification of Separation under Army Regulation 635-200, Chapter 14-12c, undated, the applicant's company commander notified the applicant of their intent to separate them under the

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provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, for about February 2022, sexually harassed SPC O____ by making unwanted sexual advances and on or about 3 October 2022, sexually harassed SPC B____, by making unwanted sexual advances. The company commander recommended characterization of service of Under Other Than Honorable Conditions. On 29 June 2023, the applicant acknowledged the basis for the separation and of the right available to them.

(5) A memorandum, Trial Defense Service, Fort Liberty Field Office, subject: Election of Rights under Army Regulation 635-200, [Applicant], dated 11 July 2023, the trial defense counsel states they consulted with the applicant regarding their administrative separation. The applicant understands that they are entitled to an administrative separation board because they have 6 or more years of active and reserve service at the time of notification of separation, or they have been given notice that they are being recommended for separation under other than honorable conditions. The applicant requests a personal appearance before an administrative separation board and requests appointment of military counsel for representation.

(6) A memorandum, Trial Defense Service, Fort Liberty Field Office, subject: Administrative Separation Board Conditional Waiver, [Applicant], dated 3 August 2023, the applicant's trial defense counsel states –

(a) They have advised the applicant of the basis for the contemplated separation based on Army Regulation 635-200, paragraph 14-12c (Commission of a Serious Offense), and its effects; of the rights available to them; and of the effect of any action taken by them in waiving their rights. They understand that they are entitled to have their case considered by an administrative separation board.

(b) The applicant hereby voluntarily waives consideration of their case by an administrative separation board contingent upon them receiving a characterization of service no less favorable than general (under honorable conditions). They make this request of their own free will and has not been subjected to any coercion whatsoever by any person.

(c) The applicant understands they may encounter substantial prejudice in civilian life if the receive a general (under honorable conditions) discharge.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 1 October 2023, with 10 years, 1 month, and 26 days of net active service this period. The DD Form 214 shows in:

- item 18 (Remarks) – member has not completed first full term of service.
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200
- item 26 (Separation Code) – JKQ
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)

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

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

(1) **Applicant provided:** A Medical Record, Office and Clinic Notes, dated 11 August 2023, the staff psychiatrist states the applicant has no previous psychiatric history who presents for post-hospitalization follow-up after recent admission for progressively worsening suicidal

ideation and development of suicidal plan. A primary stressor relates to charges leveled against them through the Sexual Harassment/Assault Response and Prevention process and their command's plans for administrative separation. Inpatient records also mentioned longer-term stressors related to their spouse's dependency needs. Their level of distress reached a point of developing suicidal ideation and plan. While their life stressors are very significant, the development of suicidal plans can be considered out of proportion to the situation and consistent with an adjustment disorder. The staff psychiatrist shows the applicant's diagnosis as Adjustment Disorder with mixed anxiety and depressed mood.

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), excerpts from their AMHRR, consisting of awards, evaluations, and case files for approved separation, and excerpts of Medical Records.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (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, Title 10 U.S. Code, Section 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 (DoD) 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; Title 10 U.S. Code; Section 1553 and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence 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. 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. Paragraph 14-12c (Commission of a Service Offense), stated 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 14-12c, 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 DoD Instruction 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 waiverable. Eligibility: Ineligible unless a waiver is granted.

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

g. Army Regulation 600-20 (Army Command Policy) prescribes the policies and responsibilities of command, which include the Army Ready and Resilient Campaign Plan, military discipline and conduct, the Army Military Equal Opportunity Program, the Army Harassment Prevention and Response Program, and the Army Sexual Harassment/Assault Response and prevention Program. Paragraph 4-14 (Relationships Between Soldiers of Different Grades), subparagraph b states Soldiers of different grades must be cognizant that their interactions do not create an actual or clearly predictable perception of undue familiarity between an officer and an enlisted Soldier, or between an NCO and a junior enlisted Soldier. All relationships between Soldiers of different grades are prohibited if they – compromise, or appear to compromise, the integrity of supervisory authority or the chain of command, cause actual or perceived partiality or unfairness, involve, or appear to involve, the improper use of grade or rank or position for personal gain, are, or are perceived to be, exploitative or coercive in nature, create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of command to accomplish its mission.

8. SUMMARY OF FACT(S):

a. The Army Discharge Review Board considers applications for upgrade as instructed by DoD Instruction 1332.28.

b. A review of the available evidence provides the applicant received nonjudicial punishment for wrongfully having sexual intercourse with SPC F____, a person, not their spouse, being prejudicial to good order and discipline in the Armed Forces; received a general officer memorandum of reprimand for making a comment to a Soldier of a junior grade, and that comment was suggestive of their interest in an unduly familiar relationship with them; received Notification of Separation with the reasons stating they sexually harassed SPC O____ and SPC B____, by making unwanted sexual advances; voluntarily waived consideration of their case by an Administrative Separation Board; and was involuntarily discharged from the U.S. Army. Their DD Form 214 (Certificate of Release or Discharge from Active Duty), which provides they were discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of General (Under Honorable Conditions). They completed 10 years, 1 month, and 26 days of net active service this period and did completed their first full term of service; however, they did not complete their 6-year reenlistment contractual obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

d. The separation authority considered whether the applicant's case should be processed through medical disability channels or under administrative separation provisions. After reviewing the separation packet, the documents pertaining to the medical evaluation board, and submission from the applicant, they directed this case be processed under chapter 14 provisions because the applicant's medical condition is not a direct or substantial contributing cause of the misconduct and there are no other circumstances that warrant continued Physical Evaluation Board processing.

e. Published DoD 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. 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: Mild TBI, so stated; Generalized Anxiety Disorder (GAD) (70% Service Connected (SC)).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found mild TBI was reported during active service. Service connection for GAD establishes nexus with 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 applicant has been diagnosed with GAD and has reported a TBI in April 2022, neither of these conditions mitigates applicant's sexually based misconduct as neither condition affects one's ability to distinguish right from wrong and act in accordance with the right. While it is true that, in rare instances, a head injury can result in disinhibition and hypersexuality, that does not appear to be the case here. Record review indicates that the applicant has reported a head injury occurring in Apr 2022. There is no medical documentation regarding this injury, and applicant has denied TBI residuals. As the normal course for a mild TBI is complete resolution of symptoms within weeks of the injury, it is highly unlikely applicant's self-reported head injury played any role in the misconduct.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering the evidence before the Board, the ADRB determined that the condition did not outweigh the basis for separation (two instances of sexual harassment and unwanted sexual advances).

b. Response to Contention(s):

(1) The applicant contends they would like the Board to grant them clemency. They had mental issues while in the military that affected their conduct, performance and decision making. The Board considered this contention and determined the applicant's mental issues found to have occurred during the applicant's military service do not outweigh or excuse the applicant's discharge. Based on the totality of the applicant's record and no experiences listed in the applicant's file that would outweigh the discharge, the Board determined the discharge is proper and equitable.

(2) The applicant contends they are unable to support themselves and their family. They need an upgrade of their characterization of service and a change to the narrative reason for separation so it will not affect them from finding gainful employment and to improve their overall quality of life.

The Board considered this contention; however the Board does not grant relief on the basis of gaining employment or enhancing employment opportunities.

c. 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(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's Mild TBI and GAD did not excuse or mitigate the offenses of two incidents of sexual harassment and unwanted sexual advances. 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. Therefore, the applicant's General (Under Honorable Conditions) discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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(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.

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:

2/13/2025

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