

**1. Applicant's Name:**

- a. **Application Date:** 2 November 2023
- b. **Date Received:** 2 November 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 honorable. The applicant requests changes to the SPD code from JNC to MBK or equivalent SPD and narrative reason.

b. The applicant is not refuting any of the events that happened that caused the applicant to receive SPD code JNC. The applicant is requesting a change to the SPD code in order to apply to the U.S. Army Reserve (USAR) without having to request any waivers. The applicant is requesting at the guidance of the USAR Recruiting Office to have the Board reconsider this request so that the applicant may be given a second chance at serving their country which will permit the applicant to submit a USAR officer reconsideration board packet.

c. **Board Type and Decision:** In a records review conducted on 8 July 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:** Unacceptable Conduct / AR 600-8-24, Chapter 4-2B / JNC / Honorable

b. **Date of Discharge:** 18 March 2016

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** Undated

(2) **Basis for Separation:** The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraphs 4-2b (4), (5), and (8) for misconduct, due to the following reasons:

(a) Engaging in an inappropriate and adulterous relationship, misusing the Department of Defense Enterprise Electronic Mail system to facilitate this relationship, and providing a false official statement in violation of Articles 92, 107, and 134, Uniform Code of Military Justice (UCMJ).

(b) Conduct unbecoming an officer.

(c) Substantiated misconduct, as detailed above which resulted in receipt of a GOMOR, 19 November 2019, that is filed permanently in the applicant's OMPF.

(3) **Legal Consultation Date:** NIF

**(4) Board of Inquiry (BOI):** On 5 November 2015, the BOI adjourned. The BOI recommended that the applicant be eliminated from the Army with an honorable characterization of service.

**(5) GOSCA Recommendation Date / Characterization:** On 28 December 2015, the GOSCA recommended the applicant be separated from service. / Honorable

**(6) DA Board of Review for Eliminations:** NIF

**(7) Separation Decision Date / Characterization:** 3 March 2016 / Honorable

**4. SERVICE DETAILS:**

**a. Date / Period of Appointment:** 19 June 2003 / NIF

**b. Age at Appointment: / Education:** 23 / Master Degree

**c. Highest Grade Achieved / MOS / Total Service:** O-4 / 35D K9 5S, All Source Intelligence / 13 years, 2 months, and 17 days

**d. Prior Service / Characterizations:** RA, 3 January 2003 - 18 June 2003 / HD

**e. Overseas Service / Combat Service:** Germany, SWA / Afghanistan (4 February 2012 - 3 April 2012; 7 November 2011 - 6 December 2011; 22 June 2011 - 21 August 2011; 6 September 2010 - 5 December 2010; 8 April 2010 - 7 July 2010; 15 February 2010 - 6 March 2010); Iraq (4 April 2011 - 3 May 2011; 15 December 2009 - 14 February 2010; 18 November 2007 - 20 November 2008)

**f. Awards and Decorations:** ACM-2CS, ICM-3CS, BSM-3, MSM-2, ARCOM-2, AAM-2, JMUA, USA/USAF PUC, NDSM, GWOTSM, HSM, ASR, OSR-4, NATO MSM, CAB

**g. Performance Ratings:** 31 October 2003 - 16 June 2004 / Best Qualified  
 17 June 2004 - 11 November 2004 / Best Qualified  
 12 November 2004 - 19 August 2005 / Best Qualified  
 20 August 2005 - 21 April 2006 / Best Qualified  
 21 April 2006 - 20 April 2007 / Best Qualified  
 20 August 2005 - 21 April 2006 / Best Qualified  
 21 April 2006 - 20 April 2007 / Best Qualified  
 21 April 2007 - 4 August 2007 / Best Qualified  
 5 August 2007 - 12 November 2008 / Best Qualified  
 13 November 2008 - 1 June 2010 / Best Qualified  
 2 June 2010 - 1 June 2011 / Best Qualified  
 2 June 2011 - 1 June 2012 / Best Qualified  
 2 June 2012 - 30 April 2013 / Best Qualified  
 1 May 2013 - 14 January 2015 / Not Qualified  
 15 January 2015 - 27 July 2015 / Highly Qualified

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** Memorandum, AR 15-6 Investigation Findings and Recommendations, 27 October 2014, shows:

(a) The investigating officer found: The applicant entered in an inappropriate relationship with P\_\_ R. N\_\_. The applicant and N\_\_ engaged in an adulterous relationship, as consummated on 7 October 2014. The applicant deliberately falsified information presented in a sworn statement executed pursuant to this informal investigation on 8 October 2014. Additionally, the applicant and N\_\_ may have violated the Acceptable Use Policy associated with the Department of Defense Enterprise Electronic-mail system. Additionally, misuse of government time and resources to facilitate the commission of the conduct appears to be involved. Multiple personal meetings, phone calls, and emails were exchanged during what were clearly core work hours.

(b) The investigating officer recommended, in part: Actions pertaining to the applicant, immediate suspension of all favorable actions, temporary suspension of security access, and initiation of UCMJ action was warranted. A letter of reprimand to be placed in the applicant's AMHRR and establishment of a BOI by GOSCA for determination of retention on active duty; if necessary following UCMJ proceedings.

(2) On 4 November 2014, the appointing authority approved the findings and recommendations of the AR 15-6 Investigation.

(3) On 17 November 2014, the applicant was flagged for adverse action (AA) effective 4 November 2014. On this same date, a commander's investigation (LA) flag was closed unfavorably effective 4 November 2014.

(4) Memorandum, GOMOR, 19 November 2014, shows the applicant engaged in an inappropriate and adulterous relationship, misused the Department of Defense Enterprise Electronic Mail system to facilitate this relationship, and provided a false official statement in violation of Articles 92, 107, and 134, UCMJ. On this same date, the applicant acknowledged receipt of the GOMOR.

(5) Memorandum, Initiation of Elimination, 21 January 2015, shows an elimination action was initiated against the applicant on an unspecified date. The applicant was required to show cause for retention on active duty under the provisions of AR 600-8-24, paragraph 4-2b (4), (5), and (8) because of substantiated misconduct that resulted in a GOMOR, 19 November 2014, that was permanently filed in the applicant's AMHRR.

(6) Two memorandums, Resignation in Lieu of Elimination Case (Applicant), 25 February 2015, shows the applicant voluntarily tendered their resignation from the Army with an honorable characterization of service.

(7) On 9 and 18 March, and 7 April 2015, the applicant's company and group commanders, and the GOSCA recommended approval of the applicant's resignation with an honorable characterization of service.

(8) Memorandum, Resignation in Lieu of Elimination Case (Applicant), 3 September 2015, shows the Deputy Assistant Secretary of the Army (Army Review Boards) did not accept the applicant's resignation that was conditioned upon receiving no less than an honorable discharge. It was directed that the case be returned to the GOSCA and a BOI be conducted unless the applicant tendered an unconditional resignation in lieu of elimination.

(9) On 15 October 2015, the applicant received notification to appear before the BOI on 5 November 2015.

(10) Officer elimination BOI, 5 November 2015, shows:

(a) The board, having carefully considered the evidence before it, found:

- The allegation that the applicant's intentional omission or misstatement of fact in official statements or records for the purpose or misrepresentation was supported by a preponderance of the evidence
- The allegation that the applicant committing an act of misconduct by engaging in an inappropriate and adulterous relationship was supported by a preponderance of the evidence
- The allegation that the applicant committing an act of misconduct by using Department of Defense Enterprise Electronic Mail System to facilitate an inappropriate and adulterous relationship was supported by a preponderance of the evidence
- The allegation of conduct unbecoming an officer was supported by a preponderance of the evidence
- These findings warrant elimination

(b) The board recommended the applicant be eliminated from the U.S. Army with an honorable characterization of service.

(11) Command Judge Advocate, 902d Military Intelligence Group, Captain V\_\_ C\_\_, email (Applicant) Separation Physical, 3 December 2015, states the applicant elected not to submit rebuttal matters.

(12) On 28 December 2015, the GOSCA recommended to the Commanding General, U.S. Army Human Resources Command, the applicant be discharged with a characterization of service of honorable.

(13) Memorandum For Commanding General, U.S. Army Human Resources Command, subject: Officer Elimination Case [Applicant], 3 March 2016, shows the Deputy Assistant Secretary of the Army (Review Boards) involuntarily eliminated the applicant from the U.S. Army with an honorable characterization of service. The elimination was based on misconduct and moral or professional dereliction (AR 600-8-24, paragraph 4-2b).

(14) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), shows the applicant completed the first full term of service. The applicant was discharged on 18 March 2016 under the authority of AR 635-200, paragraph 4-2b, with a narrative reason of Unacceptable Conduct and an honorable characterization of service. The DD Form 214 was authenticated with the applicant's electronic signature.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 293; DD Form 214; self-authored memorandum for record; Department of the Army photo; officer record brief; five officer evaluation reports; academic evaluation report; three university transcripts; and three letters of recommendation.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has earned an Executive MBA from the Robert H. Smith School of Business at the University of Maryland - College Park. The applicant

started several businesses with two classmates in 2017 and 2018 that is in the government contracting industry in selling supplies and services to the U.S. Federal and State Governments.

#### **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 600-8-24 (Officer Transfers and Discharges), sets forth the basic authority for the separation of commissioned and warrant officers.

(1) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(2) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation; Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.

(3) Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.

(4) Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.

(5) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.

e. Army Regulation 635-5-1 (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 "JNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct.

**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 changes to the SPD code from JNC to MBK or equivalent SPD and narrative reason. 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 13 years, 2 months, and 17 days during which the applicant served 6 years, 2 months, and 18 days of foreign service

between Afghanistan, Iraq, and Germany. On 19 November 2014, the applicant received a GOMOR for engaging in an inappropriate and adulterous relationship, misusing the Department of Defense Enterprise Electronic Mail system to facilitate this relationship, and providing a false official statement in violation of Articles 92, 107, and 134, UCMJ. On an unspecified date, the applicant was notified by the GOSCA to show cause for retention on active duty under the provisions of AR 600-8-24. On 5 November 2015, a BOI recommended the applicant be eliminated with an honorable characterization of service. On 28 December 2015, the GOSCA recommended separation with a characterization of honorable. On 3 March 2016, the Deputy Assistant Secretary (Army Review Boards) involuntarily eliminated the applicant from the U.S. Army with an honorable characterization of service. The applicant's DD Form 214 shows the was discharged on 18 March 2016 under the provisions of AR 600-8-24, Chapter 4, paragraph 4-2b, by reason of Unacceptable Conduct, with a characterization of service of honorable.

c. The applicant requests a change to the narrative reason. The applicant was separated under the provisions of Chapter 4, paragraph 4-2b, AR 600-8-24 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Unacceptable Conduct," and the separation code is "JNC." Army Regulation 635-8, Separation Processing and Documents, governs 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 exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation further stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant requests a change to the SPD code from JNC to MBK or equivalent SPD to re-enter military service without having to request any waivers. The 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. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (SPD Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 4, paragraph 4-2b, is "JNC."

e. The third party statements provided with the application states the applicant is the best of the best and strongly support the applicant's continuation of service. The applicant's experience and desire to commit to our profession has absolutely unlimited and unbound potential.

f. The applicant has earned an Executive MBA from the Robert H. Smith School of Business at the University of Maryland - College Park. The applicant started several businesses with two classmates in 2017 and 2018 that is in the government contracting industry in selling supplies and services to the U.S. Federal and State Governments. 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.

g. 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):** None

**b. The applicant presented the following additional contention(s):** Applicant provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.

**c. Counsel / Witness(es) / Observer(s):** None.

**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 diagnosis: adjustment disorder.

**(2)** Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor opined and found the applicant was diagnosed with adjustment disorder during 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 the applicant's diagnosis was after the misconduct and secondary to the separation stressors. Accordingly, the basis is not mitigated.

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

**b.** Response to Contention(s): The applicant did not make any contentions or provide any evidence to support that the discharge was improper or inequitable. The Board reviewed all available evidence and determined that no relief was warranted at this time. The Board determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

**c.** 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 their 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.



**d. Rationale for Decision:**

(1) The Board determined the discharge is proper and equitable as the applicant has a Characterization of Honorable; therefore no further relief is available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as there is no RE-code listed on the applicant's discharge paperwork, due to being an Army Officer, no upgrade actions are required for this item.

**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:**

8/22/2024

**X**

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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