

1. Applicant's Name:

- a. **Application Date:** 18 September 2023
- b. **Date Received:** 2 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 under than honorable conditions. The applicant requests a change of their characterization of service to general (under honorable conditions).

(2) The applicant states their discharge was based on one incident during a service period of 19 years. The only negative Noncommissioned Officer (NCO) Evaluation Reports they received were due to issues stemming from Army Physical Fitness Test (APFT) failures base on medical issues. Their incident/discharge was based off of a civil conviction, not their military service. The separation authority may direct a discharge of a general (under honorable conditions) if such is merited by the Soldier's overall record. Based on their NCO Evaluation Reports, they would like a review to support their request for an upgrade.

(3) There are multiple errors on their DD Form 214 (Certificate of Release or Discharge from Active Duty) to include in item 11 (Primary Specialty), item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized), item 14 (Military Education), and item 19a (Mailing Address After Separation).

b. Board Type and Decision:

(1) The issues regarding the correction of the administrative errors on the applicant's DD Form 214 are not within the purview of this Board. These issues should be addressed by the Army Board of Correction of Military Records (ABCMR). A DD Form 149 is enclosed for the applicant's use.

(2) In a records review conducted on 3 May 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, Paragraph 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 15 October 2019

c. **Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR), case separation file for approved separation is void of all documents except for their separation orders. On 12 January 2024 the Army Review Boards Agency requested the applicant provide their discharge packet (case separation files). The applicant response dated 17 January 2024, due to them being confined while they were being separated from the Army, they were never provided copies of their discharge documents.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: the applicant extended the most recent enlistment by a period of 20 months on 22 November 2016, giving the applicant a new Expiration of Term of Service of 10 November 2018.

b. Age at Enlistment / Education / GT Score: 38 / 60 Semester Hours or More College Credit / 103

c. Highest Grade Achieved / MOS / Total Service: E-6 / 12HI4, Construction Engineer / 11 years, 4 months, 3 days

d. Prior Service / Characterizations: AD, 18 June 1996 – 8 March 2004 / Honorable

e. Overseas Service / Combat Service: Bosnia, Hawaii, Guam, SWA / Bosnia (18 September 1998 – 17 March 1999), Iraq (1 February 2007 – 24 October 2007), Afghanistan (1 May 2010 – 21 April 2011)

f. Awards and Decorations: ARCOM-2, AAM-6, MUC-2, AGCM-6, NDSM, AFEM, GWTSM, ACM-CS, AFSM, HSM, ICM-CS, NCOPDR-2, ASR, OSR-3, NATOMDL, UNMDL

g. Performance Ratings: May 2001 – June 2002 / Among the Best
July 2002 – June 2003 / Fully Capable
July 2003 - February 2004 / Fully Capable
1 August 2006 – 31 July 2007 / Fully Capable
1 August 2007 – 7 February 2008 / Among the Best
8 February 2008 – 30 November 2008 / Among the Best
1 December 2008 - 28 February 2009 / Fully Capable
1 March 2009 – 28 February 2010 / Marginal (APFT Failure)
1 March 2010 – 28 February 2011 / Among the Best
1 March 2011 – 10 August 2011 / Fully Capable
11 August 2011 – 10 August 2012 / Marginal (APFT Failure)
11 August 2012 – 10 August 2015 / Fully Capable
11 August 2015 – 9 August 2016 / Highly Qualified
10 August 2016 – 9 August 2017 / Highly Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) The Headquarters, U.S. Army Garrison, Fort Knox, Orders 275-0153, dated 2 October 2019, reflects the applicant's discharge date of 15 October 2015.

(2) In a U.S. Attorney's Office, Western District of Kentucky Press Release "Fort Knox Soldier Pleads Guilty to Production of Child Porn by Parent, Transportation and Possession of Child Porn," dated 4 October 2018, reflects the applicant pleaded guilty before United States District Judge to five counts of production of child pornography by a parent, ten counts of transportation of child pornography, and one count of possession of child pornography. The applicant was arrested on a federal criminal complaint on 4 December 2017. A grand jury indicted the applicant on six counts on 20 December 2017, and returned a superseding indictment with additional charges on 21 March 2018.

(3) A DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 7 March 2023, shows in:

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 11 years 4 months, 3 days
- item 12d (Total Prior Active Service) – 7 years, 8 months, 21 days
- item 18 (Remarks) – in part,
 - CONTINUOUS HONORABLE ACTIVE SERVICE – 20060801 - 20110310
 - MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12c
- item 26 (Separation Code) – JKQ [Misconduct (Serious Offense)]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct, (Serious Offense)
- item 29 (Dates of Time Lost During This Period) – 4 December 2017 – 15 October 2019

i. Lost Time / Mode of Return: 1 year, 10 months, 12 days (4 December 2017 – 15 October 2019) / NIF

j. Behavioral Health Condition(s): NIF

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- two DD Forms 214
- Enlisted Record Brief
- Letter, reflecting the applicant's response to the Army Review Boards Agency request for their discharge packet

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. 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.

c. Office, Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder), 3 September 2014, directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

d. Office, Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017 issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

e. Office, Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations), 25 July 2018 issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

(1) This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, DRBs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

(2) Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

f. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) dated 19 December 2016, prescribed 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.

g. 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).

h. 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 waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of

separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

1. 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 an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation. Due to the lack of evidence the specific facts and circumstances surrounding the misconduct to be discharged under the provision on Army Regulation 635-200, paragraph 14-12c are unknown. However, the available evidence does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which provides the applicant was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of Under Other Than Honorable Conditions and with time lost during the period of 1 year, 10 months, and 12 days. The applicant received a characterization of service of under other than honorable conditions which is normally considered appropriate. They completed 11 years 4 months, and 3 days of net active service this period.

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. Paragraph 14-5 (Conviction by Civil Court) stated a Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty. A Soldier convicted by a civil court will be reduced or considered for reduction.

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.

2. BOARD DISCUSSION AND DETERMINATION:

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

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

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

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

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

b. Response to Contention(s):

(1) The applicant contends their discharge was based on one incident during a service period of 19 years. The only negative Noncommissioned Officer (NCO) Evaluation Reports they received were due to issues stemming from Army Physical Fitness Test (APFT) failures base on medical issues. Their incident/discharge was based off of a civil conviction, not military service. The separation authority may direct a discharge of a general (under honorable conditions) if such is merited by the Soldier's overall record. Based on their NCO Evaluation Reports, they would like a review to support their request for an upgrade. The Board considered this contention but determined that the applicant's offense of production of child pornography by a parent, ten counts of transportation of child pornography, and one count of possession of child pornography was a single incident which can serve as the basis for separation and characterization in accordance with AR 635-200. Therefore, a discharge upgrade is not warranted.

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 was not found to hold an in-service behavioral health condition that would mitigate or excuse the discharge. The Board considered the applicant's contention regarding their discharge was based on one incident during a service period of 19 years and found that the totality of the applicant's record does not warrant a discharge upgrade. 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 Under Other than Honorable discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to an Honorable discharge.

(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.

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

3. 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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230015061

d. Change RE Code to: No Change

e. Change Authority to: No Change

Authenticating Official:

8/19/2024

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