

**1. Applicant's Name:**

- a. **Application Date:** 27 February 2024
- b. **Date Received:** 27 February 2024
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION--**

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, domestic violence charges that contributed to the applicant's discharge was dismissed. The court's decision to dismiss reflects the applicant's innocence and warrants a reevaluation of the discharge. The basis for the discharge is therefore unfounded, however it is impacting the applicant's honor and future unfairly. Correcting the discharge status to honorable would rectify this injustice, aligning the applicant's military record with the legal outcome and acknowledging the applicant's integrity. It is critical to highlight that during the time of the alleged incidents, the applicant's spouse was residing in CA, far removed from where the applicant was stationed and from the events in question.

c. **Board Type and Decision:** In a telephonic personal appearance conducted on 19 August 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:** Condition, Not a Disability / AR 635-200, Chapter 5-13 or 5-17 / JFV / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 27 March 2019

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 18 December 2018

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was diagnosed with adjustment disorder with anxiety depressed mood on 25 July 2018. In addition, the applicant grabbed the spouse by the arm and threatened spouse with a weapon.

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

(4) **Legal Consultation Date:** 8 June 2019

(5) **Administrative Separation Board:** NA

**(6) Separation Decision Date / Characterization:** 8 February 2019 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 22 August 2017 / 3 years and 16 weeks

**b. Age at Enlistment / Education / GT Score:** 20 / High School Graduate / 99

**c. Highest Grade Achieved / MOS / Total Service:** E-2 / 11B10, Infantryman / 1 year, 7months, and 6 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** None

**f. Awards and Decorations:** NDSM, GWOTSM, ASR

**g. Performance Ratings:** NA

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

**(1)** Marriage certificate shows the applicant was married to C\_\_ H\_\_ on 14 February 2016.

**(2)** Pre-Trial Diversion Order, 19 December 2018, shows the applicant was charged with violation of KY Emergency Protective Order/Domestic Violence Order (EPO/DVO) (2 counts); Harassment (physical contact); and terroristic threatening (3d degree). The applicant was to have no contact with H\_\_ W\_\_. This case was to be continued until 18 December 2019.

**(3)** Order of Protection, 28 December 2018, shows the applicant filed an order of protection against H\_\_ M. W\_\_. The EPO/Temporary Interpersonal Protective Order was withdrawn and DVO remained in place. W\_\_'s relationship to the applicant was unmarried, currently or formerly living together. The terms were in place until 29 December 2019.

**(4)** Developmental Counseling Form, 15 August 2018, shows the company commander informed the applicant that the applicant was being considered for separation, however a decision would not be made until the applicant consulted with their behavioral health care provider.

**(5)** Developmental Counseling Form, 29 August 2018, states the applicant expressed the desire to leave service and demonstrated trouble adapting to military life.

**(6)** Two Developmental Counseling Forms, 18 September 2018, states the applicant expressed the desire to leave service and demonstrated trouble adapting to military life. The applicant was found "unfit" for continued service by the behavioral health care provider. The company commander informed the applicant that they intended to voluntarily separate the applicant from the U.S. Army under AR 635-200, paragraph 5-17.

**(7)** Order of Protection, 25 October 2018, shows W\_\_ filed an order of protection against the applicant because it was believed that the applicant was armed and dangerous. An EPO was ordered and the applicant was further ordered to turn in any and all firearms to the Christian County Sheriff's Department.

(8) Protective Order Summons, 30 October 2018, shows the applicant was to appear before the Christian County - Circuit Court on 6 November 2018.

(9) Military protective order was put in place against the applicant on 31 October 2018 for allegedly committing domestic violence and abuse, dating violence and abuse against W\_\_\_. On this same date, a developmental counseling form shows the applicant was placed on restriction to the 3rd Brigade footprint and specified locations.

(10) The applicant's Enlisted Record Brief (ERB), 28 March 2019, shows the applicant was flagged for Involuntary separation/field initiated (BA), effective 18 September 2018; was ineligible for reenlistment due to pending separation (9V). The Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions. The applicant's spouse's mailing address was in Marco, CA same as the applicant's home of record.

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

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

(1) **Applicant provided:** VA medical record, showing the applicant was rated 100 percent disabled (50 percent for major depressive disorder).

(2) **AMHRR Listed:**

(a) Report of Mental Status Evaluation, 25 July 2018, shows the applicant could understand and participate in administrative proceedings and appreciate the difference between right and wrong. The applicant was diagnosed with adjustment disorder with anxiety and depressed mood.

(b) Report of Medical Examination, undated, the examining medical physician noted the applicant's medical conditions in the comments section: Ongoing treatment for depression, anxiety, and adjustment disorder.

(c) Report of Medical History, 19 September 2018, the examining medical physician noted the applicant's medical conditions in the comments section: seen extensively by Embedded Behavioral Health and taking Zoloft.

*The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.*

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293; self-authored statement; court documents; VA medical records; and character letter.

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), 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 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

**(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)** Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government.

**(4)** Paragraph 5-1, states a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. A general (under honorable conditions) discharge is normally inappropriate for individuals separated under the provisions of paragraph 5-14 (previously paragraph 5-17) unless properly notified of the specific factors in the service that warrant such characterization.

**(5)** Paragraph 5-14 (previously paragraph 5-17) specifically provides that a Soldier may be separated for other physical or mental conditions not amounting to a disability, which interferes with assignment to or performance of duty and requires that the diagnosis be so severe that the Soldier's ability to function in the military environment is significantly impaired.

**(6)** 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.

**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 "JFV" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-14 (previously Chapter 5-17), Condition, Not a Disability.

**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 DODI 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 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.

**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 an upgrade to honorable. 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 1 years, 7 months, and 6 days. The company commander initiated separation because the applicant was diagnosed with adjustment disorder with anxiety depressed mood on 25 July 2018. In addition, the applicant grabbed the applicant's spouse by the arm and threatened spouse with a weapon. The applicant was discharged on 27 March 2019 under the provisions of AR 635-200, Chapter 5, paragraph 5-17, by reason of Condition, Not a Disability, with a characterization of service of general (under honorable conditions).

**c.** The applicant contends, in effect, domestic violence charges that contributed to the applicant's discharge was dismissed. The court's decision to dismiss reflects the applicant's innocence and warrants a reevaluation of the discharge. The basis for the discharge is therefore unfounded, however it is impacting the applicant's honor and future unfairly. Correcting the discharge status to honorable would rectify this injustice, aligning the applicant's military record with the legal outcome and acknowledging the applicant's integrity. It is critical to highlight that during the time of the alleged incidents, the applicant's spouse was residing in CA, far removed from where the applicant was stationed and from the events in question.

**(1)** The applicant provided Christian County court document showing the charges of harassment (physical contact) no injury was dismissed on 6 January 2020.

**(2)** The applicant's AMHRR contains:

**(a)** Marriage certificate showing the applicant was married to C\_\_ H\_\_ on 14 February 2016. ERB, 28 March 2019, shows the applicant's spouse's mailing address was in Marco, CA.

**(b)** Pre-Trial Diversion Order, 19 December 2018, shows the applicant was charged with violation of KY EPO/DVO (2 counts); Harassment (physical contact); and terroristic threatening (3d degree). The applicant was to have no contact with H\_. W\_\_.

**(c)** Protective Order Summons and military protective order shows H\_\_ M. W\_\_ had a protection order against the applicant for alleged domestic violence.

**(d)** The applicant's ERB shows the applicant was assigned to Fort Campbell, KY in 2017. The applicant's DD Form 214 shows the applicant was separated from the military in March 2019 while assigned to Fort Campbell, KY.

**d.** 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):** N/A

**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):** N/A

**10. BOARD DISCUSSION AND DETERMINATION:**

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

**(1)** Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder with Depressed Mood, Personality Disorder NOS, Major Depressive Disorder (MDD). The applicant was the offender of Intimate Partner Violence.

**(2)** Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed with Adjustment Disorder with Depressed Mood while in-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 Chapter 5-17 is supported with documentation, followed the proper processes and regulations, and included all levels of review and authorization. Accordingly, a Chapter 5-17 was appropriate. Regarding the characterization, the applicant was a founded offender of IPV with FAP noncompliance. Additionally, in- and post- service records indicate further misconduct could have included threatening an NCO, dereliction of duty, failed APFT, and, per the applicant's own report, being "aggressive and violent." Consequently, the characterization is more likely than not supported.

**(4)** Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder with Depressed Mood, Personality Disorder, and Major Depressive Disorder outweighed the applicant's medically unmitigated offenses of Intimate Partner Violence, threatening an NCO, dereliction of duty, and APFT failure.

**b.** Response to Contention:

**(1)** The applicant contends that the domestic violence charges that contributed to the applicant's discharge was dismissed. The court's decision to dismiss reflects the applicant's innocence and warrants a reevaluation of the discharge. The basis for the discharge is therefore unfounded, however it is impacting the applicant's honor and future unfairly.

Correcting the discharge status to honorable would rectify this injustice, aligning the applicant's military record with the legal outcome and acknowledging the applicant's integrity. It is critical to highlight that during the time of the alleged incidents, the applicant's spouse was residing in CA, far removed from where the applicant was stationed and from the events in question. The Board considered this contention but determined that the dismissal of the applicant's case upon completion of diversion is not tantamount to innocence as asserted by the applicant. The Board found insufficient information to conclude that the command's separation action was arbitrary or capricious. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends discrimination and harassment from the chain of command. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant experienced harassment or discrimination from the chain of command.

(3) The applicant contends post-service accomplishments in the form of educational progress. The Board considered the applicant's post-service accomplishments but determined that they do not outweigh the applicant's medically unmitigated offense of Intimate Partner Violence.

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 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all evidence before the Board, the applicant's Adjustment Disorder with Depressed Mood, Personality Disorder, and Major Depressive Disorder did not outweigh the applicant's medically unmitigated Intimate Partner Violence offense. The Board also considered the applicant's contentions regarding false accusations and discrimination from the chain of command but found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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 discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and 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.



# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20240002515

## 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:

11/19/2024

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