

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

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

The applicant seeks relief contending, in effect, the unit separated the applicant for a fight with the applicant's ex-friend. Before the incident, members of the applicant's unit were discriminatory towards the applicant, who as told by a noncommissioned officer (NCO) the actions were not discrimination, but rather the applicant had depression. The Army did not review the applicant's medical records. The applicant reported the discrimination and did not receive any justice. The applicant's narrative reason should be changed to medical because the applicant had depression while in the service. The applicant received Department of Veterans Affairs compensation because of the discrimination.

b. **Board Type and Decision:** In a records review conducted on 16 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct / AR 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 7 May 2004

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 26 March 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant assaulted A. S. and then interfered with A. S.'s attempt to telephone police. The applicant repeatedly failed to obey both military and court imposed "No Contact" orders by continuing to contact A. S.

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

(4) **Legal Consultation Date:** 31 March 2004

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

(6) Separation Decision Date / Characterization: Illegible / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 3 October 2001 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 89
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 92R10, Parachute Rigger / 2 years, 7 months, 5 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Alaska / None
- f. **Awards and Decorations:** GWOTSM, NDSM, ASR
- g. **Performance Ratings:** NA

h. Disciplinary Action(s) / Evidentiary Record: Third Judicial District of Anchorage Complaint, 26 December 2003, reflects the applicant committed the offenses of Assault (Domestic Violence) force or violence when the applicant pushed A. S. in the shoulder and face causing a scratch to the bridge of A. S. nose; and Destruction or Disconnect of Communication Equipment (Domestic Violence) when the applicant disconnected, injured, or destroyed any communication equipment with the intent to prevent A. S. a household/family member, from communicating with emergency service agencies or others. The applicant pled not guilty. The applicant was ordered not to contact A. S.

Field Grade Article 15, 4 February 2004, for:

On two occasions, willfully disobeying a lawful order from Staff Sergeant (SSG) R. Z., a noncommissioned officer, to have no contact with A. S. or A. S.'s immediate family (30 December 2003 and 26 January 2004); and

On three occasions, failing to go at the time prescribed to the appointed place of duty (18 and 24 December 2003 and 26 January 2004).

The punishment consisted of a reduction to E-1; forfeiture of \$597 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Report of Mental Status Evaluation, 8 March 2004, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

Numerous Developmental Counseling Forms, for but not limited to:

- Indebtedness,
- Failing barracks room inspection,
- Failing to perform corrective training,
- Failing to obey order on multiple occasions,

Unsatisfactory conduct and initiation of separation proceedings under AR 635-200, Chapter 13, Unsatisfactory Performance,
 Being issued a No Contact order,
 Disobeying a direct order, No Contact order,
 Failing to be at the appointed place of duty on multiple occasions, and
 Being informed of Article 15 punishment and instructions.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Medical Record Consultation Sheet, 19 August 2003, reflects the applicant was referred to Community Mental Health Services by the unit Champlain for evaluation of symptoms of depression. The applicant reported a parent died of cancer four months before and the other parent was suicidal. The applicant was diagnosed with bereavement; adjustment disorder with mixed emotional features.

Report of Medical Examination, 4 February 2004, the examining medical physician noted in the summary of defects and diagnoses section: Anxiety.

Report of Medical History, 1 March 2004, the examining medical physician noted in the comments section: Community Mental Health Services, seen for depression.

Community Mental Health and Family Advocacy Program letter, undated, reflects the applicant had been attending the domestic prevention and treatment group since 6 January 2004, and had an excellent level of attendance and participation. Before attending the domestic violence group, the applicant participated in individual counseling because of depression and continued to take a prescribed antidepressant.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; DD Form 214; DD Form 293; and Army Review Boards Agency Case Tracking System (ACTS) page.

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) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of

acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c prescribes 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) in effect at the time, provided 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 12c, Misconduct.

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. 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.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents), governs the 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 as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation

stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends depression affected behavior, which led to the discharge, and the command did not consider the applicant's medical records. The applicant's AMHRR contains documentation which supports in-service depression because of bereavement; and adjustment disorder, with mixed emotional features. The record shows the applicant underwent a medical examination reflecting the Community Mental Health Services had seen the applicant for depression and the examination indicated a diagnosis of anxiety. The applicant underwent a mental status evaluation (MSE) on 8 March 2004, which indicates the applicant could understand and participate in administrative proceedings and was mentally responsible. The MSE does not indicate any diagnosis. The medical examination and MSE were considered by the separation authority.

The applicant contends harassment and discrimination by members of the unit. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the Veterans Administration has granted the applicant service-connection for medical conditions the applicant suffered while on active duty. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The available medical evidence in the AMHRR is void of any indication the applicant was suffering from a disabling medical or mental condition during the discharge processing, warranting separation processing through medical channels.

The applicant requests a medical discharge. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Dysthymic Disorder, Major Depressive Disorder with Psychotic Features, and MDD without Psychotic Features, Anxiety Disorder Unspecified.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant 100 percent SC for Dysthymic Disorder.

(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 assault offense is not mitigated or excused as assault is not part of the natural sequelae of Dysthymic Disorder or MDD Disorder. Further, there is no evidence in the record that applicant suffered psychosis during the applicant's time in-service, therefore the misconduct is not mitigated. The applicant's failure to obey both military and court imposed No Contact Orders are

also not natural sequelae of Dysthymic Disorder or MDD and the applicant did not have a condition that impaired ability to differentiate between right and wrong and adhere to the right.

(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 Dysthymic Disorder, Major Depressive Disorder with Psychotic Features, MDD without Psychotic Features, and Anxiety Disorder Unspecified outweighed the medically unmitigated offenses of assault and failure to obey both military and court imposed No Contact Orders.

b. Response to Contention(s):

(1) The applicant contends depression affected behavior, which led to the discharge, and the command did not consider the applicant's medical records. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Dysthymic Disorder, Major Depressive Disorder with Psychotic Features, MDD without Psychotic Features, and Anxiety Disorder Unspecified outweighed the medically unmitigated offenses of assault and failure to obey both military and court imposed No Contact Orders. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention but determined that the applicant's Misconduct (Serious Offense) narrative reason for separation is proper and equitable given the applicant's medically unmitigated offenses of assault and failure to obey both military and court imposed No Contact Orders.

(3) The applicant contends harassment and discrimination by members of the unit. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to support that the applicant was harassed or discriminated against.

(4) The applicant contends the Veterans Administration has granted the applicant service-connection for medical conditions the applicant suffered while on active duty. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. After liberally considering all the evidence, including the VA determination, the Board found that the applicant had an unmitigated basis for separation.

(5) The applicant requests a medical discharge. The Board determined that the applicant's request for a medical discharge does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

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:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001373

(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 Dysthymic Disorder, Major Depressive Disorder with Psychotic Features, MDD without Psychotic Features, and Anxiety Disorder Unspecified did not outweigh the medically unmitigated offenses of assault and failure to obey both military and court imposed No Contact Orders. The Board also considered the applicant's contentions regarding harassment and discrimination and 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, 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:

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