

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 the under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, having a difficult time adjusting to the military, as is evidenced by the two suicide attempts while enlisted. The applicant completed most of the enlistment and served the unit, the Army, and the country honorably. The applicant admits to not being a perfect Soldier but should receive credit for the awards earned and the training successfully completed. The North Atlantic Treaty Organization (NATO) Service Ribbon and Unit Level Logistics System-Ground (ULLS-G) and hazardous materials (HAZMAT) training are not listed on the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty).

b. Board Type and Decision: In a records review conducted on 2 November 2023, 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: Unsatisfactory Performance / AR 635-200, Chapter 13 / JHJ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 5 September 2002**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 23 July 2002

(2) Basis for Separation: The applicant was informed of the following reasons:

The applicant demonstrated a pattern of unsatisfactory performance despite rehabilitative efforts.

The applicant received an Article 15 on 17 July 2001, for hiding a person in the applicant's trunk to sneak the person onto post. The applicant was reduced to Private E-2, but execution of the punishment was suspended.

The applicant subsequently violated the UCMJ again by disrespecting a noncommissioned officer (NCO), and as a result, the suspended reduction was vacated, and the applicant received a Summarized Article 15.

The applicant was formally counseled for disrespecting and disobeying an NCO, and multiple instances of failure to report to the appointed place of duty.

The applicant received a ticket from the Military Police in December 2001 for failure to produce the U.S. Army Europe (USAREUR) driver's license.

The applicant received a Company Grade Article 15, for unlawfully striking H. J.

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

(4) Legal Consultation Date: 26 July 2002

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 16 August 2002 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 February 2000 / 3 years

b. Age at Enlistment / Education / GT Score: 19 / GED / 115

c. Highest Grade Achieved / MOS / Total Service: E-3 / 63J10, Quartermaster and Chemical Equipment Repairer / 2 years, 6 months, 29 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany / None

f. Awards and Decorations: ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 9 July 2001, reflects the applicant was apprehended for: failure to obey an order or regulation. Investigation revealed the applicant was found by the gate guards exiting the kaserne with an individual hidden in the trunk of the applicant's car. The applicant was interviewed and admitted to bringing an individual to the barracks room, without signing the individual onto the installation.

Company Grade Article 15, 17 July 2001, for violating a lawful general order by wrongfully bringing an individual onto an Army installation without showing identification (5 July 2001). The punishment consisted of a reduction to E-2 (suspended), and extra duty and restriction for 14 days.

Record Of Supplementary Action Under Article 15, UCMJ, 26 October 2001, reflects the suspended portion of the punishment imposed on 17 July 2001, was vacated for: Article 91, disrespect toward Staff Sergeant (SSG) A. P., an NCO, by rolling the eyes at SSG A. P. and walking away from SSG A. P. (15 October 2001).

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001452

Summarized Article 15, 31 October 2001, for being disrespectful in department to SSG A. P., an NCO (15 October 2001). The punishment consisted of extra duty for 7 days (suspended) and restriction for 7 days (suspended).

Armed Forces Traffic Ticket, 8 November 2001, reflects the applicant was cited by the Military Police for failure to show valid driver's license.

Military Police Report, 1 June 2002, reflects the applicant was apprehended for: assault (on post). Investigation revealed on 31 May 2002, H. J. and the applicant had altercations which turned physical, when H. J. tackled the applicant to the ground. The applicant was able to get to the applicant's feet and struck H. J. three times with a closed fist.

Company Grade Article 15, 18 July 2002, for unlawfully striking H. J. in the face with the closed fists (30 May 2002). The punishment consisted of a reduction to E-1 (suspended); forfeiture of \$289 pay (suspended); and extra duty for 14 days.

Numerous Developmental Counseling Forms, for, but not limited to:

- Disrespect to an NCO,
- Failure to obey a lawful order from an NCO on multiple occasions,
- Failure to report to appointed place of duty,
- Sneaking an underage civilian dependent on the installation,
- Receiving traffic citations,
- Being involved in an altercation with a 17 year old high school student,
- Referred to the Army Substance Abuse Program,
- Receiving Article 15s for misconduct, and
- Improving duty performance.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 10 June 2002, the applicant reported headaches because of stress and two suicide attempts. The examining medical physician noted in the comments section: History of depression, stable with medication.

Report of Medical Examination, 10 June 2002, the examining medical physician noted in the summary of defects and diagnoses section: History of depression.

Memorandum, 19 June 2002, reflects the applicant underwent a mental status evaluation and was diagnosed with occupational problem. The applicant had no psychiatric conditions which would warrant a medical board and was cleared for administrative actions.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214 (two copies); DD Form 293.

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 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(5) Paragraph 13-8, prescribes for the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JHJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 13, unsatisfactory performance.

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's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends having a difficult time adjusting to military life. The applicant's AMHRR contains documentation which supports a diagnosis of in-service depression and occupational

problems. The record shows the applicant underwent a medical examination on 10 June 2002, which shows the applicant reported two suicide attempts and had a history of depression. The applicant underwent a mental status evaluation (MSE) on 19 June 2002, which indicates the applicant had no psychiatric conditions which would warrant a medical board and was cleared for administrative actions. The medical examination and MSE were considered by the separation authority.

The applicant contends good service. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the DD Form 214 should be corrected to reflect various awards. The applicant's requested change to the DD Form 214 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 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: Depression.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found evidence that the applicant was diagnosed in service with Depression.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence that the applicant was diagnosed in service with Depression that provides partial mitigation for the basis of separation. Given the nexus between Depression, decreased energy and avoidance, applicant's Depression mitigates the FTRs. However, there is no natural sequela between Depression and any of the remaining misconduct to include disrespect, disobeying an NCO, hiding a person in the trunk to sneak on post, not producing the proper driver's license, or assault since Depression does not interfere with the ability to distinguish between right and wrong and act in accordance with 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 depression outweighed the basis for applicant's separation – hiding a person in the applicant's trunk to sneak the person onto post, disrespecting a noncommissioned officer (NCO), assault, and receiving a ticket from the Military Police in December 2001 for failure to produce the U.S. Army Europe (USAREUR) driver's license.

b. Response to Contention(s):

(1) The applicant contends having a difficult time adjusting to military life. The Board considered this contention and determined that the applicant's difficult time adjusting to military life does not mitigate the applicant's hiding a person in the applicant's trunk to sneak the person onto post, disrespecting a noncommissioned officer (NCO), assault, and receiving a ticket from

the Military Police in December 2001 for failure to produce the U.S. Army Europe (USAREUR) driver's license, as the Army affords many avenues to Soldiers, including seeking separation for hardship.

(2) The applicant contends good service. The Board considered the applicant's 2 years of service and the awards received by the applicant but determined that these factors did not outweigh the applicant's hiding a person in the applicant's trunk to sneak the person onto post, disrespecting a noncommissioned officer (NCO), assault, and receiving a ticket from the Military Police in December 2001 for failure to produce the U.S. Army Europe (USAREUR) driver's license.

(3) The applicant contends the DD Form 214 should be corrected to reflect various awards. The Board determined that the applicant's requested change to the DD Form 214 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, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's depression did not excuse or mitigate the offenses of hiding a person in the applicant's trunk to sneak the person onto post, disrespecting a noncommissioned officer (NCO), assault, and receiving a ticket from the Military Police in December 2001 for failure to produce the U.S. Army Europe (USAREUR) driver's license. 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.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001452

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:

3/14/2024

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