

1. Applicant's Name:

- a. **Application Date:** 19 October 2020
- b. **Date Received:** 26 October 2020
- 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 under honorable conditions (general). The applicant requests an upgrade to honorable.

The applicant states in effect, they are requesting an upgrade because when they have looked for work, employers seemed skeptical about their discharge, and they will soon apply to a master's program, and they fear schools will turn away from their application due to their general discharge.

Their justification for an upgrade is plentiful, they were a model soldier at the most difficult language school in the world and they maintained a near 4.0 GPA. They had perfect PT scores and did not drink or smoke. The accusation that they are racist is a foolish, baseless lie. They were an English teacher in Taiwan; they love the Taiwanese and their culture. They are going to Ohio to be a part of a wedding party at their best friend's wedding; they are not white like them, why would they partake in any of these actions if they hated other races? The investigation summary showed that the accusation levied against them was by a bystander, the person they joked with did not complain and was not offended. Their army appointed lawyer (a woman of Filipino descent) said it was one of the more absurd cases they had ever seen.

b. **Board Type and Decision:** In a records review conducted on 1 March 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 (Serious Offense) / AR 635-200 / JKQ / RE-3 / Under Honorable Conditions (General)

b. **Date of Discharge:** 6 August 2019

c. **Separation Facts:**

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

(2) **Basis for Separation:** The applicant failed to treat all persons with dignity and respect. They were observed making inappropriate comments to someone of African American descent regarding whether they could tan and if they got "bedhead", they publicly asked a Jewish student if they had ever been to a bris, a religious circumcision ceremony and then joked about it, they harassed their roommate by interrupting religious practices with derogatory comments and slurs during their morning prayer, they expressed to fellow classmate that

females should not be in the military and they made multiple inappropriate comments regarding race, gender, national origin and religion that were not in line with army values violating Article 92 of the UCMJ.

(3) Recommended Characterization: NIF

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 February 2018 / 5 years

b. Age at Enlistment / Education / GT Score: 25 / Bachelor's Degree / 124

c. Highest Grade Achieved / MOS / Total Service: E-4 (SPC) / None / 1 year, 6 months, 22 days.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides that the applicant enlisted in the United States Army Reserve at the rank of specialist (E-4) with an active duty obligation of 5 years on 15 February 2018.

(2) Orders 124-202 provides the applicant reported to the Defense Language Institute Foreign Language Center on 11 May 2018.

(3) On 15 January 2019 EEO complaint was filed against the applicant. On 30 November 2018, they asked a classmate "so can you tan", " what about your hair, do you get bed head?" and "does your beard itch?". It was notated that the classmate was uncomfortable with the conversation by their demeanor. When they were asked how they felt about the questions the applicant asked them they stated: " I'm fine, that's just [applicant], he's a racist, it's just the way he thinks".

- Requested Remedy: the applicant repeatedly demonstrated their personal values were inconsistent with those of the Army. They were counseled, and despite those counseling's the applicant did not convey any intent, through action or speech to correct their behavior; discharge suggested.

(4) Fifteen Sworn Statements provides the applicant made various racial comments to classmates that did not share the same ethnicity/descent as them, they were verbally combative

regarding any religion other than their own, they made comments stating that races should stay in their home country; people of Asian descent don't belong in America and that the government should only consist of Caucasian men. The applicant watched videos and visited websites supporting "white pride", they expressed their dislike for Army diversity and its effects on the army, they were heard using the word "fag" in reference to other male service members living in their barracks. They expressed that females should not be in the military, and that it was a shame that our country allows females in the military. The applicant asked a student of Asian descent "do you think you have a right to be here?", they openly addressed their distasteful feelings towards gay and lesbian. A student stated they were the only occupant in a classroom, the applicant walked in and stood closely to them, sniffed through their nose "sharply said, what stinks like Indian food in here?" Many classmates reported they were insulted by comments the applicant made towards them and their ethnicity.

(5) A findings and recommendations for Army Regulation AR 15-6 investigation memorandum dated 19 April 2019 provides it was determined with preponderance of evidence that the applicant did make inappropriate remarks related to race on 30 November 2018, it was not an isolated incident and was representative of their pattern of behavior.

(6) An Equal Opportunity Complaint Review memorandum dated 22 April 2019, provides the investigating officer found credible evidence to confirm that alleged unlawful race discrimination occurred and that the allegations were substantiated.

(7) On 6 June 2019, the applicant received a General Officer Memorandum of Reprimand for failing to treat all persons with dignity and respect; they made multiple inappropriate comments regarding race, gender, national origin, and religion that were not in line with the Army values.

- The applicant's immediate commander endorsed permanently filing the GOMOR in the applicants AMHRR stating "the soldier deliberately violated equal opportunity policies and had not accepted the army values. The soldier jeopardizes good order and discipline, and does not demonstrate the ability to rehabilitate and change their own personal values"
- The issuing commander stated "soldier does not hold army values, their behavior and comments clearly go against all DOD policies and values, and they should not be able to serve"

(8) An Enlisted Record Brief (ERB) provides the applicant was flagged with code B; involuntary separation on 1 July 2019.

(9) A Certificate of Release or Discharge from Active-Duty document (DD Form 214) provides on 19 September 2019 the applicant was discharged from the army.

- Authority: 635-200
- Narrative Reason: Misconduct (Serious Offense)
- Service Characterization: Under Honorable Conditions (General)
- Remarks: Member has not completed first term of service
- Net Service: 1 year, 6 months, and 22 days
- Signature: Electronically signed by the applicant

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

j. Behavioral Health Condition(s): None

(1) Applicant provided:

(2) AMHRR Listed:

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Discharge Review) application, a letter from a Taiwanese student, hand drawn picture from a Taiwanese student and two additional enclosures in support of their application.

- An email dated 14 April 2020 from a friend of the applicant describes them as someone of solid a character, with a strong sense of duty; accomplishing the mission set before them. They provide the investigation against the applicant was not conducted in a professional and serious manner, and the story of what happened changed multiple times.
- A letter from the applicant's mother provides the applicant grew up in a diverse neighborhood and adapted well to different cultures. They describe the applicant as a person with high moral character, a good person with a sound moral compass that is respectful, trustworthy, and courageous.

6. POST SERVICE ACCOMPLISHMENTS: The applicant will soon apply to master degree programs.

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), dated 25 September 2019, 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 provides the basic authority for the separation of enlisted personnel provides the authorized types of characterization of service or description of separation.

(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) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons. Rehabilitative requirements are not required for individuals separated under Chapter 14-12c.

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards

(5) 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. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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.

(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 (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 12c, misconduct (serious offense).

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-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
- 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
- RE-4 Applies to: Person separated from last period of service with a nonwaiverable 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

g. Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (Flag)) provides the policies, operating rules and steps governing the suspension of favorable personnel actions. A flag is emplaced during some type of disciplinary or administrative action until that action is concluded. The Flag should be initiated within 3 working days after identification of the soldiers' unfavorable status and removed within 3 working days after determination of the final disposition. Flag code "B" is a nontransferable code used when involuntary separation or discharge is initiated.

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 DD Form 214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge which is normally considered appropriate for a soldier discharged for serious misconduct.

b. Based on available evidence the applicant enlisted in the army at the age 25, they completed basic training and reported to the Defense Language Institute Foreign Language center for 6 to 18 months prior to attending AIT. Six months after the applicant reported to the center an EEO complaint was filed against the applicant for racial discrimination; it was founded with credible evidence to confirm that the alleged race discrimination occurred. The applicant received a GOMOR and was processed for administrative separation.

c. A review of the AMHRR provides administrative irregularity occurred in the proper retention of required records; specifically, the AMHRR is void of the entire separation packet, and documentation to support if the appropriate approving authority approved the administrative separation. Notwithstanding the lack of evidence, the record provides the applicant was flagged for involuntary separation on 1 July 2022. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 19 September 2019.

d. Chapter 14 establishes policy and prescribes procedures for members being separated 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.

e. 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. 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a 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 the accusation that they were racist is a foolish, baseless lie. The Board considered this contention and found supporting evidence counter to the applicant's assertion. 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. Considering the current evidence of record, the Board determined the applicant's discharge was appropriate.

(2) The applicant contends the person they joked with did not complain and was so not offended. The Board considered this contention and determined the applicant's behavior was inappropriate regardless of its intended nature. 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. Considering the current evidence of record, the Board determined the applicant's discharge was appropriate.

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 Board found insufficient evidence of in-service mitigating factors that mitigate the applicant's misconduct (failed to treat all persons with dignity and respect). 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.

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(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:

3/8/2024

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