

1. Applicant's Name:

- a. **Application Date:** 16 February 2021
- b. **Date Received:** 23 February 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 applicant was discharged due to an ongoing court process which was eventually dismissed. Governing regulation states a Chapter 5-17 discharge warrants an honorable characterization of service due to behavior health conditions.

b. **Board Type and Decision:** In a records review conducted on 17 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:** Condition, Not a Disability / AR 635-200, Paragraph 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, 16 weeks
- b. **Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 99
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 11B10, Infantryman / 1 year, 7 months, 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:** NIF
- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**
 - (1) **Applicant provided:** None.

(2) **AMHRR Listed:** Report of Mental Status Evaluation (MSE), 25 July 2018, reflects 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.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, On-line Application, Court Documents, Medical Records, DD Form 214, letter of support, Work Study Agreement, personal statement, letter of support

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), 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.

(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) 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.

(5) Paragraph 5-1, states that 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. It further states no Soldier will be awarded a character of service under honorable conditions under this chapter unless the Soldier is notified of the specific factors in his/her record that warrants such a characterization, using the notification system. A general (under honorable conditions) characterization is normally inappropriate for Soldiers separated under the provisions of paragraph 5-4, 5-11, 5-12, 5-15, 5-16, or 5-17.

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, in effect, the applicant was discharged due to an ongoing court process which was eventually dismissed. The AMHRR reflects the applicant was discharged due to being diagnosed with adjustment disorder with anxiety depressed mood on 25 July 2018.

The applicant contends, in effect, governing regulation states a Chapter 5-17 discharge warrants an honorable characterization of service. The applicant was discharged under the provisions of AR 635-200, paragraph 5-17, due to a Condition, Not a Disability, with a general (under honorable conditions) characterization of service 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. It further states no Soldier will be awarded a character of service under honorable conditions under this chapter unless the Soldier is notified of the specific factors in his/her record that warrants such a characterization, using the notification system. The applicant's AMHRR reflects on 18 December 2018, the applicant was notified of the specific factors pertaining to the characterization of service to include grabbing the spouse by the arm and threatened spouse with a weapon.

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: Adjustment DO with mixed anxiety and depressed mood; Major Depressive DO (MDD) (50% SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the diagnosis of Adjustment DO and MDD was made on active duty. VA service connection for MDD establishes it occurred or began during active 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 there are no mitigating BH conditions. While the applicant has been diagnosed with Adjustment DO with mixed anxiety and depressed mood and Major Depressive DO (MDD), neither of these conditions mitigate the offenses of grabbing a woman's arm and/or threatening a woman with a gun as neither condition affects one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the Board's application of liberal consideration, the board considered the opinion of the Board's Medical Advisor, a voting member, that the available evidence did not support a conclusion that the applicant's Adjustment DO and Major Depressive DO (MDD) outweighed the basis of separation - grabbing a woman's arm and/or threatening a woman with a gun.

b. Response to Contention(s):

(1) The applicant contends the applicant was discharged due to an ongoing court process which was eventually dismissed. The board considered this contention and the applicant's assertion that the applicant's discharge was due to an ongoing court process; however, the board determined that there is no evidence in official records, and the applicant did not provide supporting documentation to overcome the presumption of regularity in the discharge process. Ultimately, the board determined that the assertion alone did not outweigh the misconduct -grabbing a woman's arm and/or threatening a woman with a gun - basis of separation.

(2) The applicant contends governing regulation states a Chapter 5-17 discharge warrants an honorable characterization of service. The board considered this contention and determined that the applicant's discharge was appropriate because the quality of the applicant's service was not consistent with the Army's standards for acceptable personal conduct and performance of duty by military personnel. By the misconduct of grabbing a woman's arm and/or threatening a woman with a gun the applicant diminished the quality of service that merits an honorable discharge at the time of separation.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's Adjustment DO and Major Depressive DO did not excuse or mitigate the offenses of grabbing a woman's arm and threatening a woman with a gun. The discharge was consistent with the

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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.

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:

1/26/2024

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