

**1. Applicant's Name:**

- a. **Application Date:** 8 January 2021
- b. **Date Received:** 13 January 2021
- c. **Counsel:** Yes

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under honorable conditions). The applicant requests reconsideration of an upgrade to honorable, a change of their separation code, reentry code, and the narrative reason for separation.

(2) The applicant, through counsel, requests relief stating their discharge is legally insufficient based on impropriety and inequity. It is legally impermissible to impose a duty upon them requiring them to render aid to someone when they were not on duty and was simply a bystander to an off-post event.

(3) There were not multiple infractions which could be cited as proper justification for a general discharge. A pattern of misconduct was not present as they were under no duty to render aid and they were placed under an illegal order of restriction by their company commander. A company grade officer is only authorized to issue an enlisted Soldier 14 days of restriction. When they were found off-post 48 days later, they could not have been in willful violation of a lawful order. Thus, if only one of the two incidents relied on to form the necessary pattern of misconduct were reached improperly, there is no valid basis to have discharged them.

(4) They did not commit a pattern of misconduct, as is required to substantiate the basis of their general discharge. The circumstances presented demonstrate that both an impropriety and inequity exist that led to their involuntary administrative discharge.

**b. Board Type and Decision:** In a records review conducted on 12 July 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.*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Minor Infractions) / Army Regulations 635-200, Paragraph 14-12A / JKN / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 17 April 2015

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 5 March 2015

(2) **Basis for Separation:** On 27 June 2014, willfully failed to provide aid to a Korean National and on 5 September 2014, disobeyed a lawful order from a commission officer.

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

**(4) Legal Consultation Date:** 9 March 2015

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

**(6) Separation Decision Date / Characterization:** 27 March 2015 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 5 November 2013 / 5 years

**b. Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 106

**c. Highest Grade Achieved / MOS / Total Service:** E-2 / 31B1O, Military Police / 1 year, 5 months, 13 days

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

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

**f. Awards and Decorations:** NDSM, GWTSM, KDMS-2, ASR, OSR

**g. Performance Ratings:** NA

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

**(1)** A DA Form 4856 (Developmental Counseling Form) dated 18 July 2014, reflects the applicant received event oriented counseling with notification of the suspension of privileges. The Key Points of Discussion states the purpose of the counseling was to inform the applicant that their privilege of going off-post without an official escort has been suspended. During a recent investigation, evidence was presented that provided probable cause to believe the applicant was involved in an incident off post when their conduct was prejudicial to good order and discipline. The applicant agreed with the information and signed the form.

**(2)** A memorandum, 142nd Military Police Battalion, subject: Continuing Sheet, DA Form 1574 (Report of Proceedings by Investigating Officer) Section IV and V – Findings and Recommendations, dated 24 July 2014, reflects the Investigating Officer's, (Sergeant First Class K\_\_\_\_ S\_\_\_\_, Military Police) findings and recommendations –

**(a)** Facts, on 27 June 2014, Private Two (PV2) B\_\_\_\_ W\_\_\_\_, PV2 K\_\_\_\_ C\_\_\_\_, PV2 D\_\_\_\_ L\_\_\_\_ and a fourth individual, attempting to hail a cab, witnessed a bicyclist traveling at high rate of speed heading towards them. As the bicyclist reached a point approximately 10 feet from them, PV2 W\_\_\_\_ identified the bicyclist and purposely jumped directly out in the path of the bicyclist. In jumping into the bicyclist' path, PV2 W\_\_\_\_ purposely stuck out their leg causing the bicyclist to quickly serve, falling off their bicycle. All four individuals ran from the scene without inquiring about injuries. PV2 W\_\_\_\_'s action show clear intent to do bodily harm to the Korean National bicyclist by causing the bicyclist to swerve into oncoming traffic on the road.

(b) Recommendations, the Investigating Officer recommends any and all adverse administrative action and nonjudicial punishment action be imposed. Because of PV2 L\_\_\_\_'s and Applicant's position as a Military Policeman, their duties of assisting and protecting the public should carry over not only to their off duty hours but also when they are off their installations. Additionally, their reaction to the accident shows actions that are consistent with individual that discriminate against a certain person, thus bringing discredit upon the Armed Services. PV2 L\_\_\_\_ and the applicant should have imposed on them a summarized Article 15 for their actions of not rendering aid. PV2 W\_\_\_\_ should receive a field grade Article 15 for their clear intention to cause bodily harm on a Korean National, their actions of failing to render aid and bringing discredit to the U.S. Armed Forces.

(3) A DA Form 4856, dated 8 August 2014, reflects the applicant received event-oriented counseling for misconduct. The Key Points of Discussion states on 27 June 2014, the applicant was involved in an accident which involved PV2 W\_\_\_\_ and PV2 L\_\_\_\_. During the incident, one of them jumped in front of a moving bicycle causing a local national to be severely injured. The applicant and their battle buddy's then fled the scene without rendering aid. This type of behavior will not be tolerated, the applicant's actions directly affected the unit and could have possibility effected the way locals see the U.S. Army. The applicant is supposed to be an ambassador fall of the American services. The applicant agreed with the information and signed the form.

(4) A DA Form 4856 dated 13 September 2014 reflects the applicant received event oriented counseling for failing to Obey a Lawful Order. The Key Points of Discussion states the applicant, on or about 5 September 2014 were found off post with PV2 W\_\_\_\_ and PV2 L\_\_\_\_ after being given a direct order from their Company Commander not to. The applicant was given a lawful order and informed they were not authorized to go off post, consume any alcohol, or to places that primarily sell alcohol. Because of the applicant's actions, they failed to obey a lawful order, it has shown they cannot follow orders, and do not live by the Army Values. Their Civilian Clothing privileges are suspended. This means they are not allowed to wear civilian clothing and must remain in a military uniform at all time. This privilege suspension is effective today and will remain in effect until they are notified by either the Commander or the First Sergeant that they have their privileges back. The applicant agreed with the information and signed the form.

(5) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 14 November 2014, reflects the applicant received nonjudicial punishment for, in that they, who should have known of their duty at or near Camp Coiner, Republic of Korea, on or about 27 June 2014, were derelict in the performance of those duties in that they willfully failed to provide aide to a Korean National, as it was their duty to do, in violation of Article 92, UCMJ; and having received a lawful command from their superior commissioned officer, not to go off post without an official escort, or words to that effect, did, on or about 6 September 2014, willfully disobeyed the same, in violation of Article 90, UCMJ. Their punishment consisted of a reduction in rank/grade from PV2/E-2 to private/E-1; forfeiture of \$765.00 for 2 months, and extra duty and restriction for 45 days. The applicant elected not to appeal.

(6) A DA Form 3822 (Record of Mental Status Evaluation) dated 5 December 2014, reflects the applicant fit for full duty, including deployment. Section IV (Diagnoses) reflects no psychiatrist diagnosis or condition on Axis I (Psychiatric Conditions) and no diagnosis on Axis II (Personality & Intelligence Disorders). The behavioral health provider stated the applicant psychologically cleared for any administrative actions their command deems fit.

(7) A memorandum, 142nd Military Police Company, 94th Military Police Battalion, subject: Separation under Army Regulation 635-200, Chapter 14-12a, Minor Disciplinary Infractions, [Applicant], dated 5 March 2015, reflects the applicant's notification of initiating

actions to separate them for Minor Disciplinary Infractions. The reason for the proposed actions is for, on 27 June 2014, willfully failed to provide aid to a Korean National and on 5 September 2014, disobeyed a lawful order from a commissioned officer. The company commander recommended the applicant's service be characterized as general (under honorable conditions). On the same date, the applicant acknowledged receipt of separation notice and of the rights available to them.

**(8)** In the applicant's memorandum, subject: Election of Rights under Army Regulation 635-200, Paragraph 14-12a, Minor Disciplinary Infractions – [Applicant], dated 9 March 2015, the applicant states they have advised by their consulting counsel of the basis for the contemplated action to separate them for Minor Disciplinary Infractions; and its effect; of the rights available to them, and the effect of any action taken by them in waiving their rights. They understood they may expect to encounter prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them and they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected to submit statements in their own behalf, through counsel, stating they request their involuntary separation be suspended; their misconduct demonstrates two lapses of judgment that did not result in any serious consequences. For the past 6 months, there is no evidence of relapse. In fact, they have been punished by not only a Field Grade Article 15, but also an order to not wear civilian clothing. Their lack of subsequent misconduct evidences strong potential to be rehabilitated as a Soldier.

**(9)** A memorandum, 142nd Military Police Company, 94th Military Police Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12a, Minor Disciplinary Infractions, [Applicant], dated 13 March 2015, reflects the applicant's company commander recommended the applicant be separated from the Army prior to the expiration of their current term of service.

**(10)** A memorandum, Headquarters, 501st Sustainment Brigade subject: Separation under Army Regulation 635-200, Paragraph 14-12a, Minor Disciplinary Infractions, [Applicant], dated 27 March 2015, the separation authority reviewed the separation packet of the applicant and after careful consideration of all matters, directed the applicant be separated from the Army prior to the expiration of their current term of service. The separation authority directed their service be characterized as General (Under Honorable Conditions) and states after reviewing the rehabilitative transfer requirements, they determined the requirements are waived, as the transfer will serve no useful purpose or produce a quality Soldier.

**(11)** A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 17 April 2015, with 1 year, 5 months, and 13 days of net active service this period. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private Two
- item 4b (Pay Grade) – E-2
- item 12i (Effective Date of Pay Grade) – 5 November 2013
- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKN
- item 27 (Reentry Code) - 3
- item 28 (Narrative Reason for Separation) – Misconduct (Minor Infractions)

**(12)** A DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), undated, reflects the applicant's request for an upgrade of their character of service so they can become a police officer. Their discharge is the only thing holding them back.

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They want to be able to support their family and friends. The applicant contends Private S\_\_\_\_\_ never received punishment for the situation, PV2 L\_\_\_\_\_ received an Honorable Discharge, and PV2 W\_\_\_\_\_ and they received a general (under honorable conditions). They feel it is unfair that Private S\_\_\_\_\_ didn't get into any trouble and PV2 got an honorable discharge, and they got the same discharge as PV2 W\_\_\_\_\_ and they didn't cause any harm to a Korean National and just like PV2 L\_\_\_\_\_ they were just there.

**(13)** An Army Discharge Review Board Case Report and Directive, dated 4 January 2018, reflects a records review was conducted and the Board denied the request upon finding the separation was both proper and equitable. The Board determined –

**(a)** The record confirms the applicant's discharge was appropriate because the quality of their service was not consistent with the Army's standards for acceptable personal conduct and performance of duty by military personnel. It brought discredit on the Army and was prejudicial to good order and discipline. By the misconduct (minor infractions), the applicant diminished the quality of their service below that meriting an honorable discharge at the time of separation.

**(b)** The applicant proved no independent corroborating evidence demonstrating either the command's action was erroneous or the applicant's service mitigated the misconduct or poor performance, such that they should have been retained on Active Duty.

**(c)** The record does not contain any indication or evidence of arbitrary or capricious actions by the command and all the requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process. The character of the applicant's discharge is commensurate with their overall record.

**(d)** The applicant also contends they feel it was unfair that the other Soldiers involved in the incident were treated differently than the way they were. The method in which another Soldiers' cases were handled is not relevant to the applicant's case. Applicable regulations state that each case must be decided on an individual basis considering the unique facts and circumstances of that particular case.

**i. Lost Time / Mode of Return:** NA

**j. Behavioral Health Condition(s):** None

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Memorandum, subject: Records Review Request to Army Discharge Review Board with 11 exhibits
  - Exhibit 1 – DA Form 2627 (Record of Proceedings under Article 15, UCMJ)
  - Exhibit 2 – Investigating Officer Memorandum – Findings and Recommendations
  - Exhibit 3 – U.S. Army Criminal Investigation Division Case Activity Summary
  - Exhibit 4 – DA Form 2823 (Sworn Statement) – Applicant
  - Exhibit 5 – DA Form 2823 – PV2 L\_\_\_\_\_
  - Exhibit 6 – DA Form 2823 – PV2 W\_\_\_\_\_
  - Exhibit 7 – DA Form 4856
  - Exhibit 8 – DA Form 4856
  - Exhibit 9 – DA Form 4856

- Exhibit 10 – Notification of Separation Memorandum
- Exhibit 11 – Separation Authority Memorandum
  
- DD Form 214

**6. POST SERVICE ACCOMPLISHMENTS:** None

**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

**d.** Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers) dated 2 November 2006, established procedures for investigations and board of officers not specifically authorized by any other directive. Paragraph 2-1c (Who may be Appointed) stated investigating officers and board members shall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service and temperament. Only commissioned officers, warrant officers, or Department of the Army civilian employees permanently assigned to a position graded as General Services-13 or above will be appointed as investigating officers or voting members of board.

**e.** Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

**(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)** A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

**(4)** Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

**(a)** When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

**(b)** Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

**(5)** Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12a (Minor Disciplinary Infractions), stated, Soldiers are subject to action per this section for a pattern of misconduct consisting solely of minor military disciplinary infractions.

**(6)** Chapter 15 (Secretarial Plenary Authority), currently in effect, 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.

**f.** 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 "JKN" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12a, Misconduct (Minor Disciplinary Infractions).

**g.** 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 DoD Instructions 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 waiverable. Eligibility: Ineligible unless a waiver is granted.

**(3)** 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.

**h.** Manual for Courts-Martial, United States (2012 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the



constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 90 (Willfully Disobeying Lawful Order of Superior Commissioned Officer) and Article 92 (Willful Dereliction in Performance of Duties).

#### **8. SUMMARY OF FACT(S):**

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment under the UCMJ for, failing to provide aide to a Korean National, as it was their duty to do; having received a lawful command from their superior officer, willfully disobeyed; and was involuntarily discharged from the U.S. Army. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12a, by reason of Misconduct (Minor Infractions), with a characterization of service of general (under honorable conditions). The applicant completed 1 year, 5 months, and 13 days of net active service. The applicant did not complete their first full term of service of 5 years.

c. Chapter 14 establishes policy and prescribes procedures for separation members 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.

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.

#### **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? **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**

**c. Response to Contention(s):**

**(1)** The applicant contends their discharge is legally insufficient based on impropriety and inequity. It is legally impermissible to impose a duty upon the applicant requiring the applicant to render aid to someone when the applicant was not on duty and was simply a bystander to an off-post event. The Board considered this contention but determined that the chain of command did not act improperly when it initiated an involuntary separation action based on upon the applicant's failure to render aid to a Korean national. The notification memo did not cite to the Article 15 or a UCMJ punitive article, rather it cited the applicant's offending behavior. The Board found that the applicant's actions were those of disorder and neglect, and therefore consistent with the applicant's Misconduct (Minor Infractions) narrative reason for separation and General characterization of service.

**(2)** The applicant contends there were no multiple infractions which could be cited as proper justification for a general discharge. A pattern of misconduct was not present as they were under no duty to render aid and they were placed under an illegal order of restriction by their company commander. Thus, if only one of the two incidents relied on to form the necessary pattern of misconduct were reached improperly, there is no valid basis to have discharged them. The Board considered this contention but determined that the applicant lost pass privileges and thus disobeyed a lawful order. This offense, combined with the applicant's actions in the off-post event, constitute multiple infractions justifying a general characterization of service.

**(3)** The applicant contends they did not commit a pattern of misconduct, as is required to substantiate the basis of their general discharge. The circumstances presented demonstrate that both an impropriety and inequity exist that led to their involuntary administrative discharge. The Board considered this contention but found insufficient mitigating factors to warrant discharge upgrade. The preponderance of evidence shows that the applicant did commit multiple minor disciplinary infractions commensurate with a general characterization of service.

**d.** 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.

**e. 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 was not found to hold a behavioral health condition that would excuse or mitigate the applicant's offenses of failing to render aid to a Korean national and disobeying a lawful order. The Board also considered the applicant's contentions regarding an illegal restriction and not having a duty to render aid under UCMJ Article 92 but found that the totality of the applicant's record does not warrant a discharge upgrade. The Board found that the applicant's contention that the discharge was improper due to the lack of a duty to render aid was not supported because the applicant was not notified for separation under this punitive article. 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.

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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.

## 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:

2/28/2025

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