

**1. Applicant's Name:**

- a. **Application Date:** 10 January 2021
- b. **Date Received:** 8 June 2021
- c. **Counsel:** Yes

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

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

b. The applicant through counsel, seeks relief contending, in effect, the applicant is not guilty of fraudulent entry. The applicant committed no misconduct prior to or during their service. The separation authority was not impartial when they engaged in unlawful command influence by ordering the applicant's company commander to draft administrative separation documents when the company commander felt that an administrative separation was both unnecessary and unjust. The separation authority, in fact, was the recommender and authority for separation. The separation decision should have been placed into the hands of an impartial member of the chain of command. The separation authority's ordering of the administrative separation was a reprisal to the applicant seeking help from a member of Congress. The separation authority's response to a congressional inquiry, demonstrates a lack of impartiality. Additionally, the response to the congressional inquiry blatantly twists facts in order to suggest that the chain of command was unified in this matter.

(1) Prior to active service the applicant a Ukrainian citizen served in the Ukrainian Armed Forces. Upon discharge from the Ukrainian Armed Forces, the applicant immigrated to the U.S. During the enlistment process at a recruiting station, the applicant required significant assistance from a Military Entrance Processing Station (MEPS) employee to complete the SF-86 (Security Clearance Application) because of a language barrier. The MEPS employee typed the answers to all of the questions, occasionally soliciting information orally from the applicant. During a later investigation into the security application, numerous typographical and minor errors were noted. At no time did the applicant attempt to conceal their citizenship, service in a foreign military, contacts with family members abroad, or complex personal life. During a significant period of the SF-86 process, the applicant was not present, as the MEPS employee dismissed the applicant in order to quickly complete the onerous form.

(2) The applicant's security clearance status was investigated by the Office of Personnel Management (OPM), Federal Investigative Services from April 2018 to June 2018. At no point does the report accuse the applicant of committing misconduct, although discrepancies were noted, they were never characterized as "fraudulent." In late 2019, the applicant was informed that a security clearance investigation revealed discrepancies with the SF-86 paperwork and would possibly result in a discharge from the Army. This led the applicant to request a congressional inquiry into their security clearance issues.

(3) The company commander wrote two letters, one endorsing the applicant's character. And the other states, in part, the company commander was ordered to initiate a separation by the separation authority. The evidence did not support the elements of a

fraudulent enlistment and explained that discharging the applicant was unnecessary, unfair, and an injustice. The applicant had done nothing to warrant any characterization less than "Honorable."

(4) The applicant earned a reputation as a motivated, capable, and ethical Soldier. The applicant graduated from the basic leader course and was being groomed to become a Sergeant.

**c. Board Type and Decision:** In a records review conducted on 10 April 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:** Fraudulent Entry / AR 635-200, Chapter 7-17, SEC IV / JDA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 17 April 2020

**c. Separation Facts:** The applicant's AMHRR is void of the case separation file. However, the applicant provided a document for the entry in subparagraph 3c (6).

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

**(2) Basis for Separation:** NIF

**(3) Recommended Characterization:** NIF

**(4) Legal Consultation Date:** NIF

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

**(6) Separation Decision Date / Characterization:** 25 March 2020 / General (Under Honorable Conditions)

### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 10 July 2017 / 6 years

**b. Age at Enlistment / Education / GT Score:** 30 / bachelor's degree / 106

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 15F1S, ACFT Electrician / 2 years, 9 months, and 8 days

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

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

**f. Awards and Decorations:** NDSM, GWOTSM, NCOPDR, ASR

**g. Performance Ratings:** NA

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

(1) The applicant through counsel provided:

(a) An SF-86 (Security Clearance Application), dated 13 June 2017, shows the applicant was not a citizen of the U.S. but was a permanent alien resident. The applicant was a citizen of Ukraine with a passport from Ukraine. The applicant entered the U.S. on 26 August 2013. The applicant served in the Ukraine Army from July 2003 until April 2012. Their highest rank and position held was captain and instructor.

(b) A Detailed Investigation (2018) shows, in part, the applicant was under investigation between 3 April and 7 June 2018. The applicant is a citizen of Ukraine and a permanent Alien Resident in the U.S. The applicant was a full time Ukraine soldier between July 2003 and April 2012. After interviews with the applicant, the investigation revealed the following discrepancies with the SF-86:

- birth certificate shows place of birth as Dzhankoy Soviet Union, which is now known as Dzhankoy Ukraine, SF-86 shows incorrectly with the city as Dzhankoy and country as Ukraine
- the applicant added personal and military e-mails and changed the telephone number, SF-86 shows no e-mail and a telephone number
- passport shows the applicant travelled to Egypt, Turkey and the U.S., SF-86 shows Ukraine, Egypt, and Turkey
- issues with residency (i.e., from and to dates incorrect, incorrect apartment number, an address not listed)
- school attended not listed on SF-86
- employment activities shows incorrect from and to dates on SF-86
- foreign employment not listed on SF-86
- reference and relative discrepancies on SF-86
- misspelling of spouse's first name on SF-86
- former spouse's middle name shows as last name on SF-86
- foreign financial interest not listed on SF-86
- background investigation/security clearance in Ukraine not listed on SF-86

(c) A Congressional Letter to Applicant, dated 6 November 2019, shows Congress received the applicant's request for assistance.

(d) A Developmental Counseling Form, dated 29 January 2020, shows the applicant was counseled on the purpose, initiation, appeal, and review processes of a bar to continued service. The applicant was also informed of the consequences of failing to overcome or making progress to overcome the bar to continued service. The applicant was being recommended to the chain of command for a bar to continued service because the applicant had no potential for future service based on ineligibility to obtain a security clearance and obtaining U.S. citizenship was low.

(e) A Developmental Counseling Form, dated 20 February 2020, shows the applicant's bar to continued service was approved.

(f) A DA Form 4186 (Bar to Continued Service), dated 20 February 2020, shows the applicant was barred from continued service.

(g) A Chapter 7-17 Attorney Work Product, dated 4 March 2020, states the applicant made multiple false official statements on their security clearance application, and such

statements were found to be inconsistent with the statements made during the applicant's OPM interview. Those statements were a deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. The applicant states they did not fill out their SF-86 and that it was filled out by a Sergeant. The applicant provided all documents from their past and stated they was previously a Ukrainian Army officer.

**(h)** The Separation Authority Response Letter to Congress, dated 4 March 2020, shows the separation authority responded to a congressional inquiry on behalf of the applicant regarding the applicant's concerns about the bar to continued service that the command put in place. The separation authority stated the command discovered the applicant made false statements on paperwork when the applicant joined the Army and swore those statements to be true, in writing, in the presence of the recruiter. This incident demonstrates a lack of trustworthiness in the applicant and would severely limit the applicant's potential for both promotion and continued service. AR 601-208 (Army Retention Program), paragraph 8-2 mandates that a "bar to continued service should be initiated before a separation ..." The commander made an independent assessment that due to a totality of the above circumstances; the applicant did not have potential for continued service.

**(i)** A Developmental Counseling Form, dated 5 March 2020, shows the applicant was counseled for initiation of an involuntary separation/field initiated (BA) flag.

**(j)** A Memorandum from the Defense Counsel, Administrative Separation action against Applicant, dated 16 March 2020, found the administrative separation action to be factually and legally insufficient as a basis upon which to separate the applicant. The Notification Memorandum alleges that the applicant "made multiple false official statements on [the applicant's] Security Clearance Application and such statements were found to be inconsistent with the statements [the applicant] made during [the applicant's] OPM Interview." However, there is no list or synopsis of these discrepancies anywhere in the notification packet that would facilitate analysis of these supposed discrepancies. Rather, the SF-86 and OPM Interview report are simply included back-to-back in the separation packet, forcing a reviewer to examine both and try to figure out what the discrepancies were. Notably, the SF-86 in the applicant's separation packet did not appear to be signed, and the OPM Interview report states that the interview was conducted "under unsworn declaration." The applicant disclosed their previous service with the Ukraine military, Ukrainian relatives, and their Ukrainian education. There is no evidence in the separation packet that whatever misrepresentations were allegedly made had any impact on the applicant's eligibility for enlistment.

**(k)** A Memorandum for Record, Character statement for (Applicant), 16 March 2020, showing the applicant's company commander wholeheartedly recommended and endorsed the character and competence of the applicant. The applicant is one of the hardest working, most dedicated, and most capable Soldiers the company commander has worked with in their 15 years of military service.

**(l)** A Memorandum for Commander, 25th Combat Aviation Brigade, Wheeler Army Airfield, HI, from the Bravo Company Commander, Separation Recommendation for (Applicant), dated 23 March 2020, states the company commander was directed by the separation authority (brigade commander) to initiate separation proceedings against the applicant in January 2020.

**(i)** The Brigade Staff Judge Advocate advised a Chapter 14-12c, Commission of a Serious Offense for an alleged False Official Statement by the applicant which later changed to a Chapter 7-17, Fraudulent Entry because the applicant swore their SF-86 (the allegedly false

document) prior to entering the Army and the alleged false statement was not subject to Uniformed Code of Military Justice action.

(ii) AR 635-200 requires commanders to utilize two tests to make a determination of Fraudulent Enlistment: 1) “determine if previously concealed information is, in fact, disqualifying” using criteria established in AR 601-210 (Regular Army and Reserve Components Enlistment Program); 2) “verify the existence and true nature of the apparently disqualifying information.”

(iii) Test One (Disqualifying information): The evidence that the applicant concealed is based on discrepancies between the SF-86 and subsequent OPM interview. Although discrepancies exist, the items of interest are not necessarily disqualifying from entering the Army as they do not pertain to the applicant’s number of dependents, marital status, or citizenship. However, included in the same packet of information is the applicant’s biographical information and recruiting information sheet which clearly stated the applicant’s citizenship and prior service in the Ukraine. The applicant made their past clear to all parties, including the recruiter and commander since 2014, thus, nothing was concealed during the process of enlistment or initial service. The accidental omission subsequently corrected upon first review and provided in other means at the time of the omission, does not meet the standard of “concealed” required by AR 635-200.

(iv) Test Two (Existence of Disqualifying Concealed Information): The information exists and is presumed to be true as it came from valid sources (SF-86/OPM records).

(v) The applicant’s entry documents do not pass Test One as the applicant did not intentionally nor deliberately conceal anything from officials.

(vi) Based on the facts available, the applicant made their citizenship status and prior service as a Ukrainian Officer clear to the recruiter, and previous and current commanders. The applicant was also honest about their dependent status. The applicant completed an SF-86 incorrectly, likely because of their limited English at the time, the rushed nature of MEPS operations, and the volume of recruits processed. These factors are not excusal, but they mitigate this omission when coupled with the applicant’s honesty during subsequent interviews. It is believed that any omissions or mistakes on the original SF-86 were not deliberate. Therefore, the applicant does not meet the criteria for a Chapter 7-17, “deliberate material misrepresentation, omission, or concealment.”

(vii) The company commander recommended retention of the applicant given the paucity of evidence presented regarding the applicant’s entry into service and clear lack of intent to conceal relevant information from the U.S. Army. If the separation authority disagreed, the company commander strongly recommended to characterize the applicant’s service as “Honorable.”

(2) The Commander’s Report, dated 23 March 2020, states the applicant made multiple false official statements on their Security Clearance Application, and such statements were found to be inconsistent with the statements the applicant made during their OPM interview. Those statements were a deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or re-enlistment, might have resulted in rejection. The applicant has demonstrated by their actions that they cannot uphold the Army Standard. Furthermore, their actions made them unavailable for world-wide contingency operations. Disposition by any other means is not feasible.

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

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293; discharge documents including DD Form 214; SF-86 (Security Clearance Application) (pages 1-37 (page 38, section 22 was not included) and 39-43); three Congressional Inquiry letters; Detailed Investigation (2018); and applicant notes and timeline.

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 provides the basic authority for the separation of enlisted personnel.

**(1)** Paragraph 2-2 (Notice), stated commanders were to notify the soldier in writing of the following:

**(a)** Provide the basis of the proposed separation, including the circumstances upon which the action was based, and a reference to the applicable regulatory separation provision.

**(b)** The Soldier will be advised of the following rights:

- whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army
- the least favorable characterization of service or description of separation they could receive
- the type of discharge and character of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander

**(c)** Further advise the Soldier of the following rights:

- consult with military or civilian counsel at their own expense
- submit statements in their own behalf
- obtain copies of documents that will be sent to the separation authority supporting the proposed separation
- to a hearing before an administrative separation board under section III of this chapter if they had 6 or more years of total active and Reserve service on the date of initiation of recommendation for separation

- waive their rights

**(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 7-17 provides:

**(a)** A fraudulent entry is the procurement of an enlistment, reenlistment, or period of active service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver.

**(b)** The following tests must be applied in each case of suspected fraudulent enlistment or re-enlistment. These tests will establish whether the enlistment or re-enlistment is fraudulent.

**(i)** First test. Commanders will determine if previously concealed information is, in fact, disqualifying. This information will be evaluated using the criteria for enlistment or re-enlistment in AR 601-210 or AR 601-280. Any waivable or nonwaivable disqualification concealed, omitted, or misrepresented constitutes fraudulent entry. This includes concealing information with alleged or actual recruiter connivance. If, however, the newly revealed information does not amount to a disqualification from enlistment or re-enlistment under the appropriate regulation, there is no fraudulent enlistment or reenlistment. Hence, the enlistment or re-enlistment is valid and separation may not be directed.

**(ii)** Second test. Commanders must verify the existence and true nature of the apparently disqualifying information. Verification of the actual offense may reveal that the enlistee was not disqualified and, therefore, is not a fraudulent enlistee. For example, if the Soldier alleged that he/she was convicted of burglary and placed on probation, inquiries must be made to whether the Soldier was actually convicted of burglary. In fact, the Soldier may have initially been charged with burglary, but the charge may have been reduced to trespass, which is a minor non-traffic offense for enlistment purposes that is not disqualifying for enlistment or re-enlistment. To conduct an inquiry using these tests to establish existence of fraud, a delay of 30 days is considered reasonable.

**(c)** Any incident that meets the foregoing two tests may be cause for separation for fraudulent entry. Some examples of fraudulent entry are shown below:

**(i)** Concealment of prior service. The establishment of the identity of Army personnel and verification of prior service in any of the U.S. Armed Forces normally requires only comparison of fingerprints and examination of records.

**(ii)** Concealment of true citizenship status.

- When information is received from the Immigration and Naturalization Service that a warrant for the Soldier's arrest has been issued or that deportation proceedings are



pending upon completion of military service, the Soldier will not be considered for retention

- The nearest office of the Immigration and Naturalization Service will be informed when a Soldier will be discharged or released from custody and control of the Army
- A report of the facts, along with a report of action taken, will be submitted to Headquarters, Department of the Army (DAMI), Washington, DC 20310-1051, through intelligence channels

**(iii)** Concealment of other disqualification. A Soldier who conceals other disqualification will be considered for discharge per this chapter. This concealment includes assuming the identity of another individual through the use of birth certificate, discharge certificate, or any other record belonging to another. Exceptions to this policy are concealment of minority (see chap 7, sec II) and concealment of true name. However, if concealment of a true name is used to conceal a disqualification as outlined in this paragraph, it will be considered fraudulent entry.

**(5)** Paragraph 7-17 states in part, the commander will initiate action as specified in the notification procedure or the administrative board procedure, as appropriate. The commander will determine if the incident of fraudulent entry is substantiated and ensure that the rights of the suspected fraudulent enlistee are protected. The commander will forward the action and necessary enclosures to the separation authority for determination as to whether a fraudulent enlistment occurred.

**(6)** Paragraph 7-23 stipulates a Soldier discharged under the provisions of this chapter will be furnished DD Form 256A or assigned a character of service of under other than honorable conditions. In addition to chapter 3, section II, the following factors will be considered in determining the character of service to be issued during the current period of service:

**(a)** Evidence of pre-service misrepresentation that would have precluded, postponed, or otherwise affected the Soldier's enlistment eligibility.

**(b)** Characterization will normally be under other than honorable conditions if the fraud involves concealment of a prior separation in which service was not characterized as honorable.

**(c)** The offense of fraudulent enlistment (10 USC 883; Art 83 UCMJ) occurs when the Soldier accepts pay or allowances following enlistment procured by willful and deliberate false representation or concealment of their qualifications. Therefore, upon receipt of pay and allowances, it becomes an in-service activity by the Soldier and may be considered in characterizing their period of service, even though they are not tried for the offense.

**(d)** When the individual is in an AWOL status, or in desertion, or in the hands of civil authorities, the provisions of chapter 2, section III, must be followed.

**(7)** Paragraph 7-18 (Authority), states when court-martial charges are not pending or contemplated, commanders exercising separation authority may discharge for fraudulent entry under the notification procedure if a discharge under other than honorable conditions is not to be issued.

**(8)** 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 (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 "JDA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 7, paragraph 7-17, fraudulent entry.

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:

(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.

**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 AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 7-17, section IV, by reason of Fraudulent Entry, with a characterization of service of general (under honorable conditions).

c. The applicant through counsel contends, in effect, the applicant is not guilty of fraudulent entry. The applicant committed no misconduct prior to or during their service. During the enlistment process at a recruiting station, the applicant required significant assistance from a MEPS employee to complete the SF-86 (Security Clearance Application) because of a language barrier. The MEPS employee typed the answers to all of the questions, occasionally soliciting information orally from the applicant. During a later investigation into the security application, numerous typographical and minor errors were noted. The separation authority was not impartial when they engaged in unlawful command influence by ordering the applicant's company commander to draft administrative separation documents when the company

commander felt that an administrative separation was both unnecessary and unjust. The separation authority, in fact, was the recommender and authority for separation.

(1) The applicant through counsel provided the company commander's memorandum to the separation authority, dated 23 March 2020, that states the company commander was directed by the separation authority (brigade commander) to initiate separation proceedings against the applicant in January 2020.

(2) AR 635-200, paragraph 7-17 states in part, the commander will initiate action as specified in the notification procedure or the administrative board procedure, as appropriate. The commander will determine if the incident of fraudulent entry is substantiated and ensure that the rights of the suspected fraudulent enlistee are protected. The commander will forward the action and necessary enclosures to the separation authority for determination as to whether a fraudulent enlistment occurred.

d. The applicant through counsel contends, in effect, the separation authority's ordering of the administrative separation was a reprisal to the applicant seeking help from a member of Congress. The separation authority's response to a congressional inquiry, demonstrates a lack of impartiality. Additionally, the response to the congressional inquiry blatantly twists facts in order to suggest that the chain of command was unified in this matter.

(1) The applicant through counsel provided:

(a) The separation authority's congressional response letter dated 4 March 2020, that states in part, the command discovered the applicant made false statements on paperwork when the applicant joined the Army and swore those statements to be true, in writing, in the presence of the recruiter. This incident demonstrates a lack of trustworthiness in the applicant and would severely limit the applicant's potential for both promotion and continued service. AR 601-208, paragraph 8-2 mandates that a "bar to continued service should be initiated before a separation." The commander made an independent assessment that due to a totality of the above circumstances; the applicant did not have potential for continued service.

(b) A Memorandum from the Defense Counsel, Administrative Separation action against Applicant, dated 16 March 2020, found the administrative separation action to be factually and legally insufficient as a basis upon which to separate the applicant. The Notification Memorandum alleges that the applicant "made multiple false official statements on [the applicant's] Security Clearance Application and such statements were found to be inconsistent with the statements [the applicant] made during [the applicant's] OPM Interview." The applicant disclosed their previous service with the Ukraine military, Ukrainian relatives, and their Ukrainian education. There is no evidence in the separation packet that whatever misrepresentations were allegedly made had any impact on the applicant's eligibility for enlistment.

(c) A Memorandum for Record, Character statement for (Applicant), 16 March 2020, shows the applicant's company commander wholeheartedly recommended and endorsed the character and competence of the applicant. The applicant is one of the hardest working, most dedicated, and most capable Soldiers the company commander has worked with in their 15 years of military service.

(d) The company commander's memorandum to the separation authority, dated 23 March 2020, that states in part, the applicant's entry documents do not pass Test One (Commanders will determine if previously concealed information is, in fact, disqualifying) as the applicant did not intentionally nor deliberately conceal anything from officials. Test Two

(Existence of Disqualifying Concealed Information): The information exists and is presumed to be true as it came from valid sources (SF86/OPM records). Based on the facts available, the applicant made their citizenship status and prior service as a Ukrainian Officer clear to the recruiter, and previous and current commanders. The applicant was also honest about their dependent status. The applicant completed an SF-86 incorrectly, likely because of their limited English at the time, the rushed nature of MEPS operations, and the volume of recruits processed. These factors are not excusal, but they mitigate this omission when coupled with the applicant's honesty during subsequent interviews. It is believed that any omissions or mistakes on the original SF-86 were not deliberate. Therefore, the applicant does not meet the criteria for a Chapter 7-17, "deliberate material misrepresentation, omission, or concealment." The company commander recommended retention of the applicant given the paucity of evidence presented regarding the applicant's entry into service and clear lack of intent to conceal relevant information from the U.S. Army. If the separation authority disagreed, the company commander strongly recommended to characterize the applicant's service as "Honorable."

(2) The Commander's Report, dated 23 March 2020, states the applicant made multiple false official statements on their Security Clearance Application, and such statements were found to be inconsistent with the statements the applicant made during their OPM interview. Those statements were a deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or re-enlistment, might have resulted in rejection. The applicant has demonstrated by their actions that they cannot uphold the Army Standard. Furthermore, their actions made them unavailable for world-wide contingency operations. Disposition by any other means is not feasible.

e. The applicant through counsel contends, the applicant earned a reputation as a motivated, capable, and ethical Soldier. The applicant graduated from the basic leader course and was being groomed to become a Sergeant. The board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

f. 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 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**

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

(1) The applicant through counsel contends, in effect, the applicant is not guilty of fraudulent entry. The applicant committed no misconduct prior to or during their service. During the enlistment process at a recruiting station, the applicant required significant assistance from a MEPS employee to complete the SF-86 (Security Clearance Application) because of a language barrier. The MEPS employee typed the answers to all of the questions, occasionally soliciting information orally from the applicant. During a later investigation into the security application, numerous typographical and minor errors were noted. The separation authority was not impartial when they engaged in unlawful command influence by ordering the applicant's company commander to draft administrative separation documents when the company commander felt that an administrative separation was both unnecessary and unjust. The separation authority, in fact, was the recommender and authority for separation. The board considered this contention and determined that since the applicant was barred from continued service due to fraudulent entry (false official statements on their security clearance application (SF 86)) therefore, 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 the applicant was properly and equitable discharge.

(2) The applicant through counsel contends, in effect, the separation authority's ordering of the administrative separation was a reprisal to the applicant seeking help from a member of Congress. The separation authority's response to a congressional inquiry, demonstrates a lack of impartiality. Additionally, the response to the congressional inquiry blatantly twists facts in order to suggest that the chain of command was unified in this matter. The board considered this contention and determined that the applicant's discharge was proper and equity because the separation authority acted properly in accordance with. The board considered this contention and determined that the applicant's discharge was proper and equity because the separation authority acted properly in accordance with AR 635-200, paragraph 7-17 as outlined above in paragraph 8c (2).

(3) The applicant through counsel contends, the applicant earned a reputation as a motivated, capable, and ethical Soldier. The applicant graduated from the basic leader course and was being groomed to become a Sergeant. The board congratulate the applicant on his accomplishment.

**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, there were no mitigating factors for the board to consider. Since the applicant was discharged for fraudulent entry (false official statements on their security clearance application (SF 86)), General (Under Honorable Conditions) is proper and equitable. 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, and 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:**

6/26/2024

X

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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