

1. Applicant's Name:

- a. **Application Date:** 29 March 2021
- b. **Date Received:** 5 April 2021
- c. **Counsel:** None

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 honorable conditions. The applicant requests an upgrade to honorable.

(2) The applicant seeks relief stating they are starting a life for themselves and their family, they are engaged, have a 3-month-old child and is trying to go to college; however, they need assistance. They would one day love a chance to return to military service. There were some mistakes and misunderstandings when they were in the service because of their young mindset which resulted in their discharge. Now that they have had time to grow past their old frame of mind they are diligently trying to atone for their mistakes and provide the best life possible for their fiancé and child. Their family and country are the two most important aspects of their life, and they will do anything to do their best for them both.

b. Board Type and Decision: In a records review conducted on 7 August 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: Unsatisfactory Performance / Army Regulation 635-200, Chapter 13 (Separation for Unsatisfactory Performance) / JHJ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 25 April 2017

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 17 April 2017

(2) **Basis for Separation:** failure to adapt to the Army way of life

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

(4) **Legal Consultation Date:** 19 April 2017

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

(6) **Separation Decision Date / Characterization:** 20 April 2017 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 6 July 2016 / 6 years, 35 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 118
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 / NA / 9 months, 20 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 3822 (Report of Mental Status Evaluation), dated 30 March 2017, reflects further assessment is needed to determine fitness for duty.

(a) Section IV (Diagnoses) reflects for Axis I (Psychiatric Conditions) a diagnosis of Adjustment Disorder with mixed disturbance of emotions and conduct.

(b) Section VIII (Additional Comments) states the applicant reports extensive history of disturbance of emotions and conduct prior to military service and evidence by various conduct related issues in Basic Combat Training and Advanced Individual Training. They present to behavioral health after reporting anger issues. They denied history of behavioral health related diagnosis or treatment prior to military service; however, it is likely that if retained in the military, they will continue to escalate their behavior of misconduct. Recommendation that command consider chapter separation under Army Regulation 635-200, paragraph 5-17 (Other Designated Physical or Mental Conditions). Applicant is not eligible for Existed Prior to Service discharge due to being past 180 days in service.

(2) A DA Form 4856 (Developmental Counseling Form), dated 17 April 2017, reflects the applicant received event-oriented counseling from their company first sergeant, for violation of Article 92 (Failure to Obey Order or Regulation) and violation of Company Command Policy Letter Number 6 (Leave and Pass Policy). The Key Points of Discussion states, on 25 March 2017, the applicant got into a taxi with another Soldier and attempted to exit off post while on a phase four pass. They attempted to convince the taxi driver that they both were permanent party. The driver, who was an off duty instructor confirmed they both were trainees, turned them over to their company. In addition, the applicant left the company area on 15 April 2017 by putting themselves on a hygiene pass and not consulting with any leader or noncommissioned officer to sign out properly. These actions are unacceptable, against Company Command Policy Letter Number 6 as well as violation of Article 92. Based on these events the first sergeant will be recommending Uniform Code of Military Justice action. The applicant disagree with the information stating they did not say they were permanent party, when asked, they said they were in training and the applicant signed the form.

(3) A memorandum, Alpha Company, 554th Engineer Battalion, 1st Engineer Brigade, subject: Separate Army Regulation 635-200, Chapter 13, Unsatisfactory Performance, [Applicant], dated 17 April 2017, the applicant's company commander notified the applicant that

under the provisions of Army Regulation 635-200, chapter 13, they are initiating action to separate them for Unsatisfactory Performance. The reason for the proposed action is failure to adapt to the Army way of life. On that same day, the applicant acknowledged the basis for the separation and of the right available to them.

(4) On 19 April 2017, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected not to submit statements in their behalf and elected to waive consulting counsel. They understood they many expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them. They further understood that as the result of issuance of a discharge that is less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(5) A memorandum, Alpha Company, 554th Engineer Battalion, 1st Engineer Brigade, subject: Commander's Report – Proposed Separate Army Regulation 635-200, Chapter 13, Unsatisfactory Performance, [Applicant], dated 20 April 2017, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states the separation is in the best interest of the Army and the applicant.

(6) A memorandum, Headquarters, 554th Engineer Battalion, subject: Separation under Army Regulation 635-200, Paragraph 13, Unsatisfactory Performance [Applicant], dated 20 April 2017, the separation authority, having reviewed the separation packet of the applicant, directed the applicant be separated from the Army prior to the expiration of current term of service and their service be characterized as general (under honorable conditions). After reviewing the rehabilitative transfer requirement, the separation authority determined the requirements are waived, as the transfer will serve no useful purpose or product a quality Soldier. The separation is in the best interest of the Army and the applicant.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 25 April 2017, shows in:

- item 12c (Net Active Service This Period) – 9 months, 20 days
- item 18 (Remarks) – in part, Member has not completed first full term of service
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 13
- item 26 (Separation Code) – JHJ [Unsatisfactory Performance]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Unsatisfactory Performance

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** DA Form 3822 (Report of Mental Status Evaluation) as described above in paragraph 4h(1)

5. **APPLICANT-PROVIDED EVIDENCE:** None

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

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 Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, 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 13 (Separation for Unsatisfactory Performance) contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactory in further training and/or become a satisfactory Soldier. The service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or general (under honorable conditions) as warranted by their military records.

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

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per 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 reenry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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):

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

b. The applicant's AMHRR reflects the received event-oriented counseling for violating Article 92 and violation of Company Command Policy Letter Number 6 (Leave and Pass Policy) and was involuntary separated from the Army for failure to adapt to the Army way of life. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, chapter 13, separation for unsatisfactory performance, with a characterization of service of general (under honorable conditions). The applicant completed 9 months, and 20 days of net active service; however, the applicant did not complete their first full term of service obligation of 6 years and 35 weeks.

c. Chapter 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactory in further training and/or become a satisfactory Soldier. The service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or general (under honorable conditions) as warranted by their military records.

d. The applicant's Army Military Human Resource Record provides documentation of a mental health diagnoses of Adjustment Disorder with mixed disturbance of emotional and conduct.

e. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnosis: Adjustment Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor opined that while a Chapter 5-17 was recommended, given the chronic misconduct with expressed disinterest in adherence, an unsatisfactory performance discharge was more appropriate. Although liberal consideration was applied, the applicant's diagnosis is not mitigating as the applicant was fully aware of the applicant's actions with a chronic history of similar behavior also unrelated to psychiatric difficulties.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends they are starting a life for themselves and their family, they are engaged, have a 3-month-old child and is trying to go to college; however, they need assistance. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(2) The applicant contends there were some mistakes and misunderstandings when they were in the service because of their young mindset which resulted in their discharge. Now that they have had time to grow past their old frame of mind they are diligently trying to atone for their mistakes and provide the best life possible for their fiancé and child. The Board considered this contention and determined that the applicant's youth and immaturity did not outweigh the seriousness of the applicant's basis for separation, Unsatisfactory Performance: Failure to Adapt to the Army Way of Life.

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 Disorder did not excuse or mitigate the basis for separation, Unsatisfactory Performance: Failure to Adapt to the Army Way of Life. The Board found the multiple acts of misconduct, violating leave and pass policy, disrespect, cohabitation with females in the barracks, and disrespect toward an NCO constituted unsatisfactory performance. The Board also considered the applicant's contention regarding the applicant's young mindset which resulted in their discharge and found that the totality of the applicant's record does not warrant a discharge upgrade. 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.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same reasons, as the reason the applicant was discharged was both proper and equitable.

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(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:

9/12/2024

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