

**1. Applicant's Name:**

- a. **Application Date:** 18 January 2021
- b. **Date Received:** 27 April 2023
- 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 requests, through counsel, an upgrade to honorable long with a separation program designator (SPD) code and narrative reason change.

The applicant's counsel seeks relief contending, in effect, the text message communications and social media interactions between the applicant and a former trainee occurred after the applicant had a permanent change of station from the AIT instructor position and the communications occurred within a time frame in which the applicant was no longer bound by the policy under which the applicant was discharged and the Army did not fully consider the quality of the applicant's 12 years of service.

**b. Board Type and Decision:** In a records review conducted on 22 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200 / Chapter 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 26 November 2019

**c. Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** The applicant was informed of the following reasons: NIF
- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NIF
- (6) **Separation Decision Date / Characterization:** NIF

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 2 November 2017 / 3 years
- b. **Age at Enlistment / Education / GT Score:** 28 / HS Graduate / 111
- c. **Highest Grade Achieved / MOS / Total Service:** E-6 / 14T38, Patriot Operator/Maintainer / 12 years, 5 months, 27 days
- d. **Prior Service / Characterizations:** RA, 30 May 2007 – 1 November 2017 / HD
- e. **Overseas Service / Combat Service:** Korea, SWA / United Arab Emirates (19 December 2015 – 14 December 2016)
- f. **Awards and Decorations:** ARCOM-3, AAM-6, AGCM-2, NDSM, GWOTEM, KDSM, NCOPDR-2, ASR, OSR-3
- g. **Performance Ratings:** 13 April 2017 – 10 February 2018 / Highly Qualified  
2 February 2018 – 14 January 2019 / Highly Qualified

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

(1) Memorandum, subject: AR 15-6 Investigation and Recommendations, 25 April 2019, reflects an investigating officer concluded there was substantial evidence supporting an inappropriate relationship between PVT S and the applicant; the applicant wrongfully engaged in a prohibited relationship with PV2 S, which violated AR 600-20, paragraph 4-14, 4-15, and TR 350-6, paragraph 2-5; the applicant wrongfully engaged in prohibited activities, which violated DoDI 1304.33, enclosure 3, paragraph 1a(1)(a). It was recommended the applicant be given a GOMOR, FG Article 15, and administrative separation proceedings be initiated. IT was also recommended PV2 S receive UCMJ for violation of DoDI 1304.33.

(2) FG Article 15, 25 June 2019, reflects the applicant failed to obey a lawful general regulation on or between 9 February 2019 and 18 February 2019, by wrongfully having a relationship with a trainer and any trainee, not required by the training mission; failed to obey a lawful general regulation by wrongfully being friends with a trainee; and failed a lawful general regulation between on or about 18 January 2019 and 21 January 2019, by traveling outside of a 250-mile radius without a mileage pass. The punishment consisted of reduction to sergeant/E-5, suspended, to be automatically remitted if not vacated on or before 8 January 2020; forfeiture of \$1,698 pay per month for 2 months; 2 months extra duty; and an oral reprimand.

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, Legal Brief with 10 exhibits.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant's counsel provides an Appraisal Report from the applicant's employer indicating the applicant is a contributing member of the company.

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes 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.

(6) Paragraph 14-12c, states a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests, through counsel, an upgrade to honorable long with an SPD code and narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's service AMHRR is void of the complete facts and circumstances concerning the events which led to his discharge from the Army. The applicant's record does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty). The DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of Misconduct (Serious Offense), with a characterization of service of General (Under Honorable Conditions).

The applicant's counsel requests the applicant's narrative reason and SPD code be changed. The applicant was separated under the provisions of AR 635-200, Chapter 14-12c, with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this chapter is "Misconduct (Serious Offense)" and the separation code is "JKQ." Army Regulation 635-8, Separation Documents governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason or SPD code to be entered under this regulation.

The applicant's counsel contends the text message communications and social media interactions between the applicant and a former trainee occurred after the applicant had a permanent change of station from the AIT instructor position and the communications occurred within a time frame in which the applicant was no longer bound by the policy under which the applicant was discharged.

The applicant's counsel contends the Army did not fully consider the quality of the applicant's 12 years of service. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332. 28..

If the applicant desires a personal appearance hearing, it is the applicant's responsibility to meet the burden of proof and provide the appropriate documents (i.e., the discharge packet) or other evidence sufficient to explain the facts, circumstances, and reasons underlying the separation action, for the Board's consideration because they are not available in the official record.

#### **9. BOARD DISCUSSION AND DETERMINATION:**

a. As directed by the 2017 memo signed by [REDACTED] the board considered the following factors:

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

(2) Did the condition exist or experience occur during military service? **No.** The applicant's MDD did not occur in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that MDD does not mitigate the misconduct as symptoms were secondary to the investigation and resulting discharge rather than reflect a condition existing prior to or during the misconduct. Additionally, depressive symptoms are not linked to making inappropriate relational/boundary decisions.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's MDD outweighed the medically unmitigated inappropriate relationships.

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

(1) The applicant's counsel contends the text message communications and social media interactions between the applicant and a former trainee occurred after the applicant had a permanent change of station from the AIT instructor position and the communications occurred within a time frame in which the applicant was no longer bound by the policy under which the applicant was discharged. The Board considered this contention and determined there was not enough evidence proving the applicant's assertions. 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. Therefore the Board determined the discharge was proper and equitable.

(2) The applicant's counsel contends the Army did not fully consider the quality of the applicant's 12 years of service. The Board considered this contention, the applicant's record of service and all available evidence in the record and determined the applicant's discharge was proper and equitable.

**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 Manic Depressive Disorder did not outweigh the medically unmitigated offenses of fraternization and inappropriate relationship. 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 pretexts, as the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

**Authenticating Official:**

2/13/2024

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