

1. Applicant's Name:

a. **Application Date:** 26 October 2023

b. **Date Received:** 30 October 2023

c. **Counsel:** None

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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 an upgrade of their character of service.

(2) The applicant seeks relief stating before they were discharged they were accused of disobeying a direct order from their company commander consisting of a no-contact order, which they had no evidence of them violating. They were stressed with the whole thing; questioned daily, and then they finally accepted a Field Grade Article 15. Once they completed their punishment they were discharged from the U.S. Army. They were made to repay their reenlistment bonus and they received a general (under honorable conditions) discharge based on the same thing they received their Field Grade Article 15 which they completed their punishment for.

b. Board Type and Decision: In a records review conducted on 18 September 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 details regarding the Board's decision.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Condition, Not a Disability / Army Regulation 635-200, Paragraph 5-17 / JFV / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 21 April 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 14 March 2011

(2) Basis for Separation:

on 1 March 2011, diagnosed with disturbances of emotional control sufficiently severe that their ability to effectively perform military duties is significantly impaired. Disobeying a lawful order given to them by their superior officer to have no-contact with J____ H____. Making a false official statement about the no-contact between themselves and J____ H____

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

(4) **Legal Consultation Date:** 14 March 2011

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

(6) Separation Decision Date / Characterization: 13 April 2011/ General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 26 February 2008 / 8 years
- b. Age at Enlistment / Education / GT Score:** 23 / HS Graduate / 100
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / Wheeled Vehicle Machinic / 5 years, 2 months, 15 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** Italy / None
- f. Awards and Decorations:** AAM, AGCM, NDSM, GWTSM, ASR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) dated 1 March 2011, reflects the applicant received nonjudicial punishment for, having received a lawful command from their superior commissioned officer, to have not contact with J____ H____, did at or near Naples, Italy, between on or about 23 January 2022 and 28 January 2011, willfully disobeyed the same, in violation of Article 90, UCMJ; and did, at or near Naples, Italy, on or about 15 February 2011, with intent to deceive, made an official statement to a noncommissioned officer, which statement was totally false, and was then known to be so false, in violation of Article 107, UCMJ. Their punishment consisted of a reduction in rank/grade from specialist/E-4 to private/E-1, forfeiture of \$733.00 pay for 2 months, extra duty for 45 days, restriction, and an oral reprimand. The applicant elected not to appeal.

(2) A memorandum, Landstuhl Regional Medicine Center, subject: Report of Mental Status Evaluation on [Applicant], dated 1 March 2011, reflects the applicant has had a long history of issues with mood and anger control. An overdose led this hospitalization with recent suicidal ideation. The applicant's diagnosis is shown as Depression. The Inpatient Psychiatrist states –

(a) The applicant meets the retention standards and there is no psychiatric disease or defect that warrants medical board; however, criteria for administrative separation are present.

(b) The applicant's diagnosis represents a mental condition not amounting to disability and not appropriate for separation processing under Army Regulation 635-200, paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder), but which manifests disturbance of emotional control sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

(c) The applicant's condition and the problems presented are not, in the opinion of the examiner, amenable to hospitalization, treatment, transfer, disciplinary action, training, or reclassification to another type of duty within the military. It is unlikely that efforts to rehabilitate

or develop this individual into a satisfactory member of the military will be successful. The was no history of deployment to an area designated as imminent danger pay area and no history of Traumatic Brain Injury (TBI) or Post Traumatic Stress Disorder (PTSD) related to military service.

(d) Recommendations, the applicant is psychiatrically cleared for any administrative action deemed appropriate by command. Psychiatric factors indicate that administrative separation under Army Regulation 635-200, paragraph 5-17 (Other designated physical or mental conditions) would be in the best interests of the applicant and the military.

(3) A DA Form 4856 (Developmental Counseling Form) dated 8 March 2011, reflects the applicant received event-oriented counseling to explain a recommendation made by an Army Doctor that they saw them during their recent visit to Landstuhl Medical Center. The Key Points of Discussion states, on 26 February 2011, they were seen by a Doctor at the Landstuhl Army Medical Center for possibly having mental instability. The psychiatrist has recommended the applicant be processed immediately for discharge under Army Regulation 635-200, paragraph 5-17 and the Chain of Command has decided to support the recommendation from the Army medical professional. The applicant agreed with the information and signed the form.

(4) A memorandum, Headquarters, U.S. Army AFSouth Battalion, subject: Separation under Army Regulation 635-200, Paragraph 5-17, dated 14 March 2012, notified the applicant of initiating actions to separate them for Other Designated Physical or Mental Condition. The reasons for the proposed action is as described above in paragraph 3c(2). The company commander recommends the applicant receive General (Under Honorable Conditions) discharge. On the same day the applicant acknowledged receipt of notification for separation and of the rights available to them.

(5) In the applicant's memorandum, subject: Notification Acknowledgement Receipt and Election of Rights, dated 14 March 2011, the applicant states they have been advised by their consulting counsel of the basis of the contemplated action to separate them for Commission of a Serious Offense and its effects; of the rights available to them, and of the effect of any action taken by them in waiving their rights. The applicant elected not to submit statements on their own behalf and waived consulting counsel. They understood they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them. They further understand that as the result of issuance of a discharge under other than honorable conditions, they may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(6) A memorandum, Headquarters, U.S. Army AFSouth Battalion, subject: Separation under Army Regulation 635-200, Paragraph 5-17, dated 16 March 2011, the applicant's company commander submitted a request to separate them prior to their expiration current term of service. The company commander states it is unlikely that efforts to rehabilitate or develop into a satisfactory member of the military will be successful.

(7) A memorandum, Headquarters, U.S. Army Garrison – Vicenza, subject: Separation under Army Regulation 635-200, Paragraph 5-17, Other Designated Physical or Mental Conditions, [Applicant], dated 13 April 2011, the separation authority reviewed the applicant's separation packet and directed the applicant be separated from the Army prior to the expiration of current term of service. The separation authority directed their service be characterized as General (Under Honorable Conditions).

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20230013722**

(8) On 21 April 2011, the applicant was discharged accordingly, their DD Form 214 provides the applicant completed 5 years, 2 months and 15 days of net active service this period and they completed their first full term of service. Their DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 9 March 2011
- item 18 (Remarks) –
 - no entry for the applicant's CONTINUOUS HONORABLE ACTIVE SERVICE – "20060207 – 20080225"
 - MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 5-17
- item 26 (Separation Code) – JFV
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Condition, Not a Disability

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation as described above in paragraph 4h(2).

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214

6. POST SERVICE ACCOMPLISHMENTS: none submitted with 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 17 December 2009, 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 5 (Separation for Convenience of the Government) stated unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conduction, or an uncharacterized description of service if in entry-level status.

(5) Paragraph 5-17 (Other Designated Physical or Mental Conditions) stated commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of Personnel Who did not Meet Procurement Medical Fitness Standards) or 5-13 (Separation Because of Personality Disorder) that potentially interfere with assignment to or performance of duty.

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 "JFV" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, paragraph 5-17, (Condition, Not a Disability).

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 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.

g. Army Regulation 635-8 (Separation Processing and Documents) dated 10 March 2014, prescribed policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a

DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

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. A review of the available evidence provides the applicant received nonjudicial punishment for failure to obey an order and making a false official statement, the applicant received notification of separation for their acts of misconduct and of their diagnosis with disturbances of emotional control sufficiently severe that their ability to effectively perform military duties is significantly impaired; and they were involuntary discharged from the U.S. Army. Their DD Form 214 provides the applicant was discharged with a character of service of general (under honorable conditions), with a narrative reason for separation as "Condition, Not a Disability." They completed 5 years, 2 months and 15 days of net active service this period and completed their first full term of service; however, they did not complete their 6-year reenlistment obligation.

c. Paragraph 5-17 (Other Designated Physical or Mental Conditions) stated commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of Personnel Who did not Meet Procurement Medical Fitness Standards) or 5-13 (Separation Because of Personality Disorder) that potentially interfere with assignment to or performance of duty.

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.

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 diagnoses/experiences: Depressive DO NOS.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found diagnosis of Depressive DO NOS was made during active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating Behavioral Health (BH) conditions. While the applicant was diagnosed with Depressive Disorder NOS while on active duty, this condition does not mitigate applicant's misconduct of disobeying an order to not have contact with an NCO's wife or making a false official statement given that

Depressive DO NOS does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition or experience did not outweigh the basis for separation.

b. Response to Contention(s):

(1) The applicant contends before they were discharged they were accused of disobeying a direct order from their company commander consisting of a no-contact order, which they had no evidence of them violating. The Board considered this contention and determined the applicant was discharged for disobeying a direct order and making a false official statement. Ultimately the Board voted and determined an upgrade is not warranted as there are no experiences or conditions that would excuse the misconduct, and therefore the discharge is appropriate.

(2) The applicant contends they accepted a Field Grade Article 15 and once they completed their punishment they were discharged from the U.S. Army. They were made to repay their reenlistment bonus and they received a general (under honorable conditions) discharge based on the same thing they received their Field Grade Article 15. The Board considered this contention and determined the applicant was separated for being diagnosed with disturbances of emotional control sufficiently severe that their ability to effectively perform military duties is significantly impaired, failure to obey orders, and making a false official statement. 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

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 Depressive DO did not excuse or mitigate the misconduct of disobeying a direct order and making a false official statement. 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or 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:

1/16/2025

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