

1. Applicant's Name:

- a. **Application Date:** 25 September 2020
- b. **Date Received:** 27 September 2020
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is uncharacterized. The applicant requests an upgrade to honorable, and changes to the SPD and RE codes and narrative reason.

b. The applicant seeks relief contending, in effect, the medical officers at Fort Jackson assumed the applicant's injury was a pre-existing condition and pushed the applicant out of the Army. According to the applicant's family's attorney, even if the injury was caused by the applicant's pre-existing condition the Army needs to cover any medical expenses as it was re-injured while in the Army. The Army knew about the pre-existing condition and accepted the applicant, which disqualifies the Army from denying the applicant coverage. The applicant is seeking medical care and possible reenlistment.

c. **Board Type and Decision:** In a records review conducted on 5 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:** Failed Medical/Physical/Procurement Standards / AR 635-200, Paragraph 5-11 / JFW / RE-3 / Uncharacterized

b. **Date of Discharge:** 23 July 2020

c. **Separation Facts:**

(1) **Date Entrance Physical Standards Board (EPSBD) convened:** 6 July 2020

(2) **EPSBD Findings:** The findings of the evaluating physicians indicate the applicant was medically unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians the condition existed prior to service. The applicant was diagnosed with: Other meniscus derangements, unspecified medial meniscus, left knee.

(3) **Date Applicant Reviewed and Concurred with the Findings, and Requested Discharge without Delay:** 10 July 2020

(4) **Separation Decision Date / Characterization:** 10 July 2020 / NIF

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 23 August 2019 / 6 years

- b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 104
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / None / 11 months and 1 day
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) The applicant provided:

(a) Medical Record that shows on 22 January 2019, the applicant had a left knee arthroscopy, cyst excision, partial medial meniscectomy (left). Pre and Post-Op diagnosis was left knee pain.

(b) Medical Record that shows on 19 April 2019, the physical therapist states the applicant had excellent rehabilitation potential to achieve established physical therapy goal within 6 months provided the applicant actively participated in the physical therapy treatment plan and the home program.

(c) Accessions Medical History Report, dated 15 August 2019, showing the examining medical physician noted: 22 January 2019 - excision large left anteromedial parameniscal cyst, debridement medial meniscus, good recovery. Patient fully released by ortho on 19 April 2019.

(2) Report of Medical History, dated 23 August 2019, shows the examining medical physician noted, left excision anteromedial parameniscal cyst, partial medial meniscus on 22 January 2019. The applicant had a good recovery, released, returned to cheerleading, runs every day for two miles with no problems.

(3) On 6 July 2020, an EPSB recommended the applicant for separation from the U.S. Army for failure to meet medical procurement standards in accordance with DODI 6130.03, Chapter 5.18.a.

(4) On 10 July 2020, the applicant was counseled by the commander for recommendation for separation under chapter 5-11, AR 635-200 on the basis of conditions EPTS.

(5) On 14 July 2020, the applicant was counseled by the Reserve Liaison Noncommissioned Officer because the applicant was referred for EPTS counseling in accordance with AR 635-200, chapter 5-11 for (Surgical History/Meniscus Derangements). The applicant, the Military Entrance Processing Station, and the recruiter and/or U.S. Army Reserve (USAR) unit was aware of this condition at the time of enlistment and prior to shipping.

(6) Orders 199-1314, dated 17 July 2020, shows the applicant was discharged from the Reserve on 23 July 2020.

(7) The applicant provided a DD Form 214 (Certificate of Release or Discharge from Active Duty), that shows the applicant had not completed the first full term of service. The

applicant was discharged on 23 July 2020 under the authority of AR 635-200, paragraph 5-11, with a narrative reason of Failed Medical/Physical/Procurement Standards. The DD Form 214 was not authenticated with the applicant's electronic signature.

(8) The applicant provided:

(a) A Mayo Clinic doctor's letter, dated 7 August 2020, that states the applicant underwent a left knee arthroscopic partial medial meniscectomy along with the cyst excision on 22 January 2019. The applicant did fully recover from this surgery within 3-4 months. The applicant was also able to run multiple miles in a single run, hence fully recovered. It does not sound like the applicant sustained a new injury that happened after a duration of at least one full year with normal function of the knee. As the applicant had a duration of several months of normal function with their knee and being medically cleared for full activities, it would be reasonable to think that this new injury in 2020 is not directly related to the applicant's surgery done on 22 January 2019.

(b) Chief of Staff, Headquarters U.S. Army Training Center and Fort Jackson letter in response to Senator E__'s inquiry, dated 26 August 2020, states on 6 July 2020, the applicant went to physical therapy to request a magnetic resonance imaging (MRI) of the knee. Over the course of several days, the applicant saw three separate medical providers and the consensus among them was that the applicant could not continue basic training with an injured knee. The applicant agreed with that prognosis. Medical personnel determined that the applicant's condition existed prior to entry into military service. The applicant insisted that the injury was preexisting.

(c) Applicant's email rebuttal to the Army, dated 10 September 2020, states the applicant did agree it was a pre-existing condition because the medical officers at Fort Jackson told the applicant that the injury was a pre-existing condition. The applicant was counseled and did not raise any issues because again, the applicant was going on the information that was given. The applicant was told that the injury was caused by the applicant's pre-existing condition, there was nothing they could do, and that the applicant's military career was over. The applicant agreed with them because the applicant felt the applicant had no case. When the applicant joined the Army Reserve the applicant made the Army aware that the applicant had a surgery, providing all records. According to the applicant's family's attorney, even if the injury was caused by the applicant's pre-existing condition the Army needs to cover any medical expenses as it was re-injured while in the Army.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; DD Form 214; Congressional Release Form; doctor letter; medical records; Chief of Staff, Headquarters U.S. Army Training Center and Fort Jackson Letter to Congress; applicant email rebuttal to Army.

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 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(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) Paragraph 3-9, states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

(3) Chapter 5, provides for the basic separation of enlisted personnel for the convenience of the government.

(4) Paragraph 5-1, states that a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status.

(5) Paragraph 5-10 (previously paragraph 5-11), specifically provides that Soldiers who were not medically qualified under procurement medical fitness standards, when accepted for enlistment, or who became medically disqualified under these standards prior to entry on active duty or active duty training or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within six months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at that time, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of AR 40-501, Chapter 3.

(6) Glossary prescribes entry-level status for ARNGUS and USAR Soldiers begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II advanced individual training (AIT). (Soldiers completing Phase I BT or basic combat training remain in entry-level status until 90 days after beginning Phase II.)

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided 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 "JFW" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-11, Failed Medical/ Physical/ Procurement Standards.

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 USAR, 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, and change the SPD and RE codes and narrative reason. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The proceedings of the EPSBD revealed the applicant had a medical condition (Other meniscus derangements, unspecified medial meniscus, left knee), which was disqualifying for enlistment and existed prior to entry on active duty. These findings were approved by competent medical authority and the applicant agreed with the findings and proposed action for administrative separation from the Army.

c. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions, at the time, of Chapter 5-11, AR 635-200, with an uncharacterized discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Failed Medical/Physical/Procurement Standards," and the separation code is "JFW." Army Regulation 635-8 (Separation Processing and Documents), governs 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 to be entered under this regulation.

d. The applicant requests the SPD code to be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations. The SPD code specified by Army Regulations in effect at the time for a discharge under Chapter 5, paragraph 5-11, is "JFW."

e. The applicant requests a RE code change to be able to reenlist. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE

code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of RE codes if appropriate.

f. The applicant contends, in effect, the medical officers at Fort Jackson assumed the applicant's injury was a pre-existing condition and pushed the applicant out of the Army. According to the applicant's family's attorney, even if the injury was caused by the applicant's pre-existing condition the Army needs to cover any medical expenses as it was re-injured while in the Army. The Army knew about the pre-existing condition and accepted the applicant, which disqualifies the Army from denying the applicant coverage. The applicant is seeking medical care.

(1) The applicant provided the Accessions Medical History Report, dated 15 August 2019, showing the examining medical physician noted on 22 January 2019, excision large left anteromedial parameniscal cyst, debridement medial meniscus, good recovery. Patient fully released by ortho on 19 April 2019.

(2) The applicant provided a Mayo Clinic doctor's letter, dated 7 August 2020, that states in part, the applicant underwent a left knee arthroscopic partial medial meniscectomy along with the cyst excision on 22 January 2019. The applicant did fully recover from this surgery within 3-4 months. It does not sound like the applicant sustained a new injury that happened after a duration of at least one full year with normal function of the knee. As the applicant had a duration of several months of normal function with their knee and being medically cleared for full activities, it would be reasonable to think that this new injury in 2020 is not directly related to the applicant's surgery done on 22 January 2019.

(3) Eligibility for medical benefits for Veterans does 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.

g. 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:

h. 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, a voting member, 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.** There is no mitigating condition or experience which occurred during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A.** The Board's Medical Advisor applied liberal consideration and opined that given the applicant's

preliminary surgical history (surgical site, large size of cyst etc.) with the very early presentation of left knee symptoms soon after entry on active duty without specific trauma, the discharge met Existed Prior To Service standards and was proper and equitable.

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

i. Response to Contention(s):

(1) The applicant requests the narrative reason for the discharge to be changed.

(2) The applicant requests the SPD code to be changed.

(3) The applicant requests a RE code change to be able to reenlist.

(4) The applicant contends, in effect, the medical officers at Fort Jackson assumed the applicant's injury was a pre-existing condition and pushed the applicant out of the Army. According to the applicant's family's attorney, even if the injury was caused by the applicant's pre-existing condition the Army needs to cover any medical expenses as it was re-injured while in the Army. The Army knew about the pre-existing condition and accepted the applicant, which disqualifies the Army from denying the applicant coverage. The Board considered this contention and determined in accordance with AR 635-200 that, based on the applicant's official record, the applicant was separated while in an entry level status and an Uncharacterized Discharge is the proper characterization of service except when the DCS, G-1 determines that an Honorable Discharge is warranted based on unusual circumstances involving personal conduct and performance of duty, which is not applicable in this case. Therefore, no change is warranted.

j. 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.

k. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, in accordance with AR 635-200 and based on the applicant's official record the applicant was separated while in an entry level status and Uncharacterized discharge is the proper characterization of service except when the DCS, G-1 determines that an Honorable discharge is warranted based on unusual circumstances involving personal conduct and performance of duty, which is not applicable in this case. Therefore, no change is warranted.

(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.

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:

4/25/2024

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