

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 5 October 2020
- b. **Date Received:** 8 October 2020
- 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 (under honorable conditions). The applicant requests an upgrade to honorable and a change of their reentry code.

(2) The applicant seeks relief stating they are trying to apply for education benefits under the Post 9/11 GI Bill and they would need an honorable discharge not an uncharacterized to qualify.

b. Board Type and Decision: In a records review conducted on 20 March 2024, and by a 5-0 vote, the Board determined the narrative reason for the applicant's separation is improper and inequitable based on the circumstances surrounding the applicant's discharge. Based on available medical records, behavioral health was aware of significant pre-enlistment treatment with documentation of concerning mental status. However, in reaction, behavioral health discouraged the applicant from reporting ongoing in-service psychiatric distress, intimidating the applicant by indicating it would lengthen the applicant's discharge, and did not request pre-enlistment records allowing for an appropriate fitness for duty evaluation. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined the RE code was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Entry Level Performance and Conduct / Army Regulations 635-200, Chapter 11 / JGA / RE-3 / Uncharacterized

b. Date of Discharge: 30 January 2020

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file. However, the applicant provided documents which are described below in 3c (1) through (6).

(1) **Date of Notification of Intent to Separate:** 21 January 2020

(2) **Basis for Separation:** the applicant cannot meet the minimum standards prescribed for successful completion of training because of lack of motivation and self-discipline. They cannot or will not adapt socially or emotionally to a military lifestyle. They disobeyed multiple orders from their chain of command and were arrested for assaulting Drill Sergeant G _____. They were formally counseled and provided a reasonable period of time to overcome their deficiencies but failed to do so. Their performance demonstrates that they cannot meet the

Army's minimum standards for successful completion of training and does not warrant continued service in the U.S. Army.

(3) Recommended Characterization: Uncharacterized

(4) Legal Consultation Date: 21 February 2020

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 30 December 2019 / 6 years, 24 weeks
- b. **Age at Enlistment / Education / GT Score:** 30 / Bachelor's Degree / 100
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / NA / 1 month, 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) A DA Form 4856 (Developmental Counseling Form) dated 14 January 2020, reflects the applicant received event-oriented counseling from their Senior Drill Sergeant, for their continued refusal to train and disobedience to lawful orders. The Senior Drill Sergeant informed the applicant that they will be recommending they receive an Entry Level Separation from the U.S. Army in accordance with Army Regulation 635-200, chapter 11. The applicant agreed with the information and signed the form.

(2) A DA Form 4856, dated 15 January 2020, reflects the applicant received counseling for disrespecting a noncommissioned officer (NCO), lack of discipline, lack of motivation, disrespectful, and lack of Army Values. The Key Points of Discussion reflects on 12 January 2020, after given orders not to leave the battalion area, the applicant proceeded to walk off. The applicant failed to follow the guidance by the Drill Sergeants. The applicant was informed that if they would be considered absent without leave if they continued to walk down the road, at that point, they proceeded to run into the woods, when one of the Drill Sergeants had to chase them. On this day the applicant violated Article 91 (Insubordinate Conduct Toward an NCO), UCMJ, Article 92 (Failure to Obey an Order), UCMJ, and Article 134 (Disorderly Conduct), UCMJ. On 13 January 2020, they disrespected multiple Cadre members in the dining facility. They proceeded to assault Drill Sergeant G____, violating Article 128 (Assault), striking them multiple times. The applicant agreed with the information and signed the form.

(3) A memorandum, Charlie Company, 1st Battalion, 19th Infantry Regiment, subject: Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 21 January 2020, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200,

Chapter 11, for misconduct described in previous paragraph 3c(2), with a recommended characterization of uncharacterized. On that same day, the applicant's acknowledgement of receipt of separation notice.

(4) On 21 January 2019, 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 on their own behalf and waived their right to consulting counsel and representation by military counsel and/or civilian counsel at no expense to the Government. They 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 and that they may expect to encounter substantial prejudice in civilian life.

(5) A memorandum, Charlie Company, 1st Battalion, 19th Infantry Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 21 January 2020, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states the reason for their actions is the applicant disobeyed multiple orders from their chain of command and they were arrested for assaulting Drill Sergeant G _____. They were counseled in writing and afforded the opportunity to overcome their deficiencies. It is not feasible or appropriate to accomplish other disposition as the applicant has been afforded ample opportunity to successfully meet the standards and has made no substantial progress. It is not prudent to retain them for further training.

(7) The Headquarters, U.S. Army Garrison, Fort Benning Orders 027-2203, dated 27 January 2020, assigned the applicant to the U.S. Army Transition Point for transition processing with a date of discharge of 30 January 2020.

(8) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 30 January 2020, with 1 month and 1 day of net active service this period. The applicant has not completed their first full term of service. The DD Form 214 shows in –

- item 24 (Character of Service) – Uncharacterized
- item 26 (Separation Code) – JGA
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Entry Level Performance and Conduct

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** University Hospital Department of Psychiatry Individualized Multidisciplinary Treatment Team Plan dated 8 May 2014, reflecting a discharge diagnosis of Schizophrenia Form Disorder.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: None

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

- 3rd Party Statement
- The University Hospital Letter
- page 3 of 4, DD Form 2808 (Report of Medical Examination)
- Medical Document, XR Scoliosis Survey, reflecting an Impression of Kyphoscoliosis
- Case Files for Approved Separation
- DD Form 214
- Letter, referencing Supplemental Claim for Post 9/11 GI Bill Education Benefits

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 DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 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) Paragraph 1-16 (Counseling and Rehabilitative Requirements) stated Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier.

(5) Chapter 11 (Entry Level Performance and Conduct) provides for the separation of personnel due to unsatisfactory performance, conduct, or both, while in an entry level status.

(a) Paragraph 11-3a (2) stipulates the policy applies to Soldiers who are in entry-level status, undergoing initial entry training, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous active duty.

(b) Paragraph 11-8 (Description of Service) stipulates service will be described as uncharacterized under the provisions of this chapter.

(6) Chapter 15 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

(7) Glossary defines entry-level status for RA Soldiers is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

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 "JGA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 11, Entry-Level Performance and Conduct.

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. Manual for Courts-Martial, United States (2019 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 91 (Insubordinate Conduct Toward an NCO), Article 92 (Failure to Obey an Order), Article 128 (Assault), and Article 134 (Disorderly Conduct).

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. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment for wrongfully using marijuana and was involuntary separation from the service. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 11, by reason of Entry Level Performance and Conduct, with a characterization of service of Uncharacterized. The applicant completed 1 month and 1 day of net active service this period; however, the applicant did not complete their 6-year, 24-week contractual enlistment obligation.

c. Chapter 11 (Entry Level Performance and Conduct) provides for the separation of personnel due to unsatisfactory performance, conduct, or both, while in an entry level status. Soldiers who are in entry-level status, undergoing initial entry training, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous active duty. Their service will be described as uncharacterized under the provisions of this chapter.

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: The applicant was diagnosed in-service with an Adjustment Disorder. However, documentation clearly outlines a more significant psychiatric illness was present with current service connection for Schizophrenia.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant was diagnosed in-service with an Adjustment Disorder. However, documentation clearly outlines a more significant psychiatric illness was present with current service connection for Schizophrenia.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that individuals with psychosis have fluctuating motivation, self-discipline, and adaptation often exacerbated by stressors; basic training stressors would have easily escalated symptoms and presentation. In terms of the assault, it is very probable this was also tied to the applicant's condition; paranoia, delusions, and altered thought processes lead to poor problem solving, impulse control, and judgement. Due to the improper actions by behavioral health including coercion, intimidation, not providing an appropriate assessment after being made aware of a possible psychiatric

condition placed the applicant and others at risk, along with clearing the applicant for disciplinary action knowing the likelihood that the applicant had a disabling condition.

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

c. Response to Contention(s): The applicant contends they are trying to apply for education benefits under the Montgomery Post 9-11 GI Bill and they would need an honorable discharge not an uncharacterized to qualify. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's in-service Adjustment Disorder with service connection for Schizophrenia fully outweighing the applicant's Entry Level Performance and Conduct of failing to meet the minimum standards prescribed for successful completion of training due to lack of motivation and self-discipline basis for separation.

d. The Board determined the narrative reason for the applicant's separation is improper and inequitable based on the circumstances surrounding the applicant's discharge. Based on available medical records, behavioral health was aware of significant pre-enlistment treatment with documentation of concerning mental status. However, in reaction, behavioral health discouraged the applicant from reporting ongoing in-service psychiatric distress, intimidating the applicant by indicating it would lengthen the applicant's discharge, and did not request pre-enlistment records allowing for an appropriate fitness for duty evaluation. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined the RE code was proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's in-service Adjustment Disorder with service connection for Schizophrenia mitigated the applicant's Entry Level Performance and Conduct of failing to meet the minimum standards prescribed for successful completion of training due to lack of motivation and self-discipline. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

(3) The RE code will not change, as the applicant is diagnosed with a disabling condition.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD code to: Secretarial Authority/ JFF**
- d. Change RE Code to: No Change**
- e. Change Authority to: AR 635-200**

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20200009119

Authenticating Official:

7/31/2024



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