

**1. Applicant's Name:**

- a. **Application Date:** 20 November 2020
- b. **Date Received:** 20 November 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 honorable conditions. The applicant requests a change to honorable and a change of their narrative reason for separation.

(2) The applicant seeks relief stating the nature of their current discharge status reflects poorly on their character and their time in the service. Their family, friends, drill sergeants and employers alike would disapprove of their company commander's evaluation of who they were.

(3) Their company commander transferred them to the Fitness Training Company under false pretenses and refused their communications with legal counsel upon their notification of involuntary separation. Trial Defense Service could not contact them without their company commander's supervision. They were placed in solitary confinement for an isolated incident.

(4) It is important that their DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects who they were during Basic Combat Training and who they could have been in Advance Individual Training if their contractual obligation been kept. Let the record show they were cleared to train and held at a Medical Facility with no injury, placed in solitary confinement until Military Police made a desperate attempt to remove them and place them in their custody. They have paid the fines, completed extra duty assigned to them and would like the proper adjustments be made to their DD Form 214.

**b. Board Type and Decision:** In a records review conducted on 17 July 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) / Army Regulation 635-200, Paragraph 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 20 August 2020

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 13 August 2020

**(2) Basis for Separation:** assaulted a Military Police Officer, failed to report, disrespected noncommissioned officers (NCOs), and failed to obey lawful orders on multiple occasions.

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

**(4) Legal Consultation Date:** 13 August 2020

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

**(6) Separation Decision Date / Characterization:** 13 August 2020 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 21 January 2020/ 3 years, 26 weeks

b. **Age at Enlistment / Education / GT Score:** 28 / Test Base Equivalent Certificate / 108

c. **Highest Grade Achieved / MOS / Total Service:** E-1 / NA / 7 months

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** NA

g. **Performance Ratings:** NA

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

**(1)** A DA Form 689 (Individual Sick Slip), dated 29 April 2020, reflects the applicant, assigned to the Fitness Training Company, had an injury to their left finger and left knee. The medical officer approved the applicant to return to duty.

**(2)** A DA Form 2808 (Report of Medical Examination) dated 15 May 2020, reflects in –

- Item 15c (Purpose of Examination) - Separation
- item 77 (Summary of Defects and Diagnoses) – Eczema – current (wrists) and left hand ring finger, fracture, 14 February 2020
- item 78 (Recommendation) – continue cream for skin condition; cleared by Orthopedics for fracture; and may proceed with administrative process

**(3)** A DA Form 4856 (Developmental Counseling Form) dated 4 June 2020, reflects the applicant received counseling from their drill sergeant to inform them of their extra duty details. The applicant agreed with the information and signed the form. [Note: the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) is not in evidence for review, to show the applicant's misconduct.]

**(4)** A DA Form 4856 (Developmental Counseling Form) dated 17 June 2020, reflects the applicant received counseling from their drill sergeant, to inform them of their recommendation for separation in accordance with Army Regulation 635-200 (Active Duty Enlisted Administrative Separation), chapter 11 (Entry Level Performance and Conduct). Key

Points of Discussion states the applicant is being recommended for discharge for failure to adapt to military environment. The applicant refused to sign the form.

(5) Page 4 (Article 15 Punishment Worksheet) of a DA Form 2627, dated 31 July 2020, reflects the applicant received punishment consisting of a forfeiture of \$866.00 pay for 2 months and extra duty for 14 days. [Note: the applicant only provided page 4 of their DA Form 2627.]

(6) A DA Form 4856 (Developmental Counseling Form) dated 3 August 2020, reflects the applicant received event oriented counseling from their company commander for assaulting a Military Police (MP) Officer. Key Points of Discussion states, on 23 July 2020, the applicant refused to leave the Behavioral Health Clinic. The applicant's first sergeant gave them a direct order to leave the clinic and get into a van, the applicant refused the order. The MPs tried to escort them out of the clinic and had to drag them out. Once the MPs got them close to the van, the applicant grabbed a hold of a male MP's right leg using their arms and legs. Two MPs tried to get the applicant to loosen their grip. While in the scuffle the applicant bit the male MP on the leg and was then tasered. The applicant received punishment under a Field Grade Article 15 for their actions. The company commander recommends separation from the Army given their misconduct. The applicant initialed that they agreed with the information and initialed their signature "XXX." [Note: the DA Form 2627 is not in evidence for review regarding this misconduct.]

(7) A memorandum, Fitness Training Company, 120th Adjutant General Battalion (Reception), 193rd Infantry Brigade, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 13 August 2020, notified the applicant of initiating actions to separate them for Commission of a Serious Offense, for misconduct as described above in paragraph 3c(2). On the same day the applicant acknowledged receipt of notification for separation.

(8) A memorandum, Fitness Training Company, 120th Adjutant General Battalion (Reception), 193rd Infantry Brigade, subject: Election of Rights Regarding Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 13 August 2020, reflects the applicant's acknowledgment of having been advised by their consulting counsel of the basis of the contemplated action to separate them for commission of 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. They elected not to submit statements in their behalf and elected to waive consulting counsel and representation. They understood that they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them and they may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(9) In a memorandum for record, subject: Election of Rights – Trainee Separation Action, dated 13 August 2020, reflects the applicant's company commander affirmed –

- the command has allowed the applicant to listen to the recorded briefing concerning the administrative separation process
- that no member of the command or cadre has unduly influenced the trainee concerning the trainee's election of rights
- the trainee does not request a telephonic consultation with a Trial Defense Services attorney

(10) A memorandum, Fitness Training Company, 120th Adjutant General Battalion (Reception), 193rd Infantry Brigade, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense,

[Applicant], dated 13 August 2020, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The company commander states the applicant received a Summarized Article 15 on 4 June 2020 in violation of Article 90 (Willfully Disobey Superior Commissioned Officer), UCMJ and Article 91 (Insubordination Conduct Toward an NCO), UCMJ; and a Field Grade Article 15 on 31 July 2020, in violation of Article 91 (Insubordination Conduct Toward an NCO), UCMJ and Article 128 (Assault), UCMJ.

(11) A memorandum, Headquarters, 193rd Infantry Brigade, U.S. Army Training Center and Fort Jackson, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 13 August 2020, the separation authority, after careful consideration of all matters, directed the applicant be separated from the Army prior to their expiration of current term of service and their service be characterized as General (Under Honorable Conditions). After reviewing the rehabilitative transfer requirements the commander determined the requirements do not apply to this action.

(12) On 20 August 2020, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides they completed 7 months of net active service this period and did not complete their first full term of service obligation of 3 years and 26 weeks.

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

j. **Behavioral Health Condition(s):** None

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- 3rd Party Statement

**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), dated 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

**(1)** An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and

performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. 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. Paragraph 14-12c (Commission of a Service Offense), stated 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 14-12c, misconduct (serious offense).

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 Instruction 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):

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

**b.** A review of the applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment for act of misconduct on two occasions and was involuntarily separated from the Army. The DD Form 214 provides the applicant was discharged with a character of service of General (Under Honorable Conditions), for misconduct, (serious offense). They completed 7 months of net active service this period; however, they did not complete their 3 years, 26-week contractual enlistment obligation.

**c.** Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

**d.** Published DoD 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? **No.** The Board's Medical Advisor, a voting member, reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant although longstanding personality disordered traits were documented. 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.**

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **N/A.**

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

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

**(1)** The applicant contends Their company commander transferred them to the Fitness Training Company under false pretenses and refused their communications with legal counsel upon their notification of involuntary separation. Trial Defense Service could not contact them without their company commander's supervision. The Board considered this contention and determined there is insufficient evidence in the file to support this contention. 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.

(3) The applicant contends it is important that their DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects who they were during Basic Combat Training and who they could have been in Advance Individual Training if their contractual obligation been kept. The Board considered this contention and determined there is insufficient evidence in the file to support the applicant's contention that their DD Form 214 is inequitable based on the applicant's quality of service at the time of discharge. 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.

(4) The applicant contends, let the record show they were cleared to train and held at a Medical Facility with no injury, placed in solitary confinement until Military Police made a desperate attempt to remove them and place them in their custody. The Board considered this contention and determined there is insufficient evidence in the file to support this contention. 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.

(5) The applicant contends they have paid the fines, completed extra duty assigned to them and would like the proper adjustments be made to their DD Form 214. The Board considered this contention and determined there is insufficient evidence in the file to support this contention. 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 Board found the totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

(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:**

8/7/2024

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