

1. Applicant's Name:

- a. **Application Date:** 31 October 2011
- b. **Date Received:** 9 November 2011
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is uncharacterized. The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, the applicant had no conduct issues.

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:** Entry Level Performance and Conduct / AR 635-200, Chapter 11 / JGA / RE-3 / Uncharacterized

b. **Date of Discharge:** 18 October 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 28 September 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was unable to obtain a security clearance for access to sensitive information. A security clearance is required for military occupational specialty (MOS) 25U and without one, the applicant could not effectively perform mission duties, the applicant's potential for advancement and positions of leadership are unlikely, and the applicant would not be able to participate in training that involved sensitive information/equipment, all of this resulting in an adverse impact on a unit's operational readiness, discipline, good order, and morale. The applicant was provided with counseling and rehabilitation required by paragraph 11-4.

(3) **Recommended Characterization:** Uncharacterized

(4) **Legal Consultation Date:** On 28 September 2011, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 3 October 2011

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 18 April 2011 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 30 / High School Graduate / 97
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / None / 6 months and 1 day
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Memorandum, Intent to Deny Security Clearance (Applicant), dated 18 July and 26 August 2011, shows the U.S. Army Central Personnel Security Clearance Facility made a preliminary decision to deny the applicant's security clearance due to information in the statement of reasons. Statement of Reasons shows the applicant's credit report revealed the applicant had financial issues that led to security concerns.

(2) On 6 September 2011, the applicant elected not to submit a reply to the statement of reasons. On this same date, the applicant was counseled by the company's executive officer to inform the applicant that they could not be awarded MOS 25U without a secret security clearance. Revocation of the security clearance would result in reclassification to another MOS or separation from the Army under AR 635-200, chapter 13, unsatisfactory performance.

(3) Memorandum, Intent to Deny Security Clearance (Applicant), dated 7 September 2011, states the applicant elected not to comply with the requirements contained in the Intent to Deny Security Clearance letter of instruction. The Central Clearance Facility made a preliminary decision to deny the applicant's security clearance due to information in the statement of reasons. The applicant needed to reclassify into an MOS that did not require access to classified information.

(4) On 7 September 2011, the applicant's command submitted a request for reclassification for the applicant.

(5) Memorandum, Reclassification Request (Applicant) from the Chief, Trainee/Student Processing Branch, Fort Gordon, dated 13 September 2011, informed the applicant's commander that the request for reclassification was disapproved. There were no MOS's available for reclassification for the applicant. In addition, a request for an exception to policy was sent to the Human Resources Command; however, the reclassification request was disapproved. It was recommended that the applicant be processed for separation in accordance with AR 635-200, Chapter 11 (see email).

(6) Report of Mental Status Evaluation, 20 September 2011, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements.

(7) The applicant's Enlisted Record Brief, dated 20 September 2011, shows the applicant was flagged for involuntary separation/field initiated (BA), effective 20 September 2011.

(8) On 26 September 2011, the applicant was counseled by the company's executive officer on MOS reclassification rejection. Because the applicant opted not to submit a rebuttal to the revocation of their security clearance, the applicant was informed without a security clearance the applicant would need to reclassify or be separated from the Army. The inability to maintain a security clearance represented a failure to perform their duties, and would result in separation from the Army under AR 635-200, chapter 13.

(9) On 28 September 2011, the commander initiated action to separate the applicant for entry level performance and conduct under AR 635-200, Chapter 11, Section 1, paragraph 11-3.

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

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** MSE as described in previous paragraph 4h.

The ARBA's medical advisor reviewed DoD and VA medical records.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 149; and DD Form 214.

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 11 provides for the separation of personnel due to unsatisfactory performance, conduct, or both, while in an entry-level status.

(4) 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 AD or IADT or no more than 90 days of Phase II under a split or alternate training option. (See the glossary for precise definition of entry-level status.)

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

(6) 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 (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 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. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. An honorable discharge may be given only in cases which are clearly warranted by unusual circumstances involving outstanding personal conduct and/or performance of duty. An honorable discharge is rarely ever granted.

c. The applicant's DD Form 214 indicates the applicant was discharged on 18 October 2011 under the provisions of AR 635-200, Chapter 11, by reason of Entry-level performance and conduct, with a characterization of service of uncharacterized.

d. The applicant contends, in effect, they had no conduct issues. AR 635-200 states a separation will be described as entry-level with service uncharacterized if, at the time separation action is initiated, the Soldier has less than 180 days of continuous active duty service. The evidence of the AMHRR reflects the applicant was notified on 28 September 2011 of the intent to initiate separation proceedings from the Army. At the time of the notification, the applicant had 115 days of continuous active duty service. Based on the time in service, the applicant was in an Entry Level Status, and the uncharacterized discharge was appropriate.

e. 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service 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: The applicant contends, in effect, they had no conduct issues. 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.

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, 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.

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(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:** 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:

4/24/2024

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