

1. Applicant's Name:

- a. **Application Date:** 21 December 2020
- b. **Date Received:** 21 December 2020
- 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 honorable. The applicant requests a change to the RE code to 1 or 3.

b. The applicant seeks relief contending, in effect, they were misdiagnosed for an injury sustained during enlistment which was further injured during a deployment to Haiti. The applicant received pain medications only for the diagnosis the applicant was given at the time. Within a year after discharge the applicant was correctly diagnosed by the VA hospital network, resulting in an expedited surgery to fix the issue. The diagnosis given by the Army for their injury that resulted in the discharge and the RE code 4 was "Tenosynovitis of the shoulder and Tendinopathy of the bicep." The correct diagnosis is a "Torn rotator cuff and Shoulder impingement." Additionally, during the applicant's time in service, the applicant did not have any negative marks on their record (e.g., articles or misconduct). Furthermore, the applicant's DD Form 214 states that they received an "Honorable" discharge with a successful completion of service.

c. **Board Type and Decision:** In a records review conducted on 5 May 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:** Disability, Severance Pay, Non-Combat Related / AR 635-40, Chapter 4 / JFO / RE-4 / Honorable

b. **Date of Discharge:** 25 August 2011

c. **Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** NIF
- (2) **Basis for Separation:** NIF
- (3) **Recommended Characterization:** NIF
- (4) **Legal Consultation Date:** NIF
- (5) **Administrative Separation Board:** NA
- (6) **Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 2 October 2007 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 21 / High School Graduate / 84
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 88H10, Cargo Specialist / 3 years, 10 months, and 24 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Haiti / None
- f. **Awards and Decorations:** AAM-2, NDSM, GWOTSM, HSM, ASR
- g. **Performance Ratings:** None
- h. **Disciplinary Action(s) / Evidentiary Record:**
 - (1) Physical Disability Information Report, 31 May 2011, shows the applicant received a 20 percent disability rating.
 - (2) The applicant's Enlisted Record Brief, 31 May 2011, shows the applicant was ineligible for reenlistment due to an approved involuntary separation (9T).
 - (3) Orders 153-0002, 2 June 2011, shows the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 25 August 2011 from the Regular Army. These orders shows the applicant received a 20 percent disability rating.
 - (4) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), shows the applicant completed the first full term of service. The applicant was discharged on 25 August 2011 under the authority of AR 635-200, Chapter 4, with a narrative reason of Disability, Severance Pay, Non-Combat Related. The DD Form 214 was authenticated with the applicant's electronic signature.
- 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.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; DD Form 214; military medical record; email supplement to DD Form 149.

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 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Physical Disability Evaluation System according to the provisions of title 10, United States Code (USC), chapter 61, (10 USC 61) and Department of Defense Directive (DODD) 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The objectives of this regulation are to maintain an effective and fit military organization with maximum use of available manpower and provide benefits for eligible soldiers whose military service is terminated because of a service-connected disability; and provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

e. Chapter 4 addresses the Eligibility for Disability Evaluation, Initiation of Medical Evaluation, Physical Disability Evaluation, Review and Confirmation of Physical Evaluation Board Action, Medical Processing Related to Disability Evaluation, and Disposition Subsequent to Adjudication.

f. 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.

g. 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 "JFO" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-40, Disability, Severance Pay, Non-Combat legacy Disability Evaluation System.

h. 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 a change to the RE code to 1 or 3. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant provided their DD Form 214 (Certificate of Release or Discharge from Active Duty), however, the AMHRR does contain a properly constituted copy of the DD Form 214, which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-40, Chapter 4, by reason of Disability, Severance Pay, Non-Combat Related with a characterization of service of Honorable.

c. The applicant requests the RE code to be changed to RE code 1 or 3. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

d. The applicant contends, in effect, they were misdiagnosed with "Tenosynovitis of the shoulder and Tendinopathy of the bicep" for an injury sustained during enlistment which was further injured during a deployment to Haiti. Within a year after discharge the applicant was correctly diagnosed by the VA hospital network, resulting in an expedited surgery to fix the issue. The correct diagnosis is a "Torn rotator cuff and Shoulder impingement."

(1) The applicant provided a medical report from the Naval Medical Center Portsmouth, 20 July 2010, it shows:

(a) A magnetic resonance imaging (MRI) was completed on 20 July 2010. Findings: Four views of the right shoulder demonstrate hypertrophic changes at the acromioclavicular joint. Otherwise, normal mineralization and alignment. No evidence of acute or healing fractures. Ligamentous relationships, joint spaces and soft tissues are preserved. Impression: AC joint degenerative changes.

(b) Multiplanar multisequence non-contrasted MRI of the right shoulder was performed on 20 July 2010. Findings: The rotator cuff is intact without evidence of tendinopathy, full-thickness tear, or atrophy. The acromioclavicular joint is unremarkable in appearance. The acromion is Type II in morphology. There is thickening of the inferior joint capsule and synovium. Maximal thickness of the joint capsule and synovium adjacent to the neck of the humerus is 5.2 mm, abnormally increased. There is also decreased signal intensity and amorphous appearance of the rotator interval. The longhead of biceps tendon intraarticular portion appears heterogeneous in signal and is ill-defined. There is no significant labral or cartilaginous abnormality. No joint effusion. Impression: 1) Thickening and decreased signal of the rotator interval with thickened inferior joint capsule synovium, without fluid signal intensity increase. Findings are consistent with chronic adhesive capsulitis. 2) Intraarticular longhead biceps tendinopathy and probable fraying.

(c) The AMHRR contains a Physical Disability Information Report, 31 May 2011, that shows the applicant received a 20 percent disability rating.

e. The applicant contends, in effect, during their time in service, they did not have any negative marks on their record (i.e., articles or misconduct) and received an "Honorable" discharge with a successful completion of service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

f. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Post-Traumatic Stress Disorder (100% Service Connected).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found diagnosis of Post-Traumatic Stress Disorder was made while on active 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 the applicant's RE code remain a 4. Medical record review indicates that the applicant was diagnosed with Post-Traumatic Stress Disorder while in the military and has been found 100% service connected for Post-Traumatic Stress Disorder by the VA. The VA also notes the applicant is housebound.

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

b. Response to Contention(s):

(1) The applicant contends, in effect, they were misdiagnosed with "Tenosynovitis of the shoulder and Tendinopathy of the bicep" for an injury sustained during enlistment which was further injured during a deployment to Haiti. Within a year after discharge the applicant was correctly diagnosed by the VA hospital network, resulting in an expedited surgery to fix the issue. The correct diagnosis is a "Torn rotator cuff and Shoulder impingement." The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention.

(2) The applicant contends, in effect, during their time in service, they did not have any negative marks on their record (e.g., articles or misconduct) and received an "Honorable" discharge with a successful completion of service. The Board considered this contention and the applicant's three years and ten months of service, including one overseas tour to Haiti and the numerous awards received by the applicant. The current characterization of service is

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Honorable, there is no further relief available with respect to characterization. Liberal consideration was applied to the re-entry code, and it was determined that the applicant's 100% service connected Post-Traumatic Stress Disorder is a service limiting condition. 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 found the re-entry code associated with the Honorable characterization was both proper and equitable and voted not to change the re-entry code despite applying liberal consideration of all the evidence before the Board. The applicant is 100% service connected for Post-Traumatic Stress Disorder which is a service limiting condition.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, 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. The applicant is 100% service connected for Post-Traumatic Stress Disorder which is a service limiting condition.

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:

10/29/2024

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

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SPD – Separation Program
Designator
TBI – Traumatic Brain Injury

UNC – Uncharacterized
Discharge

UOTHC – Under Other Than
Honorable Conditions

VA – Department of Veterans
Affairs