

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

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

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

The applicant seeks relief contending, in effect, during basic training, a series of events began, and the applicant did not receive adequate guidance for the circumstances which led to the discharge. A parent was beaten to death and then revived, only to be diagnosed with terminal prostate cancer, including AIDS, and had only three months to two years to live. The applicant was the only person who cared for the parent, with whom the applicant spent a year and ten months before the parent's death. Spending time with the parent impacted the ability to reenlist and obtain employment with government agencies. The applicant further details the contentions in an allied self-authored statement provided with the application.

b. **Board Type and Decision:** In a records review conducted on 4 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 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:** Physical Condition, Not a Disability / AR 635-200, Chapter 5-17 / JFV / RE-3 / Uncharacterized

b. **Date of Discharge:** 21 January 2004

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 15 January 2004

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant had a condition which was not compatible with satisfactory service, a disorder manifesting disturbances of perception, thinking, emotional control, or behavior sufficiently severe and the ability to perform military duties was significant, and further attempts to train were not justified.

(3) **Recommended Characterization:** Uncharacterized

(4) **Legal Consultation Date:** On 15 January 2004, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 15 January 2004 / Uncharacterized

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 23 October 2003 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 97
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / None / 2 months, 29 days
- 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:** Two Developmental Counseling Forms for being recommended for an entry level separation; lacking motivation and desire to train; and failing to adapt to military service.
- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**
 - (1) **Applicant provided:** None

(2) **AMHRR Listed:** Report of Mental Status Evaluation, 9 January 2004, reflects the applicant was cleared for an expeditious separation. The applicant had the mental capacity to understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant was evaluated for a disorder manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe and the applicant's ability to effectively perform the military duties was significantly impaired, and the command was advised such would potentially interfere with assignment or performance of duty, including military training. The condition was not amenable to rehabilitation while in initial training and did not amount to a disability, and if retained in the service, the command may anticipate problems with unreliability in stressful situations; depression; excessive use of cadre; minimal potential for soldierization; anxiety; and risk of self-harm.

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

5. APPLICANT-PROVIDED EVIDENCE: Online application; DD Form 293; DD Form 149; DD Form 214; self-authored statement; death certificate; and medical record (consultation sheet).

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) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) 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.

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

(5) Paragraph 5-1 states a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. A general (under honorable conditions) discharge is normally inappropriate for individuals separated under the provisions of paragraph 5-14 (previously paragraph 5-17) unless properly notified of the specific factors in the service that warrant such characterization.

(6) Paragraph 5-14 (previously paragraph 5-17) specifically provides that a Soldier may be separated for other physical or mental conditions not amounting to a disability, which interferes with assignment to or performance of duty and requires that the diagnosis be so severe that the Soldier's ability to function in the military environment is significantly impaired.

(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), at the time of the discharge, 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 "JFV" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-14 (previously Chapter 5-17), Physical Condition, Not a Disability.

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: 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.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's Army Military Human Resource Record (AMHRR) includes evidence the applicant, while in training status, was evaluated by competent medical authority and determined the applicant had a disorder manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe and the applicant's ability to effectively perform the military duties was significantly impaired, and the command was advised such would potentially interfere with assignment or performance of duty, including military training. The condition was not amenable to rehabilitation while in initial training and did not amount to a disability, and if retained in the service, the command may anticipate problems with unreliability in stressful situations; depression; excessive use of cadre; minimal potential for soldierization; anxiety; and risk of self-harm.

The applicant's AMHRR reflects the applicant, in an entry level status, had a total of 92 days of creditable active duty service upon discharge.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions, at the time, of Chapter 5, paragraph 5-17, AR 635-200 with an uncharacterized discharge. The narrative reason specified by Army Regulations, at the time, for a discharge under this paragraph was "Physical Condition, Not a Disability," and the separation code is "JFV." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the SPD code should be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations. The SPD code specified by Army Regulations at the time, for a discharge under Chapter 5, paragraph 5-17, is "JFV."

The applicant desires to rejoin the Military Service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The applicant contends not receiving proper guidance for the circumstances which led to the discharge. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends family issues affected behavior and ultimately caused the discharge. There is no evidence in the AMHRR the applicant ever sought assistance for the events leading to the separation action under review.

The applicant contends an upgrade of the discharge will allow the applicant to obtain federal employment. The Board does not grant relief to gain employment or enhance employment opportunities.

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: a disorder manifesting disturbances of perception, thinking, emotional control, or behavior.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was separated for a disorder manifesting disturbances of perception, thinking, emotional control, or behavior.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is no evidence of any mitigating BH conditions or experiences. The applicant was separated for a disorder manifesting disturbances of perception, thinking, emotional control, or behavior that was evaluated by BH and determined to meet the criteria for a Chapter 5-17 separation in accordance with the Army Regulations at the time. There are no other in service BH conditions or experiences, and the applicant is not service connected by the VA for any BH conditions. Accordingly, there is no mitigation for the basis of separation.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's behavioral health condition outweighed the discharge.

b. Response to Contention(s):

(1) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention but determined that the circumstances of the applicant's parent, while extremely difficult, do not mitigate the applicant's Uncharacterized characterization of service and Condition, Not a Disability narrative reason for separation.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention but found insufficient mitigating factors to show that the applicant's Condition, Not a Disability narrative reason for separation was improper or inequitable.

(3) The applicant desires to rejoin the Military Service. The Board considered this contention and voted to maintain the RE-code at a RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate

(4) The applicant contends not receiving proper guidance for the circumstances which led to the discharge. The Board considered this contention but found that the applicant waived legal counsel as part of the separation proceedings.

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain federal employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 there were no mitigating factors for the Board to consider. Since the applicant was discharged for failing medical procurement standards due to a behavioral health condition, Uncharacterized is proper and equitable. 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.

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

4/23/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:
AWOL – Absent Without Leave

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001210

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