

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, believing to have suffered from a heat injury, the applicant received an uncharacterized discharge, which was later discovered the applicant had suffered from an acute anxiety attack during a clinical visit. The applicant, who never had anxiety prior to the enlistment, is now receiving treatment for depression and anxiety after returning home with those medical issues. The applicant believes an uncharacterized discharge under AR 40-501, paragraph 2-27, should allow the applicant to receive a general discharge because there were no disciplinary actions. Army Regulation 40-501 does not indicate what type of discharge must be issued. Accordingly, the applicant believes a general discharge is more suitable, considering the conditions were caused and aggravated by the active Army training.

b. **Board Type and Decision:** In a records review conducted on 14 March 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:** Failed Medical/Physical/Procurement Standards / AR 635-200, Paragraph 5-11 / JFW / RE-3 / Uncharacterized

b. **Date of Discharge:** 16 July 2014

c. **Separation Facts:**

(1) **Date Entrance Physical Standards Board (EPSBD) convened:** 27 June 2014

(2) **EPSBD Findings:** The findings of the evaluating physicians indicate the applicant was medically unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians the condition existed prior to service. The applicant was diagnosed with: Learning Disorder NOS (EPTS); Adjustment Disorder with Depressed Mood.

(3) **Date Applicant Reviewed and Concurred with the Findings, and Requested Discharge without Delay:** 3 July 2014

(4) **Separation Decision Date / Characterization:** 7 July 2014 / Uncharacterized

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 9 June 2014 / 3 years, 28 weeks
- b. **Age at Enlistment / Education / GT Score:** 17 / High School Graduate / 105
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 / None / 1 month, 8 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None / The applicant's AMHRR reflects award of the NDSM, however, the award is not reflected on the DD Form 214.
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** The applicant's Enlisted Record Brief (ERB), 17 July 2014, reflects the applicant was flagged for Involuntary Separation or Discharge (Field Initiated) (BA), and was ineligible for reenlistment due to Pending Separation (9V). The applicant's rank remained PVT/E-1.

The applicant's DD Form 214 reflects the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 5-11, with a narrative reason of Failed Medical/Physical/Procurement Standards. The DD Form 214 was authenticated with the applicant's electronic signature. The applicant had no lost time.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**
 - (1) **Applicant provided:** EPSBD findings as described in previous paragraph 3c.
 - (2) **AMHRR Listed:** EPSBD findings as described in previous paragraph 3c.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2).

- 5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293; Congressional correspondence with ACTS Control Sheet; DD Form 214; AR 40-501, Paragraph 2-27; third-party statement; DA Form 4707; DA Form 268; two DD Forms 2807-1; AIT data sheet; DA Form 2808; and ERB.
- 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 that 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.

(6) Paragraph 5-10 (previously paragraph 5-11) specifically provides that Soldiers who were not medically qualified under procurement medical fitness standards, when accepted for enlistment, or who became medically disqualified under these standards prior to entry on active duty or active duty training or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within six months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at that time, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of AR 40-501, Chapter 3.

(7) Glossary prescribes 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), in effect at the time, provided 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 "JFW" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-11, Failed Medical/ Physical/ Procurement Standards.

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 proceedings of the EPSBD revealed the applicant had a medical condition, which was disqualifying for enlistment and existed prior to entry on active duty. These findings were approved by competent medical authority and the applicant agreed with the findings and proposed action for administrative separation from the Army.

The applicant contends having suffered from a heat injury, which was later determined to be an acute anxiety attack; the applicant had never suffered from an anxiety prior to the enlistment. The proceedings of the EPSBD revealed the applicant had a medical condition, which was disqualifying for enlistment and existed prior to entry on active duty. The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends because there were no disciplinary action and considering the medical conditions were caused and aggravated by the active Army training, a general (under honorable conditions) discharge was more suitable. Army Regulation 635-200 states a separation will be described as entry-level with service uncharacterized if, at the time separation action, the Soldier had less than 180 days of continuous active duty service. The applicant's AMHRR reflects the EPSBD convened on 27 June 2014, and the applicant served 19 days of continuous active duty at the time of EPSBD proceedings. The applicant acknowledged on 3 July 2014, of being informed of the EPSBD findings, concurred with the proceedings, and requested to be discharged from the Army without delay. The applicant had a total of 38 days of continuous active duty service upon discharge.

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: Adjustment Disorder. Additionally, the applicant asserts Depression and Anxiety, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder. The applicant self-asserts Depression and Anxiety at the time of military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there is no evidence of any BH conditions or experiences that mitigate the applicant's Uncharacterized discharge for Failed Medical/Physical Procurement Standards. The applicant's Learning Disorder NOS was determined to have existed prior to service and failed to meet medical physical procurement standards. The applicant was separated in accordance with separation guidelines. The applicant's asserted symptoms of depression and anxiety are part of his in service diagnosis of an Adjustment Disorder that was diagnosed due to the applicant's difficulty adjusting to the military. The applicant's Adjustment Disorder does not have a nexus with or provide mitigation for failing to meet medical physical procurement standards for a Learning Disorder.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, it was determined that the applicant's Learning Disorder NOS existed prior to entry into service and failed to meet medical physical

procurement standards and their in-service connected Adjustment Disorder with Depressed Mood did not outweigh the basis of separation - applicant was medically unfit for appointment or enlistment in accordance with current medical fitness standards.

b. Response to Contention(s):

(1) The applicant contends having suffered from a heat injury, which was later determined to be an acute anxiety attack, the applicant had never suffered from an anxiety prior to the enlistment. The Board considered this contention and determined the applicant has a Learning Disability that EPTS starting at the age of 7 through graduation from high school. Therefore, the applicant's discharge for Failed Medical/Physical/Procurement Standards is appropriate.

(2) The applicant contends because there were no disciplinary action and considering the medical conditions were caused and aggravated by the active Army training, a general (under honorable conditions) discharge was more suitable. The Board considered this contention and determined in accordance with AR 635-200 that, based on the applicant's official record, applicant was separated while in an entry level status and an UNC is the proper characterization of service except when the DCS, G-1 determines that an HD 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, despite applying liberal consideration of all the evidence before the Board, the applicant's Adjustment Disorder, asserted Depression and Anxiety did not excuse or mitigate the basis for separation of Failure to meet Medical/Physical/Procurement Standards. 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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001225

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:

5/2/2024

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