

**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 general (under honorable conditions). The applicant is being reconsidered for a change in narrative reason and RE code.

The applicant seeks relief contending, in effect, because the applicant was discharged for failing two APFT tests, the discharge should be changed. Instead of an honorable discharge, the applicant received a general discharge because of a prior Article 15 violation for failing to report an altercation between two other Soldiers. The applicant is a bachelor's degree candidate who desires to obtain school benefits. The other two Soldiers are still in the Army and are receiving benefits. Because of the conduct of others, the benefits should not have been denied. The discharge should be considered honorable.

b. **Board Type and Decision:** In a records review conducted on 1 February 2023, and by a 5-0 vote, the Board denied any change to the narrative reason or RE code 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:** Unsatisfactory Performance / AR 635-200, Chapter 13 / JHJ / RE-3 / Honorable

b. **Date of Discharge:** 23 July 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 8 June 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons:

The applicant has shown the inability to perform satisfactory by not progressing as a Soldier. Accordingly, it was determined the applicant was unqualified for further military service.

Specifically, the applicant failed three Army Physical Fitness Tests and was barred from reenlistment. The applicant was unable to meet the requirements of having the reenlistment bar lifted during a three-month period because of medical profiles stating the applicant was unable to take an Army Physical Fitness Test.

The applicant received a Field Grade Article 15 on 21 June 2011 for being disorderly.

The applicant had been disrespectful to noncommissioned officers by mannerisms and have violated the Barracks Policy twice by having overnight guests.

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

**(4) Legal Consultation Date:** 20 June 2012

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

**(6) Separation Decision Date / Characterization:** 6 July 2012 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 28 July 2010 / 4 years

**b. Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 90

**c. Highest Grade Achieved / MOS / Total Service:** E-2 / 92A10, Automated Logistical Specialist / 1 year, 11 months, 26 days

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

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

**f. Awards and Decorations:** NDSM, GWOTSM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Eight Developmental Counseling Forms for being recommended for the BAR to reenlistment and separation under Chapter 13, unsatisfactory performance, bar to reenlistment initiated for failing three consecutive APFTs, consequences of incomplete APFT, violating the Barracks SOP, substandard performance, disrespecting an NCO, and being insubordinate.

Serious Incident Report (SIR), 24 March 2011, reflects the applicant and 10 other Soldiers were involved in an assault incident on 23 March 2011 in PVT E.'s barracks room.

Report of Proceedings by Investigating Officer/Board of Officers, 20 April 2011, reflects:

The investigating officer (IO) found the root cause of the fight between PV2 M. and PFC E. was when the applicant informed PV2 M. of PFC E. spreading rumors about PV2 M, which led to a verbal confrontation and an altercation between PV2 M. and PFC E.

The IO recommended CG Article for PV2 M. and PFC E. for fighting; the applicant and PV2 E. for the roles in providing an environment for the fight to occur; PV2 W. L. for making a false official statement to the IO during the interview and for the role in enabling the confrontation; and PV2 H. and PFC H. for the role in the fight.

FG Article 15, 16 June 2011, for disorderly conduct on 23 March 2011. The punishment consisted of a reduction to E-1; forfeiture of \$733 pay (suspended); and extra duty for 7 days.

Body Fat Content Worksheet, 21 June 2011, reflects the applicant was not in compliance with the Army weight standards and was recommended monthly weight loss of 3-8 pounds.

Army Physical Fitness Test Scorecard reflects the applicant failed record APFTs on 23 June 2011, 12 July 2011, and 7 December 2011.

Bar to Reenlistment Certificate, 1 February 2012, reflects the imposition of the bar because of failing the Army Physical Fitness Test was approved on 2 February 2012.

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

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Mental Status Evaluation, 4 April 2012, reflects 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. The applicant had been screened for PTSD and mTBI with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The AXIS I diagnosis was Occupational Problem.

**5. APPLICANT-PROVIDED EVIDENCE:** Online application 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) 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 3-7b states 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.

(4) Chapter 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a

member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(5) Paragraph 13-8 prescribes for the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

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 "JHJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 13, unsatisfactory performance.

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 contends being discharged for failing two Army Physical Fitness Tests and instead of an honorable discharge, the applicant received a general discharge because of an Article 15 for failing to report an altercation between two other Soldiers. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant desire to obtain school benefits. Eligibility for veterans' benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends other Soldiers involved in an altercation were not discharged, while the applicant received an Article 15 for failing to report the altercation between the two Soldiers. The DODI 1332.28 provides each case must be decided on its individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case.

#### **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 found, based on the Board's Medical Advisor's opine, reviewing the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that, based on the Board's Medical Advisor's opine, the applicant was diagnosed in service with an Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board applied liberal consideration, to include considering the Board's Medical Advisor's opine, and found that the applicant was diagnosed in service with an Adjustment Disorder. However, an Adjustment Disorder does not provide any mitigation for the basis of separation given that it is a transient reaction to stress and does not provide mitigation in the absence of a more severe BH condition. The VA has not service connected any BH conditions, and the applicant did not self-assert any BH conditions.

(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 Adjustment Disorder outweighed the medically unmitigated misconduct or the basis for separation.

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

(1) The applicant contends being discharged for failing two Army Physical Fitness Tests and instead of an honorable discharge, the applicant received a general discharge because of an Article 15 for failing to report an altercation between two other Soldiers. The Board considered this contention but found that the applicant's characterization of service was upgraded at a previous Army Discharge Review Board. The board determined that a change to narrative reason and RE code was not warranted based on APFT failure is unsatisfactory performance.

(2) The applicant desire to obtain school benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(3) The applicant contends other Soldiers involved in an altercation were not discharged, while the applicant received an Article 15 for failing to report the altercation between the two Soldiers. The Board considered this contention, but determined the DODI 1332.28 provides each case must be decided on its individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case during proceedings.

**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 determined the discharge is proper and equitable as a prior ADRB has upgraded the discharge with a Character of Honorable. Therefore, no further relief is available.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, 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:**

5/24/2024

**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