

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 period under review is uncharacterized. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was unjust because the Acute Stress Disorder diagnosis was not treated. As a private, the unit climate became hostile to those who were no longer training. The discharge was for performance and conduct, rather than for the PTSD caused by a targeted assault on an enlisted military police Soldier. To hasten the discharge, the applicant was humiliated and forced to sign paperwork the applicant did not understand. While on active duty, the applicant sought assistance from the base Chaplain, the Behavioral Medicine Division, and drill sergeants immediately following the assault, only to be met with repeated disparagement and humiliation. In January 2011, while on convalescence leave, the aggravated assault occurred. According to the VA documents, the applicant was targeted and assaulted because of the Army service in the military police MOS. The applicant was diagnosed with PTSD a month after the traumatic incident. Three months after the incident, the applicant was discharged with a diagnosis of Acute Stress Disorder. There were no behavioral or conduct issues with the service as a 31B Soldier in training prior to the trauma. The applicant had persistent flashbacks, night terrors, and dis-associative experiences after returning from convalescence leave, but no behavior issues. The applicant followed orders and sought mental health treatment on a regular basis. The applicant is being treated by the VA for service-connected post-traumatic stress disorder, with a disability rating of 70 percent. Following discharge, the applicant was notified of not being able to access any VA benefits or medical treatment. The applicant went three years without therapy for the continuing psychiatric disorders, including but not limited to suicide attempts and severe depression.

b. **Board Type and Decision:** In a records review conducted on 7 December 2023, 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:** 8 April 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 29 March 2011

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant had been recommended for separation by R. S., LCSW, because of acute stress disorder. The evaluation resulted in a finding that the applicant was unlikely to satisfactorily complete training and it was in their best interest to be separated. Therefore, the applicant was recommended for separation according to AR 635-200, Chapter 11 (Inability to Adapt). The applicant was provided the counseling and rehabilitation required by paragraph 11-4.

(3) Recommended Characterization: Uncharacterized

(4) Legal Consultation Date: he applicant waived legal counsel on 29 MAR 11.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 1 April 2011 / Uncharacterized

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 2 November 2010 / 5 years

b. **Age at Enlistment / Education / GT Score:** 20 / some college / 116

c. **Highest Grade Achieved / MOS / Total Service:** E-2 / None / 5 months, 7 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:** Developmental Counseling Forms for being recommended for separation for acute stress disorder resulting from an assault.

Los Angeles Police Department Investigative Report reflects on 7 February 2011, the applicant and suspect engaged in a verbal dispute over relatives' vehicle and the suspect pushed the applicant to the ground and placed both hands around the neck, choking the applicant.

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

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

(1) Applicant provided: Report of Medical Assessment and Continuation Record of Treatment as described in paragraph 4j(2) below.

Department of Veterans Affairs service-connected disability letter, 8 August 2017, reflecting the disability for PTSD with dissociative features and unspecified psychotic disorder.

(2) AMHRR Listed: Report of Medical Assessment and Continuation Record of Treatment, 16 March 2011, the examining medical physician noted in the comments section: The Anxiety was treated and resolved. The Continuation Record of Treatment listed anxiety and depression as being treated by the Behavioral Medicine Division, which was resolved and indicated "counseling as needed."

Report of Mental Status Evaluation, 28 March 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in administrative proceedings and was mentally responsible. The examiner stated the applicant was seen in BHD/CMHS on 17 March 2011. The applicant was physically assaulted while on convalescent leave in January 2011. The traumatic event occurring in the civilian community was not related to Army service. The applicant was experiencing symptoms of Acute Stress Disorder, persistent reexperiencing of images and thoughts, avoidant behaviors, and symptoms of anxiety. These symptoms are causing significant stress which impeded the applicant's ability to focus and effectively participate in Army training. It was recommended the command consider a Chapter 11 discharge which would allow the applicant the opportunity to return home and seek the appropriate services necessary to treat the Acute Stress Disorder. Since Soldiers in training are not eligible for the therapeutic services required for the situation, medical officials determined a discharge was in the best interests of the applicant and the Army. The applicant had a normal mental status examination.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149 and listed attachments. Additional Evidence: Email correspondence, caregiver authored statement, and VA letter.

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) 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.

(5) Chapter 11 provides for the separation of personnel due to unsatisfactory performance, conduct, or both, while in an entry level status (ELS).

(6) Paragraph 11-3a (2) stipulates the policy applies to Soldiers who are in entry-level status, undergoing IET, 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.)

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

(8) 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), 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: 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.

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

The applicant contends separation under Entry Level Status (ELS) was not appropriate and should have received an honorable discharge. Army Regulation 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 29 March 2011 of the intent to initiate separation proceedings from the Army. At the time of the notification, the applicant had 148 days of continuous active duty service. Based on the time in service, the applicant was in an ELS status, and the uncharacterized discharge was appropriate.

The applicant contends the narrative reason for the discharge needs changed, because the discharge should have been for PTSD caused by a targeted assault as an enlisted military police Soldier and there were no behavior issues and the applicant complied with the orders. The applicant was separated under the provisions of Chapter 11, AR 635-200, with an uncharacterized discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Entry Level Performance and Conduct" and the separation code is "JGA." Army Regulation 635-8 (Separation Processing and Documents) governs the 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 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 to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 11, is "JGA."

The applicant contends the discharge was unjust because the acute stress disorder diagnosis was not treated, the unit environment became hostile to those who were no longer training, and the applicant seeking assistance following the assault were met with repeated disparagement and humiliation. The applicant's AMHRR reflects the applicant, while in training status, was not eligible for therapeutic services and was recommended for a discharge to allow the applicant the opportunity to return home and seek the appropriate treatment for the acute stress disorder. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being humiliated and forced to sign paperwork the applicant did not understand to expedite the discharge. The applicant's AMHRR reflects upon being notified of the intent to initiate separation proceedings from the Army and the opportunity to consult with an appointed counsel for consultation, the applicant waived the right to consult with counsel on 29 March 2011.

The applicant contends being treated by the VA for service-connected PTSD and was granted 100 percent disability. The applicant provided a VA letter indicating the applicant was granted 100 percent disability rating for service connection PTSD and a third-party letter from the caregiver which described the applicant's change in behavior after returning from military service and supported the applicant's PTSD contention. The applicant's AMHRR contains no documentation of PTSD diagnosis.

The applicant contends being informed of not being able to obtain VA benefits or medical treatment. Eligibility for veterans' benefits 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.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] 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, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Acute Stress Disorder and PTSD.

(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 Acute Stress

Disorder and is service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's Uncharacterized discharge for Entry Level Performance and Conduct appears appropriate. The applicant was diagnosed with an Acute Stress Disorder after being physically assaulted by a family member while home on convalescent leave and has subsequently been diagnosed and service connected by the VA for PTSD. While the assault and applicant's diagnosis of Acute Stress Disorder contributed to the discharge, an Uncharacterized discharge is appropriate given the length of time in service. The narrative reason is also appropriate given that the applicant requested to be discharged expeditiously. A service connection for PTSD does not negate the appropriateness of the applicant's discharge since the VA operates under a different set of laws.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidentiary record, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Acute Stress Disorder and/or PTSD outweighed the basis for applicant's Uncharacterized discharge for Entry Level Performance and Conduct.

b. Response to Contention(s):

(1) The applicant contends separation under Entry Level Status (ELS) was not appropriate and should have received an honorable discharge. The Board considered this contention and determined (per AR 635-200) that the applicant was separated while in an entry level status and an Uncharacterized Discharge is the proper characterization of service. Exceptions may be granted when the DCS, G-1 determines that an Honorable Discharge is warranted based on unusual circumstances involving personal conduct and performance of duty. The evidentiary record contained no such evidence.

(2) The applicant contends the narrative reason for the discharge needs changing because the discharge should have been for PTSD caused by a targeted assault with no behavior issues. The Board considered this contention and determined that (per AR 635-200) the applicant was separated while in an entry level status and an Uncharacterized Discharge is the proper characterization of service.

(3) The applicant contends the SPD code should be changed. The Board considered this contention and determined that the applicant received the appropriate SPD code for an Uncharacterized discharge specified in AR 635-200, Chapter 11.

(4) The applicant contends the discharge was unjust because the acute stress disorder diagnosis was not treated, the unit environment became hostile to those who were no longer training, and the applicant seeking assistance following the assault were met with repeated disparagement and humiliation. The Board considered this contention and found no evidence of this assertion in the evidentiary record or applicant-provided documents.

(5) The applicant contends being humiliated and forced to sign paperwork the applicant did not understand to expedite the discharge. The Board considered this contention and found no evidence of this assertion in the evidentiary record or applicant-provided documents. The applicant requested an expedited discharge and the command complied as able.

(6) The applicant contends being treated by the VA for service-connected PTSD and was granted disability. The Board considered this contention and determined that the criteria

used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization.

(7) The applicant contends being informed of not being able to obtain VA benefits or medical treatment. The Board considered this contention and determined that eligibility for Veteran's benefits do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact the Department of Veterans Affairs for further assistance.

c. The Board determined that the discharge is, at this time, proper and equitable considering the current evidentiary record. However, the applicant may request a personal appearance hearing to address 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: The Board determined that the discharge is, at this time, proper and equitable considering the current evidentiary of record and current regulations.

(1) The Board voted not to change the applicant's characterization of service because the applicant was separated while in an entry level status. An Uncharacterized discharge is the proper characterization of service per AR 635-200.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD under the same pretexts 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:

12/27/2023

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001383

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