

1. Applicant's Name:

- a. **Application Date:** 21 October 2020
- b. **Date Received:** 26 October 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is Uncharacterized. The applicant requests an upgrade to honorable, a change of their separation code and the narrative reason for separation.

(2) The applicant seeks relief stating they sustained bilateral stress fracture, hips during training. They were discharged for entry level performance in lieu of a medical discharge. A DA Form 2173 (Statement of Medical Examination and Duty Status) states Soldier's Injury would result in a claim against the government for medical care" and they were still discharged for entry level performance and conduct, even when an injury was recorded and known.

b. Board Type and Decision: In a records review conducted on 22 May 2024, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Entry Level Performance and Conduct / Army Regulations 635-200, Chapter 11 / JGA / RE-3 / Uncharacterized

b. Date of Discharge: 19 April 2016

c. Separation Facts: The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file. However, the applicant provided documents which are described below in 3c (1) through (6).

(1) Date of Notification of Intent to Separate: 12 April 2016

(2) Basis for Separation: the applicant cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, or self-discipline. They cannot or will not adapt socially or emotionally to a military lifestyle. They have demonstrated character and behavior characteristics not compatible with satisfactory continued service.

(3) Recommended Characterization: Uncharacterized

(4) Legal Consultation Date: 12 April 2016

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 13 April 2016 / Uncharacterized

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 20 October 2015 / 8 years
- b. **Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 121
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / NA / 6 months
- 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:**

(1) A DA Form 3349 (Physical Profile) dated 3 March 2016, reflects the applicant's medical condition as stress reaction, both hips (femoral neck) with a temporary profile for 30 days. Item 8 (Functional Limitations and Capabilities and Other Comments) states –

- Expected date of fully mission capable – 25 April 2016
- Justification comments for fully mission capable – applicant will need rehabilitation after profile
- No climbing, crawling, or jumping/landing, no lifting/lowering/carrying for more than 10 pounds, no running or walking/marching, no standing for more than 15 minutes per hour
- No physical training, marching, no standing over 15 minutes/per hour, must use crutches at all times

(2) A DA Form 4856 (Developmental Counseling Form) dated 5 March 2016, reflects the applicant received event oriented counseling from their Drill Sergeant, informing the applicant of the denial of convalescent leave. Key Points of Discussion states a memorandum from the Army Community Hospital made recommendation for unit convalescent leave for 30 days. The applicant's unit commander denied the convalescent leave. The reason for the denial is, at Fort Benning, GA the applicant will receive the best medical care that is focused on getting them back into training. Additionally, after reviewing the DA Form 3349, which starts 4 March 2016 and ends 3 April 2016, places severe limitations on their ability to train, as any training would cause more harm than good. With that stated, the applicant will, by default miss an excess of 72 hours of training and will be recommended for restart after they have recovered from their injury. If the applicant is not able to return to full duty, then their unit and the Army will have no choice but ensure they are in the best health possible and they will be chaptered due to medical reasons. The applicant agreed with the information and signed the form.

(3) A DA Form 2173 (Statement of Medical Examination and Duty Status) dated 8 March 2016, reflects –

- the applicant's injury as Bilateral Stress Fracture Hips
- the injury is likely to result in a claim against the Government for future medical care
- the injury was incurred in the Line of Duty

- on or about 4 March 2016, applicant complains of bilateral hip pain, no trauma, applicant was examined, had a bone scan, and diagnosed with Bilateral Stress Fracture Hips, while in Fort Benning, GA

(4) A DA Form 4856, dated 13 March 2016, reflects the applicant received event oriented counseling for missing training due to sick call/physical therapy. The Plan of Action states the applicant has been counseled, will receive the missed training, will make every attempt to be present at all training periods and informed that if a pattern of absences is established, they may be recommended for Restart. The applicant agreed with the information and signed the form.

(5) A DA Form 4856 dated 16 March 2016, reflects the applicant received event oriented counseling with the recommendation for a Restart due to profile. The Key Points of Discussion states the applicant is being considered for a restart due to the amount of training they will have missed from being on profile from 4 March 2016 to 3 April 2016 with an expected dated of being fully mission capable of 25 April 2016. The applicant agreed with the information and signed the form.

(6) A DA Form 4856 dated 16 March 2016, reflects the applicant received event oriented counseling for refusal to train. The applicant informed their senior drill sergeant that they refuse to restart during their previous counseling session. By refusing to restart, they are refusing to train and will be recommended for involuntary separation. The applicant agreed with the information and signed the form.

(7) Three DA Forms 4856 dated 18 March 2016 and 19 March 2016, reflects the applicant received event oriented counseling from their senior drill sergeant, company first sergeant and company commander, with the recommendation for Entry Level Separation as they have demonstrated a lack of motivation by refusing to Restart. The applicant was counseled and understands they are being recommended for separation. The applicant agreed with the information and signed the forms.

(8) A DA Form 4856 dated 6 April 2016, reflects the applicant received event oriented counseling from the Army National Guard Liaison Noncommissioned Officer, for Entry Level Separation, unsatisfactory performance. The Key Points of Discussion states the applicant was recommended for an Entry Level Performance and Conduct due to inability to adapt to military order, lack of motivation, discipline by refusing to train when they were offered numerous opportunities by their chain of command and the Army National Guard Liaison to restart or continue in training, they have chosen to refuse to train. They are derelict in the performance of their duty. The applicant agreed with the information and signed the form.

(9) A memorandum, Bravo Company, 1st Battalion, 50th Infantry Regiment, subject: Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 12 April 2016, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 11, for misconduct described in previous paragraph 3c (2). with a recommended characterization of uncharacterized. On that same day, the applicant acknowledged of receipt of separation notice.

(10) On 12 April 2016, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They elected not to submit statements on their own behalf and waived their right to consulting counsel and representation by military counsel and/or civilian counsel at no expense to the Government. They understood that as the result of issuance of a discharge that

is less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws and that they may expect to encounter substantial prejudice in civilian life. They further understood that they may be ineligible to apply for enlistment in the U.S. Army for a period of up to 2 years after discharge.

(11) A memorandum, Bravo Company, 1st Battalion, 50th Infantry Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 12 April 2016, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states it is not feasible or appropriate to accomplish other disposition as the applicant cannot or will not adapt to a military lifestyle, they refuse to restart Basic Training.

(12) A memorandum, Bravo Company, 1st Battalion, 50th Infantry Regiment, subject: Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 13 April 2016, the separation authority having reviewed the separation packet of the applicant and after careful consideration, directed the applicant be separated from the Army prior to the expiration of their current term of service. The separation authority directed the applicant's service be characterized as Uncharacterized. After reviewing the rehabilitative transfer requirement, they determined the requirements are waived and the transfer will serve no useful purpose or produce a quality, Soldier.

(13) The Headquarters, U.S. Army Garrison, Fort Benning Orders 106-2214, dated 15 April 2016, released the applicant from active duty for training, discharged them from the Reserve of the Army, and returned them to the Army National Guard.

(14) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 19 April 2016, with 2 months and 23 days of net active service this period. The applicant has not completed their first full term of service. The DD Form 214 shows in –

- item 24 (Character of Service) – Uncharacterized
- item 26 (Separation Code) – JGA
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Entry Level Performance and Conduct

(15) The State of Ohio, Adjutant General's Department Orders 133-915 dated 12 May 2016, discharged the applicant from the Army National Guard and as a reserve of the Army, effective 19 April 2016. The type of discharge is shown as Uncharacterized.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE: None

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with letter
- Case Files for Approved Separation
- DD Form 214
- Congressional Letter

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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.

(2) 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.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Paragraph 1-16 (Counseling and Rehabilitative Requirements) stated Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality, Soldier.

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

(a) Paragraph 11-3a (2) stipulates the policy applies to Soldiers who are in entry-level status, undergoing initial entry training, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous active duty.

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

(6) Chapter 15 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the

Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

(7) Glossary defines entry-level status for Army National Guard, for Soldiers ordered to Initial Active Duty for Training for one continuous period, it terminates 180 days after beginning training.

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 DoD Instructions 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):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant sustained an injury during Basic Training and was assigned a temporary profile prohibiting further training. The applicant received numerous developmental counseling and was recommended to restart Basic Training after they have recovered from their injury, the applicant refused to restart Basic Training. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 11, by reason of Entry Level Performance and Conduct, with a characterization of service of Uncharacterized. The applicant completed 2 months and 23 days of net active service this period; however, the applicant did not complete their 8-year contractual Army National Guard enlistment obligation.

c. Chapter 11 (Entry Level Performance and Conduct) provides for the separation of personnel due to unsatisfactory performance, conduct, or both, while in an entry level status. Soldiers who are in entry-level status, undergoing initial entry training, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable

continuous active duty. Their service will be described as uncharacterized under the provisions of this chapter.

d. 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

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

c. Response to Contention(s): The applicant contends stating they sustained bilateral stress fracture, hips during training and discharged for entry level performance in lieu of a medical discharge they were still discharged for entry level performance and conduct, even when an injury was recorded and known. The board carefully deliberated on this matter during its proceedings. After thorough consideration, they decided to maintain the current characterization of the discharge. This decision was based on the absence of any mitigating factors that would warrant a change. The applicant's discharge was executed in full compliance with Army Regulation 635-200, Chapter 11, which pertains to Entry Level Performance and Conduct. In light of these circumstances, an Uncharacterized discharge is deemed both appropriate and fair. The separation process adhered to all procedural and substantive requirements outlined in the regulation. Furthermore, it fell within the authorized discretion of the separation authority. Throughout the process, the applicant was afforded full administrative due process, ensuring that all proper procedures were followed.

d. 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 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 contentions that the discharge was improper or inequitable.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's original characterization of service, finding no mitigating circumstances to warrant a change. The Uncharacterized discharge was deemed appropriate and fair, given that the applicant was separated due to entry-level performance issues and conduct, specifically their refusal to resume training. The board determined that the discharge process adhered to all procedural and substantive regulatory

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requirements, fell within the separation authority's discretionary powers, and afforded the applicant full administrative due process throughout the proceedings.

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

4/14/2025

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
UOTH – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs