

1. Applicant's Name:

- a. **Application Date:** 19 August 2020
- b. **Date Received:** 20 October 2020
- c. **Counsel:** None

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

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is uncharacterized. The applicant requests:

- an upgrade to honorable or general (under honorable conditions)
- removal of any derogatory information from the applicant's record
- entitled promotions, and awards and citations
- medical discharge
- disability severance pay
- temporary or permanent disability retirement

b. The applicant seeks relief contending, in effect, the discharge is an error or unjust and should not have received an uncharacterized discharge. Counsel did not explain the applicant's rights as a 17 or 18 year old.

c. **Board Type and Decision:** In a records review conducted on 10 April 202, 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:** Condition, Not a Disability / AR 635-200, Chapter 5-17 / JFV / RE-3 / Uncharacterized

b. **Date of Discharge:** 14 December 2017

c. **Separation Facts:** The applicant's AMHRR contains the case separation file. However, the applicant provided the case separation file which are described below in 3c (1) through (6).

(1) **Date of Notification of Intent to Separate:** 6 December 2017

(2) **Basis for Separation:** The applicant was informed of the following reasons: Bilateral hip injury and pain.

(3) **Recommended Characterization:** Uncharacterized

(4) **Legal Consultation Date:** On 6 December 2017, the applicant waived legal counsel.

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

(6) Separation Decision Date / Characterization: 8 December 2017 / Uncharacterized

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 26 June 2017 / 4 years
- b. Age at Enlistment / Education / GT Score:** 24 / Associate Degree / 105
- c. Highest Grade Achieved / MOS / Total Service:** E-3 / None / 5 months and 19 days
- d. Prior Service / Characterizations:** NA
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** None
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) Physical Profile Record shows on 15 November 2017, the applicant had bilateral hip pain/injury. The applicant had a confirmed grade 3 femoral neck stress fractures in each hip and was pending reimaging to check their health status.

(2) On 16 November 2017:

(a) Physical Profile Record shows the applicant developed femoral neck stress factors since attempting initial entry training at Fort Leonard Wood. This condition prevented full participation in unit physical readiness training, basic marksmanship training, field training, and ruck marches without increase in pain and potentially raising further harm. The applicant's medical condition was not a disqualifying condition per AR 40-501, chapter 2. The applicant had no medical condition that did not meet retention standards per AR 40-501, chapter 3. There was also no condition that warranted an existed prior to service status per AR 635-200, chapter 5-11, Failed Medical/Physical/Procurement Standards. The applicant was recommended for a chapter 5-17, Condition, Not a Disability.

(b) A physician assistant at the Consolidated Troop Medical Clinic reviewed the applicant's medical records and determined a medical examination was not required for separation.

(c) The applicant elected not to have a separation medical examination.

(3) The applicant provided a counseling form received on 27 November 2017 showing the applicant was pending an administrative separation (chapter 5-17) and a flag.

(4) On 27 November 2017, the applicant was flagged for involuntary separation/field initiated (BA) effective 17 November 2017.

(5) On 30 November 2017, the applicant was informed to return to duty and to continue to follow the same profile issued by physical therapy.

(6) Memorandum, Separation Under AR 635-200, Chapter 5-17, Other Designated Physical or Mental Conditions, (Applicant), dated 5 December 2017, shows the commander initiated separation action to separate the applicant for bilateral hip injury and pain.

(7) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant had not completed the first full term of service. The applicant was discharged under the authority of AR 635-200, paragraph 5-17, Condition, Not a Disability, with a narrative reason of uncharacterized. The DD Form 214 was authenticated with the applicant's electronic signature.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; case separation packet; VA Form 21-22 (Appointment of Veterans Service Organization as Claimant's Representative); and VA Form 21-4138 (Statement in Support of Claim).

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) 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.

(2) 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.

(3) Paragraph 3-9 states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

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

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

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

(7) Chapter 15 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.

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

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

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

a. The applicant requests an upgrade to honorable or general (under honorable conditions), removal of any derogatory information from the applicant's record, entitled promotions, and awards and citations, a medical discharge, disability severance pay, and a temporary or permanent disability retirement. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's AMHRR includes evidence the applicant, while in a training status, was evaluated by competent medical authority and determined the applicant had a bilateral hip pain/injury. A physician assistant recommended the applicant receive a chapter 5-17, Condition, Not a Disability.

c. The applicant's DD Form 214 shows the applicant served 5 months and 19 days. On 14 December 2017, the applicant was discharged under AR 635-200, paragraph 5-17, Condition, Not a Disability with an uncharacterized characterization of service.

d. The applicant contends, in effect, the discharge is an error or unjust and should not have received an uncharacterized discharge. Counsel did not explain the applicant's rights as a 17 or 18 year old. The applicant provided the election of rights memorandum, dated 6 December 2017, showing the applicant waived legal counsel. The AMHRR shows the applicant entered the military service at the age of 24. AR 635-200, paragraph 5-1, states a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. A general (under honorable conditions) discharge is normally inappropriate for individuals separated under the provisions of paragraph 5-14 (previously paragraph 5-17) unless properly notified of the specific factors in the service that warrant such characterization. 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. The applicant requests removal of any derogatory information from the applicant's record, entitled promotions, and awards and citations, a medical discharge, disability severance pay, and a temporary or permanent disability retirement. The applicant's requests does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

f. 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.** Applicant has an Uncharacterized discharge and is requesting upgrade to GD/HD. There are no mitigating BH conditions.

(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**
The Board's Medical Advisor applied liberal consideration and opined that the applicant's Uncharacterized Chapter 5-17 separation was proper and equitable. Applicant developed bilateral femoral stress fractures during military training which prevented full participation in military training. As per AR 40-501 chapter 2, the applicant's medical condition was not a disqualifying condition. The applicant has also requested medical disability for her condition. However, under AR 40-501, chapter 3, the applicant had no medical condition that did not meet medical retention standards as per AR 40-501, chapter 3. Also, per AR 40-501 chapter 2, the applicant's medical condition was not a disqualifying condition and were given the opportunity to rehabilitate and opt for discharge from the military.

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

b. Response to Contention: The applicant contends, in effect, the discharge is an error or unjust and should not have received an uncharacterized discharge. Counsel did not explain the applicant's rights as a 17 or 18 year old. The board considered this contention and the totality of the applicant's record and in accordance with AR 40-501, chapter 3, the applicant had no medical condition that did not meet medical retention standards as per AR 40-501, chapter 3. Also, the applicant elected to be released from service instead of being rehabilitated and restart in the phase that they were currently in. Therefore, the applicant's Uncharacterized Chapter 5-17 separation was proper and equitable.

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, there were no mitigating factors for the board to consider. The applicant was discharged for failing medical procurement standards after being diagnosed with bilateral hip injury and pain. Also, the applicant's military records indicate the applicant was properly treated for the applicant's injuries and the applicant was properly counseled regarding the administrative separation. The applicant was discharged for a condition (bilateral femoral stress fractures), not a disability, Uncharacterized is proper and equitable. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

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

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210006937

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:

12/4/2024

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