

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210007530

1. Applicant's Name: [REDACTED]

a. Application Date: 24 March 2021

b. Date Received: 30 March 2021

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 Honorable. The applicant requests a change of their separation authority.

(2) The applicant seeks relief contending when submitting a packet for Officer Candidate School, their recruiter realized there was an issue with the separation authority (Army Regulation 635-200, paragraph 5-15a(2) on their DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation authority does not apply to them as they were not an Active Guard/Reserve (AGR) Soldier on an initial tour as a recruiter, nor were they involuntarily released from the Army. They do have a Reentry Code of RE-3 due to an Army Physical Fitness (APFT) Failure suspension of favorable personnel actions (Flag) at the time of their Expiration Term of Service (ETS), which is the only thing that should have negatively impacted their DD Form 214.

b. Board Type and Decision: In a records review conducted on 16 May 2024, and by a 5-0 vote, the Board determined the narrative reason for discharge was inequitable because the applicant completed their first term of enlistment however the narrative reason and separation authority provided was incorrect. Therefore, the Board voted to grant relief in the form of a change to the narrative reason for separation to Completion of required Active Service with a corresponding separation code of KBK. The Board determined the RE code was proper and equitable and voted not to change it. The applicant already has an Honorable discharge.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Non-Retention on Active Duty / Army Regulations 635-200, Paragraph 5-15a(2) / LGH / RE-3 / Honorable

b. Date of Discharge: 25 September 2014

c. Separation Facts: The applicant's case separation file is void from their Army Military Human Resource Record (AMHRR).

4. SERVICE DETAILS:

a. Date / Period of Reenlistment: 18 April 2011 / 3 years, 23 weeks

b. Age at Enlistment / Education / GT Score: 22 / GED / 104

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92F10, Petroleum Supply Specialist / 3 years, 5 months, 8 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea / None

f. Awards and Decorations: AAM-2, AGCM, NDSM, GWTSM, KSM, NCOPDR, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlisted Record Brief, dated 16 June 2014, reflects the applicant enlisted in the U.S Army at the rank/grade of private first class/E-3 on 18 April 2011 and reflects the applicant's suspension of favorable personnel actions for APFT Failure on 11 March 2014.

(2) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was released from active duty and assigned to the USAR Control Group (Reinforcement) on 25 September 2014, with 3 years, 5 months, and 8 days of net active service this period. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Specialist
- item 4b (Pay Grade) – E-4
- item 6 (Reserve Obligation Termination Date) – 27 January 2019
- item 12i (Effective Date of Pay Grade) – 1 February 2013
- item 24 (Character of Service) – Honorable
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 5-15a(2)
- item 26 (Separation Code) – LGH
- item 27 (Reentry Code) - 3
- item 28 (Narrative Reason for Separation) – Non-Retention on Active Duty

(3) U.S. Army Human Resources Command Orders D-01-902937 dated 29 January 2019, reflects the applicant was discharged from the USAR with a type of discharge of Honorable, effective 29 January 2019.

i. Lost Time / Mode of Return: NA

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214
- Enlisted Record Brief

6. POST SERVICE ACCOMPLISHMENTS: None submitted with 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 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) effective 17 December 2009, 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. It prescribes the policies, procedures, and the general provisions governing the separation of Soldiers before expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(4) Paragraph 5-15a (Early Release of Reserve Component Personnel Serving Active Guard/Reserve (AGR) Tours under 10 U.S. Code 12301(d)) stated U.S. Army Reserve and Army National Guard of the United States AGR Soldiers serving tours under Title 10, U.S. Code, Section 13201(d) may be release from active duty for the convenience of the Government, prior to completion of their AGR tour. Subparagraph 5-15a(2) stated AGR Soldiers serving on an initial tour as recruiters (that is, are on an initial AGR tour having entered the AGR program for the purpose of recruiting) may be involuntarily released from active duty when a determination has been made that they are unqualified, ineffective, or unsuitable for continued recruiting duty, and that early release is in the best interest of the Government.

(5) 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.

(6) Paragraph 16-4 (Non-retention on Active Duty) stated Soldiers denied or ineligible for continued active duty service may be separated, upon request, as provided below to include locally imposed Bar to Reenlistment and declination of continued service. Separation under this paragraph will occur no later than 90 days after the Soldier receives pre-separation counseling as required by law, which must be scheduled as soon as separation is approved. Any existing service obligation that cannot be fulfilled by the separation date will be waived. Nothing in this paragraph precludes separation of a Soldier for another reason authorized by this regulation. Approved request for separation cannot be withdrawn. The service of Soldiers separated under this paragraph will be characterized as honorable.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) effective 10 January 2008, provided the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "LGH" as the appropriate code to assign enlisted Soldiers who are involuntary released from active duty or transferred, under the provisions of Army Regulation 635-200, paragraph 5-15a(2), Non-Retention on Active Duty.

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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation.. The available evidence reflects the applicant received suspension of favorable personnel actions for APFT failure and was involuntary separated. The applicant's AMHRR does contain a properly constituted DD Form 214 which was authenticated by the applicant's signature. Their DD Form 214 provides they were discharged with a character of service of Honorable, for Non-Retention on Active Duty. They completed 3 years, 5 months, and 8 days of net active service this period and completed their first full term of service.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense; to include abuse of illegal drugs; and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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**

b. Prior Decisions Cited: None

c. Response to Contention(s): The applicant contends the separation authority (Army Regulation 635-200, paragraph 5-15a(2)) on their DD Form 214, does not apply to them as they were not an AGR Soldier on an initial tour as a recruiter, nor were they involuntarily released from the Army.

The Board considered this contention and determined the narrative reason for discharge was inequitable because the applicant completed their first term of enlistment however the narrative reason and separation authority provided was incorrect. Therefore, the Board voted to grant relief in the form of a change to the narrative reason for separation to Completion of required Active Service with a corresponding separation code of KBK. The Board determined the RE code was proper and equitable and voted not to change it. The applicant already has an Honorable discharge.

d. The Board did not change the characterization of service because the applicant already has an Honorable discharge. The Board determined the narrative reason for discharge was inequitable because the applicant completed their first term of enlistment however the narrative reason and separation authority provided was incorrect. Therefore, the Board voted to grant relief in the form of a change to the narrative reason for separation to Completion of required Active Service with a corresponding separation code of KBK. The Board determined the RE code was proper and equitable and voted not to change it.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because it is already Honorable. 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 to grant relief in the form of a change to the narrative reason for separation to Completion of required Active Service with a corresponding separation code of KBK.

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

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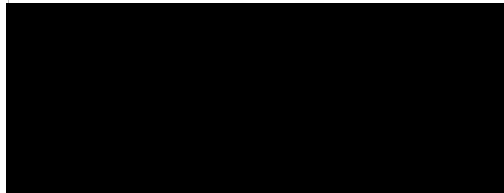
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10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD code to: Completion of Required Active Service / KBK
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

5/20/2025



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