

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 11 September 2020
- b. **Date Received:** 18 September 2020
- 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 dishonorable. The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, the character of service does not allow the applicant to rejoin the Army Reserves although the narrative reason for separation, separation code, and reentry code does allow the applicant to rejoin. The narrative and reason for separation was due to Failed Medical/ Physical Procurement standards. During training because of complications with the applicant's back, the applicant was unable to complete training. However, the applicant is ready and able to complete training.

c. **Board Type and Decision:** In a records review conducted on 3 April 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. The Board also voted to administratively correct the applicant's DD214 to reflect the correct characterization of Uncharacterized.

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:** Failed Medical/Physical/Procurement Standards / AR 635-200, Paragraph 5-11 / JFW / RE-3 / Uncharacterized

b. **Date of Discharge:** 26 July 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 Entrance Physical Standards Board (EPSBD) convened:** 30 June 2017

(2) **EPSBD Findings:** The findings of the evaluating physicians indicate the applicant was medically unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians the condition existed prior to service (EPTS).

(a) The applicant was in the 4th week of basic combat training and had back pain. A scoliosis survey shows a minimal levoscoliosis involving the thoracolumbar spine with the apex at L1. The applicant did not feel that they could continue training due to their pain and wanted to be discharged from the military.

(b) The applicant was diagnosed with: Other forms of scoliosis, thoracolumbar region.

(3) **Date Applicant Reviewed and Concurred with the Findings, and Requested Discharge without Delay:** 11 July 2017

(4) Separation Decision Date / Characterization: 12 July 2017 / NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 1 July 2016 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 17 years / High School Graduate / 101
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / None / 1 year and 26 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NIF
- h. **Disciplinary Action(s) / Evidentiary Record:** The applicant provided:

(1) Report of Medical History, dated 1 July 2016, shows the examining medical physician noted no significant medical history in the comments section.

(2) On 22 May 2017, the applicant was ordered to IADT with a report date of 30 May 2017.

(3) On 11 July 2017, the applicant was counseled for separation under AR 635-200, chapter 5-11 for scoliosis. The applicant stated they were aware that they had scoliosis, however, the applicant's physician told the applicant that their curvature was fine.

(4) The applicant's Enlisted Record Brief, dated 18 July 2017, shows the applicant was flagged for involuntary separation/field initiated (BA), effective 12 July 2017; and was ineligible for reenlistment due to pending separation (9V).

(5) Orders 205-1303, dated 24 July 2017, shows the applicant was discharged from the Reserve on 26 July 2017.

(6) 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 on 26 July 2017 under the authority of AR 635-200, paragraph 5-11, with a narrative reason of Failed Medical/Physical/Procurement Standards. 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 and not solely those documents listed in 4j(1) and (2) above.

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 214; and separation orders.

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) 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) 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) Paragraph 3-10 states a Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

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

(6) Paragraph 5-1, states that 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. No Soldier will be awarded a character of service of general (under honorable conditions) under this chapter unless the Soldier is notified of the specific factors in their service record that warrant such a characterization, using the notification procedure. Such characterization is normally inappropriate for Soldiers separated under the provisions of paragraphs 5-4, 5-11, 5-12, 5-15, 5-16, or 5-17.

(7) Paragraph 5-10 (previously paragraph 5-11), specifically provides that Soldiers who were not medically qualified under procurement medical fitness standards, when accepted for enlistment, or who became medically disqualified under these standards prior to entry on active duty or active duty training or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within six months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into

the military service had it been detected at that time, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of AR 40-501, Chapter 3.

(8) 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.

(9) Glossary prescribes entry-level status for ARNGUS and USAR Soldiers begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II advanced individual training (AIT). (Soldiers completing Phase I BT or basic combat training remain in entry-level status until 90 days after beginning Phase II.)

e. Army Regulation 635-5-1 (SPD Codes), in effect at the time, 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 "JFW" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-11, Failed Medical/ Physical/ Procurement Standards.

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 waivable and nonwaivable 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): 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. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The proceedings of the EPSBD revealed the applicant had a medical condition (Other forms of scoliosis, thoracolumbar region), which was disqualifying for enlistment and existed prior to entry on active duty. These findings were approved by competent medical authority and the

applicant agreed with the findings and proposed action for administrative separation from the Army.

c. The applicant contends, in effect, the character of service does not allow the applicant to rejoin the Army Reserves although the narrative reason for separation, separation code, and reentry code does allow the applicant to rejoin. The narrative and reason for separation was due to Failed Medical/ Physical Procurement standards. During training because of complications with the applicant's back, the applicant was unable to complete training. However, the applicant is ready and able to complete training.

(1) AR 635-200, paragraph 3-10 states a Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

(2) AR 635-200, paragraph 5-1, states that 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. No Soldier will be awarded a character of service of general (under honorable conditions) under this chapter unless the Soldier is notified of the specific factors in their service record that warrant such a characterization, using the notification procedure. Such characterization is normally inappropriate for Soldiers separated under the provisions of paragraphs 5-4, 5-11, 5-12, 5-15, 5-16, or 5-17.

(3) Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

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. Response to Contention: The applicant contends, in effect, the character of service does not allow the applicant to rejoin the Army Reserves although the narrative reason for separation, separation code and reentry code does allow the applicant to rejoin. The narrative and reason for separation was due to Failed Medical/ Physical Procurement standards. During training because of complications with the applicant's back, the applicant was unable to complete training. The Board considered this contention and determined the DD214 should be administratively corrected to reflect the characterization of Uncharacterized. The current reentry code of RE-3 will allow the applicant to reenter service with waiver.

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. The Board also voted to administratively correct the applicant's DD214 to reflect the correct characterization of Uncharacterized.

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. Since the applicant was discharged for failing medical procurement standards, 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. The Board voted to administratively correct the applicant's DD214 to correctly reflect the discharge of Uncharacterized.

(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

AR20210009647

10. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order: Yes**
- b. **Change Characterization to: Uncharacterized**
- c. **Change Reason / SPD Code to: No Change**
- d. **Change RE Code to: No Change**
- e. **Change Authority to: No Change**

Authenticating Official:

4/25/2024



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