

1. Applicant's Name:

- a. **Application Date:** 9 December 2020
- b. **Date Received:** 12 January 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 uncharacterized. The applicant requests an upgrade of their character of service and a change of their narrative reason for separation.

(2) The applicant seeks relief stating they are requesting a change from uncharacterized to a medical discharge. They had a back injury in service and unable to lift over 15 pounds and unable to complete Basic Training.

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

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request).

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 15 May 2015

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 30 April 2015

(2) **Basis for Separation:** demonstrated an inability to adapt to the military by failing to pass the Basic Physical Fitness Test three times.

(3) **Recommended Characterization:** Uncharacterized

(4) **Legal Consultation Date:** 30 April 2015

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

(6) **Separation Decision Date / Characterization:** 30 April 2015

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 February 2015 / 4 years

- b. **Age at Enlistment / Education / GT Score:** 23 / HS Diploma / 99
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 / NA / 3 month, 14 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A Declination of Military Medical Examination in Conjunction with Administrative Separation under Army Regulation 635-200 dated 9 April 2015, reflects the applicant was afforded an opportunity to undergo a complete military medical evaluation in conjunction with their administrative separation action. They have decided not to undergo a new medical examination in conjunction with this action. They understood that by electing not to receive an examination, any undiagnosed or undocumented medical conditions they may currently have will remain undiagnosed and undocumented. They understood that exiting the military with undiagnosed or undocumented medical conditions may limit their eligibility to receive government sponsored medical care, treatment, or compensation in the future for these conditions. They understood that undiagnosed or undocumented medical conditions will not be considered by the separation authority when determining their service characterization. They voluntarily decided not to undergo a complete medical examination.

(2) Three DA Forms 4856 (Developmental Counseling Form) dated 30 March 2015 through 15 April 2015, reflects the applicant received event oriented counseling from their Drill Sergeant, for failing to pass the final Basic Physical Fitness Test on three occurrences.

(3) A DA Form 4856 dated 23 April 2015, reflects the applicant received event oriented counseling from their company commander to inform the applicant that they will be recommending they receive an Entry Level Separation from the U.S. Army in accordance with Army Regulation 635-200, chapter 11 (Entry Level Performance and Conduct)(Failure to Adapt).

(4) A memorandum, Echo Battery, 1st Battalion, 79th Field Artillery, subject: Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 30 April 2015, 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 an inability to adapt to the military by failing to pass the Basic Physical Fitness Test three times, with a recommended characterization of uncharacterized. On that same day, the applicant's acknowledgement of receipt of separation notice.

(5) On 30 April 2015, the applicant completed their election of rights signing they had been advised by consulting counsel of the basis for the contemplated action to separation them for Entry Level Performance and Conduct, 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.

(6) A memorandum, Echo Battery, 1st Battalion, 79th Field Artillery, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 30 April 2015, the applicant's

company commander submitted a request to separate them prior to their expiration term of service. The company commander states the separation is in the best interest of both the Army and the Soldier.

(7) The memorandum, Headquarters, 1st Battalion, 79th Field Artillery, subject: Separation under Army Regulation 636-200, Chapter 11, Entry Level Performance and Conduct [Applicant], dated 30 April 2015, reflects the separation authority has reviewed the separation packet of the applicant and after careful consideration of all matters 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 and after reviewing the rehabilitative transfer requirements, determined the requirement do not apply to this action.

(8) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 15 May 2015, with 3 month, and 14 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

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

j. **Behavioral Health Condition(s):** None

5. **APPLICANT-PROVIDED EVIDENCE:** None submitted with the application.

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), 6 September 2011, 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.

(7) Glossary defines entry-level status for Regular Army Soldiers is the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JGA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 11, Entry-Level Performance and Conduct.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per 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 received three event-oriented counseling each time they failed the Basic Physical Fitness Test and was involuntary separation from the service. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 11, Chapter 11, Entry Level Performance and Conduct, with a characterization of service of Uncharacterized. The applicant completed 3 months and 14 days of net active service this period; however, the applicant did not complete their 4-year contractual 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. Character of 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 applicant was diagnosed with Adjustment Disorder with depressed mood during Basic Combat Training. This condition, however, is not a mitigating condition in the absence of another mitigating Behavioral Health condition. The applicant is applying for a discharge upgrade of Uncharacterized discharge contending they failed Army Physical Fitness Tests and separated with an Uncharacterized Discharge due to a back injury they incurred during Basic Combat Training.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant's back injury and diagnosis of Adjustment Disorder with depressed mood was made during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's uncharacterized separation was proper, equitable and without error. A records review indicates that the applicant self-reported having problems with physical training prior to the onset of back pain. There is no evidence in the medical record indicating that either the applicant's mid back

pain or Behavioral Health diagnosis of Adjustment Disorder with depressed mood played any role in the applicant's three Army Physical Fitness Test failures.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's mid back pain or Behavioral Health diagnosis of Adjustment Disorder with depressed mood outweighed the basis for the applicant's separation: Uncharacterized, Entry Level Performance and Conduct.

b. Response to Contention(s): The applicant is requesting a change in discharge from uncharacterized to a medical discharge. The applicant had a back injury in service and was unable to lift over 15 pounds and unable to complete Basic Training. The Board considered this contention and determined in accordance with AR 635-200 that, based on the applicant's official record, the applicant was separated while in an entry level status and an Uncharacterized Discharge is the proper characterization of service except when the DCS, G-1 determines that an Honorable Discharge is warranted based on unusual circumstances involving personal conduct and performance of duty, which is not applicable in this case. Therefore, no change is warranted.

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, in accordance with AR 635-200 and based on the applicant's official record, the applicant was separated while in an entry level status. An Uncharacterized discharge is the proper characterization of service except when the DCS, G-1 determines that an Honorable discharge is warranted based on unusual circumstances involving personal conduct and performance of duty, which is not applicable in this case. Therefore, no change is warranted.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210009785

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:

7/13/2024

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

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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