

1. Applicant's Name: [REDACTED]

a. **Application Date:** 11 December 2020

b. **Date Received:** 12 January 2021

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, in 2017 while at the National Training Center (NTC) the applicant began to experience discomfort in their lower back. The discomfort gradually got worse during deployment in October 2017. Upon return from deployment the applicant failed the Army physical fitness tests (APFT) in December 2018. The applicant saw a physical therapist for muscle tension. In early 2019, the applicant failed the APFT for a second time. In spite of being a good soldier and receiving several medals and awards including an Army Commendation Medal, two Army Achievement Medals and various ribbons, the applicant was given a general (under honorable conditions) discharge. The applicant finds it unfair that their life has been affected so much due to physical standards and the type of discharge received. The applicant knows of other soldiers who were given an honorable discharge for failing the APFT. The applicant received a VA Disability Rating Decision, 16 December 2020, showing the applicant was rated 40 percent for lumbosacral strain (claimed as lower back pain).

c. **Board Type and Decision:** In a records review conducted on 18 December 2023, and by a 5-0 vote, the Board determined that the discharge was too harsh based on the applicant's length and quality of service, to include combat service, and as a result it is inequitable. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable. The Board determined the narrative reason and the reentry eligibility code are proper and equitable and voted not to change them.

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:** Physical Standards / AR 635-200, Chapter 13-2E / JFT / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 1 August 2019

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 18 June 2019

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant failed two consecutive record APFTs.

(3) **Recommended Characterization:** General (Under Honorable Conditions)

(4) Legal Consultation Date: On 18 June 2019, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 28 June 2019 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 31 January 2018 / 4 years

b. Age at Enlistment / Education / GT Score: 20 / High School Graduate / 85

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years, 11 months, and 15 days

d. Prior Service / Characterizations: RA, 17 August 2015 - 30 January 2018 / HD

e. Overseas Service / Combat Service: SWA / Kuwait (31 October 2017 - 13 March 2018); and Syria (13 March 2018 - 12 June 2018)

f. Awards and Decorations: ARCOM, AAM, AAM-C, AGCM, NDSM, GWOTEM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Two developmental counseling forms shows the applicant was counseled on 5 and 8 August 2016 for negligent discharge of their weapon at a live fire exercise and for initiation of an adverse action (AA) flag.

(2) APFT Scorecard shows the applicant failed a record APFT on 18 October 2018.

(3) Four developmental counseling forms shows the applicant was counseled on 18 October, 27 November, and 20 December 2018, and 14 January 2019 for APFT failures, specifically for the run event.

(4) APFT Scorecard shows the applicant failed a record APFT on 19 January 2019.

(5) Developmental Counseling Form, 21 February 2019, shows the applicant was counseled on initiation for a chapter 13 for the inability to pass two consecutive APFTs.

(6) Report of Mental Status Evaluation (MSE), 23 April 2019, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant had the capacity to understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. There was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. From a psychiatric perspective, the applicant met medical retention standards per AR 40-501.

(7) On 18 June 2019, the company commander initiated action to separate the applicant for failing two consecutive records APFTs.

(8) C Company, 1st Battalion, 35th Armor Regiment, memorandum, subject: Commander's Report - Proposed Separation under AR 635-200, Chapter 13-2e, Unsatisfactory Performance, APFT Failure, (Applicant), 26 June 2019, shows the applicant received a summarized Article 15 on 19 September 2019 for being guilty of an Article 92 (Failure to obey order or regulation). The punishment consisted of extra duty for 45 days.

(9) The applicant's Enlisted Record Brief, 2 August 2019, shows the applicant was flagged for involuntary separation/field initiated (BA), effective 21 February 2019, and for APFT failure (JA), effective 22 October 2018; was ineligible for reenlistment due to pending separation (9V). The Assignment Eligibility Availability (AEA) code shows AEA code "C" which is temporarily ineligible for reassignments due to medical, convalescence, confinement due to trial by court martial, enrollment in Track III ASAP, or local bar to reenlistment.

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

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** MSE as described in previous paragraph 4h.

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored letter; character statement; VA Rating Decision; and ARCOM certificate.

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) Chapter 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will

not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(4) Paragraph 13-2c (previously paragraph 13-2e) states in pertinent part, separation proceedings will be initiated for Soldiers without medical limitations that have two consecutive failures of the APFT. The reason for discharge will be shown as physical standards.

(5) Paragraph 13-8, stipulates the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

(6) 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.

e. Army Regulation 635-5-1 (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 "JFT" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, in effect at the time, Chapter 13-2e, Physical 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 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. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 3 years, 11 months, and 15 days during which the applicant served 9 months and 13 days of foreign service between Kuwait and Syria. The applicant received seven developmental counseling forms which included failing two consecutive record APFTs on 18 October 2018 and 19 January 2019. The commander's report, 26 June 2019, shows the applicant received nonjudicial punishment for Article 92 (Failure to obey order or regulation). The applicant was discharged on 1 August 2019 under the provisions of AR 635-200, Chapter 13, paragraph 13-2e, by reason of physical standards with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, to have experienced lower back pain in 2017 while at the NTC. The discomfort gradually got worse during deployment in October 2017. Upon return from deployment the applicant failed the APFT in December 2018 and then in early 2019. The applicant saw a physical therapist for muscle tension. The applicant provided a VA Disability Rating Decision, 16 December 2020, showing the applicant was rated 40 percent for lumbosacral strain (claimed as lower back pain).

d. The applicant contends, in effect, the applicant was a good soldier and received several medals and awards including an Army Commendation Medal, two Army Achievement Medals and various ribbons. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

e. The applicant contends, in effect, it is unfair that their life has been affected so much due to physical standards and the type of discharge received. The applicant knows of other soldiers who were given an honorable discharge who also failed the APFT. The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case. Additionally, when an applicant cites a prior decision of the ADRB, another agency, or a court, the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of the cited matter to the applicant's case. The Board is an independent body, not bound by prior decisions in its review of subsequent cases because no two cases present the same issues.

f. The character statement provided with the application states the applicant was an ideal soldier and lived the Army values. The applicant's APFT failures should be blamed on the unit. Individual Soldier responsibility is one thing but the unit also had a responsibility to meet the applicant half way. Their operating tempo precluded them from doing organized physical training for months and when the Digital Training Management System demanded an APFT the battalion had 74 failures. A remedial physical training program was established for all soldiers who failed the APFT for the next 90 days but few could ever attend. After 90 days of the first failure, the applicant was given a second APFT at NTC while on a 30 day opposing force detail. Of the 74 failures, only 14 passed on the second attempt demonstrating the ineffectiveness of the unit's PT and remedial PT programs.

g. 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 not been diagnosed with a potentially mitigating BH condition or experience. Applicant is requesting a discharge upgrade based on his contention he incurred a back injury during NTC which resulted in him failing two PT tests and being discharged.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant contends his back injury occurred during NTC.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that applicant contends that he injured their back during NTC in 2017 which they state led to them failing two record APFTs in 2018 and 2019. To support his contention, he notes that the VA has granted him 40% service connection for lumbo-sacral strain. Record review indicates that there are no medical notes documenting they suffered a back injury during NTC. The one and only medical note regarding a back issue is dated 3 Dec 2018 in which the applicant reports they injured their back two weeks earlier while deadlifting. There is no documentation indicating they received any type of profile for this back injury which was described as muscle strain. Based on this information, it is the opinion of the Agency medical advisor that the applicant's contention his NTC back injury led to him failing two consecutive APFTs is not supported by the medical documentation.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, it was determined that the applicant does not have any BH conditions that provide medical mitigation towards the basis of separation. Additionally, the applicant's self-asserted NTC back injury is not supported by the available medical documentation and does not outweigh the basis of separation - the applicant failed two consecutive record APFTs.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends, in effect, to have experienced lower back pain in 2017 while at the NTC. The discomfort gradually got worse during deployment in October 2017. Upon return from deployment the applicant failed the APFT in December 2018 and then in early 2019. The applicant saw a physical therapist for muscle tension. The board considered this contention, but ultimately did not address it due to an upgrade being granted based upon inequity and consideration of the applicant's length, quality, and combat service.

(2) The applicant contends, in effect, the applicant was a good soldier and received several medals and awards including an Army Commendation Medal, two Army Achievement Medals and various ribbons. The board considered this contention, but ultimately did not address it due to an upgrade being granted based upon inequity and consideration of the applicant's length, quality, and combat service.

(3) The applicant contends, in effect, it unfair that their life has been affected so much due to physical standards and the type of discharge received. The applicant knows of other soldiers who were given an honorable discharge who also failed the APFT. The board considered this contention, but ultimately did not address it due to an upgrade being granted based upon inequity and consideration of the applicant's length, quality, and combat service.

d. The Board determined: Based on liberally considering all the evidence before the Board, it was determined that the applicant does not have any BH conditions that provide

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medical mitigation towards the basis of separation. Additionally, the applicant's self-asserted NTC back injury is not supported by the available medical documentation and does not outweigh the basis of separation - the applicant failed two consecutive record APFTs. Without medical mitigation, and in consideration of the applicant's length of service, to include combat, and quality, the Board voted 5-0 to upgrade the discharge to HD/NC (JFT)/NC (RE-3) based on inequity.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. The Board determined that the discharge was too harsh based on the applicant's length and quality of service, to include combat service, and as a result it is inequitable.

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

(3) The RE code will not change.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD code to: No Change**
- d. Change RE Code to: RE3**
- e. Change Authority to: No Change**

Authenticating Official:

1/14/2025

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