

1. Applicant's Name:

- a. **Application Date:** 23 December 2020
- b. **Date Received:** 5 January 2021
- 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 general (under honorable conditions) and a narrative reason change.

The applicant seeks relief contending, in effect, the applicant did nothing wrong.

b. **Board Type and Decision:** In a records review conducted on 24 July 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.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Failed Medical / Physical / Procurement Standards / AR 635-200 / Chapter 5-11 / JFW / RE-3 / Uncharacterized

b. **Date of Discharge:** 13 March 2009

c. **Separation Facts:**

(1) **Date Entrance Physical Standards Board (EPSBD) convened:** 19 July 2017

(2) **EPSBD Findings:** After careful considerations of medical records, laboratory, findings, and medical examinations, the board found the applicant was medically unfit for enlistment according to current medical fitness standards and that in the opinion of the evaluating physicians the following medical condition(s) existed prior to service. The applicant was in BCT and had exertional shortness of breath and chest tightness. The applicant was found to have a history of traumatic brain injury with lacerations, induced coma and seizures in July 2003. The applicant was seen in the ER on 8 February for temporal migraine, blurred vision, and confusion. The applicant was seen at Winder TMC on 8 February for follow-up and evaluation. The applicant was still having a headache. The applicant was unable to train due to the headaches, blurred vision, confusion, and dizziness. The applicant could not complete the prescribed military training due to the symptoms and diagnosis. The applicant was diagnosed with head injury and recurrent headaches. The applicant did not receive a waiver for the diagnosis prior to enlistment. Based on the medical condition that existed prior to service, it was recommended the applicant be separated from the service.

(3) **Date Applicant Reviewed and concurred with the Findings and Requested to be discharged from the Army without delay:** 6 March 2009

(4) **Separation Decision Date / Characterization:** 9 March 2009 / Uncharacterized

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 31 October 2008 / 8years (ARNG)
- b. **Age at Enlistment / Education / GT Score:** 21 / HS Graduate / 103
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / None / 4 months, 13 days
- d. **Prior Service / Characterizations:** ARNG, 31 October 2008 – 13 March 2009 / NA
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** See EPSBD as described in item 3c(1).
- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**
 - (1) **Applicant provided:** None
 - (2) **AMHRR Listed:** None

5. **APPLICANT-PROVIDED EVIDENCE:** DD Form 293-2

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), dated 25 September 2019, 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 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) 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.

(3) 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.

(4) 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. Unless the DCS, G-1, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority. A Soldier is in an entry-level status (ELS) if the Soldier has not completed more than 180 days of creditable continuous active duty prior to the initiation of separation action.

(5) Department of Defense Instruction (DoDI) Number 1332.14 updates the definition of "entry level status," specifically extending its duration. entry-level status. Upon enlistment, a Service member qualifies for entry-level status during: The first 365 days of continuous active military service; or the first 365 days of continuous active service after a service break of more than 92 days of active service. A Service member of a Reserve Component who is not on active duty or who is serving under a call or order to active duty for 365 days or less begins entry-level status upon enlistment in a Reserve Component. Entry-level status for such a Service member of a Reserve Component terminates: Three hundred and sixty-five days after beginning training if the Service member is ordered to active duty for training for one continuous period of 180 days or more; or one hundred and eighty days after the beginning of the second period of active duty training if the Service member is ordered to active duty for training under a program that splits the training into two or more separate periods of active duty. For the purposes of characterization of service or description of separation, the Service member's status is determined by the date of notification as to the initiation of separation proceedings.

(6) 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. The characterization of service for Soldiers separated under this provision of the regulation will normally be honorable. However, for Soldiers in entry-level status, it will be uncharacterized. AR 635-200 states that a Soldier is in an entry-level status (ELS) if the Soldier has not completed more than 180 days of creditable continuous active duty prior to the initiation of separation action.

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

The applicant requests an upgrade to general (under honorable conditions). The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant was separated under the provisions of Army Regulation 635-200, paragraph 5-11, due to failed medical/physical procurement standards, with an uncharacterized discharge and a RE code of "3."

The proceedings of the EPSBD revealed the applicant had a medical condition 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.

The applicant contends the applicant did nothing wrong and revealed everything. An uncharacterized discharge is neither positive nor negative and it is not meant to be a negative reflection of a Soldier's military service. It merely means that the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. The applicant was in an ELS at the time of the initiation of the separation.

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? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnosis: pre-enlistment TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** Pre-enlistment TBI symptoms persisted.

(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 was appropriately evaluated and separated with agreement by MEB and treating providers.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the Pre-enlistment TBI condition did not outweigh the basis of separation.

b. Prior Decisions Cited: AR20120002249

c. Response to Contention(s): The applicant contends the applicant did nothing wrong and revealed everything. The Board acknowledged and considered this contention.

d. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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.

e. Rationale for Decision:

(1) The Board considered the applicant's statement, record of service, medical findings, and the reason for separation. The Board concurred with the conclusion of the medical advising official that the applicant was appropriately evaluated and separated with agreement by MEB and treating providers. The applicant had a medical condition that was disqualifying for enlistment and existed prior to entry on active duty. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same reasons, 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.

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:

8/26/2024

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