

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 12 April 2021
- b. **Date Received:** 20 April 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, the applicant served in the military from July 2009 until June 2011 when the applicant was discharged due to failure to pass the running portion of the Army physical fitness test (APFT). Due to the applicant's military occupational specialty (MOS) as a 92G (Food Specialist), the applicant had odd hours and had to work many weekends which prevented the applicant from being able to join their unit during their daily physical fitness training. As cooks, they were required to work as early as 0500 hours until as late as 1900 hours and had to work most holidays and weekends because the dining facility is required to stay open to serve other soldiers. Because of this, the applicant would perform physical training with their unit two times a week at the most. The applicant performed well within their MOS and had no complaints from the applicant's superiors. The applicant never had any disciplinary actions during their time in the Army. The only thing that hindered the applicant's service was failure to run within the allotted time for the applicant's age group.

c. **Board Type and Decision:** In a records review conducted on 16 August 2024, and by a 5-0 vote, the Board determined that the characterization of service is inequitable based on the applicant's length of service, positive chain of command recommendations, and no other misconduct. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

Please see Board Discussion and Determination 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:** Unsatisfactory Performance / AR 635-200, Chapter 13 / JHJ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 15 June 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 17 May 2011

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

(3) Recommended Characterization: Honorable

(4) Legal Consultation Date: 17 May 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 May 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 13 July 2009 / 3 years and 20 weeks

b. Age at Enlistment / Education / GT Score: 17 / High School Graduate / 99

c. Highest Grade Achieved / MOS / Total Service: E-2 / 92G10, Food Service Operation / 1 year, 11 months, and 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 12 March and 1 June 2010, the applicant was counseled for failing the APFT on 12 March and 1 June 2010.

(2) On 9 March 2011, the applicant acknowledged initiation of an APFT failure flag.

(3) Memorandum for Record, subject: Letter of Intent, 17 March 2011, the applicant was being considered for separation under chapter 13 for unsatisfactory performance due to failing the APFT on 12 March and 1 June 2010, and 21 March 2011. (Analyst notes, the date of the memorandum is incorrect based on the APFT failure on 21 March 2011).

(4) On 21 March 2011, the applicant was counseled for failing the APFT on 21 March 2011.

(5) On 24 March 2011, the applicant was flagged for APFT Failure (JA), effective 21 March 2011.

(6) On 29 March 2011, the applicant was counseled on the prohibitions of an adverse action flag.

(7) Report of Medical History, 8 April 2011, the examining medical physician noted the applicant's medical conditions in the comments section: The applicant stated their stress was work related, however, separating from the military will resolve the issue and did not desire behavioral health at that time.

(8) APFT Scorecard shows the applicant failed record APFTs on 12 March and 1 June 2010, and 21 March and 13 May 2011.

(9) Report of Mental Status Evaluation (MSE), 25 April 2011, shows the applicant was fit for duty, including deployment and met medical retention requirements. The applicant was screened for PTSD and mild TBI with negative results.

(10) The applicant's Enlisted Record Brief, 15 June 2011, shows the applicant was flagged for Involuntary separation/field initiated (BA), effective 27 April 2011; and was ineligible for reenlistment due to physical readiness (9E).

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; DD Form 4-3; separation orders; and DD Form 214.

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 prescribes for the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

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 "JHJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 13, unsatisfactory performance.

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 (Certificate of Release or Discharge from Active Duty) shows the applicant served 1 years, 11 months, and 3 days. The applicant failed four consecutive APFTs between March 2010 and May 2011. The applicant's DD Form 214 shows the applicant was discharged on 15 June 2011 under the provisions of AR 635-200, Chapter 13, by reason of Unsatisfactory Performance, with a characterization of service of General (Under Honorable Conditions).

c. The applicant contends, in effect, that as a 92G (Food Specialist), the applicant had odd hours and had to work many weekends which prevented the applicant from being able to join their unit during their daily physical fitness training. As cooks, they were required to work as early as 0500 hours until as late as 1900 hours and had to work most holidays and weekends because the dining facility is required to stay open to serve other soldiers. Because of this, the

applicant would perform physical training with their unit two times a week at the most. The applicant performed well within their MOS and had no complaints from the applicant's superiors. The applicant never had any disciplinary actions during their time in the Army. The only thing that hindered the applicant's service was failure to run within the allotted time for the applicant's age group. Analyst notes, AR 635-200, 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.

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 the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service 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, that as a 92G (Food Specialist), the applicant had odd hours and had to work many weekends which prevented the applicant from being able to join their unit during their daily physical fitness training. As cooks, they were required to work as early as 0500 hours until as late as 1900 hours and had to work most holidays and weekends because the dining facility is required to stay open to serve other soldiers. Because of this, the applicant would perform physical training with their unit two times a week at the most. The applicant performed well within their MOS and had no complaints from the applicant's superiors. The applicant never had any disciplinary actions during their time in the Army. The only thing that hindered the applicant's service was failure to run within the allotted time for the applicant's age group. The Board acknowledged and considered this contention during deliberations.

c. The Board determined that the characterization of service was too harsh based on the applicant's length of service, chain of command recommendations, and no other misconduct, and as a result it is inequitable. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason, SPD code, and RE code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) Based on a preponderance of evidence, the Board voted to grant relief by upgrading the applicant's characterization of service to Honorable. The Board noted the applicant's length of service, the applicant's chain of command recommended an Honorable Discharge, and no other misconduct in the file. Those positive factors mitigated the failure of consecutive APFTs.

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

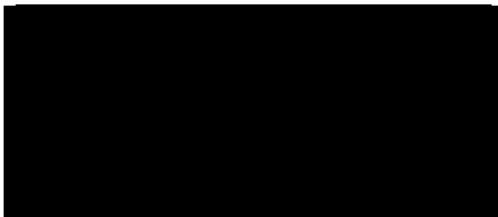
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes**
- b. Change Characterization to: Honorable**
- c. Change Reason / SPD Code to: No Change**
- d. Change RE Code to: No Change**
- e. Change Authority to: AR 635-200**

Authenticating Official:

9/5/2024



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