

1. Applicant's Name:

- a. **Application Date:** 19 May 2021
- b. **Date Received:** 19 May 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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the applicant was given a general (under honorable conditions) discharge due to failing the Army physical Fitness Test APFT) because the command wanted to set an example and used the discharge to intimidate other Soldiers who were not doing well on the APFT due to long workdays, but the discharge should have been honorable.

b. **Board Type and Decision:** In a records review conducted on 16 August 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:** Unsatisfactory Performance / AR 635-200 / Chapter 13 / JHJ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 8 March 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 24 February 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant failed two consecutive Army Physical Fitness Test; the applicant was disrespectful in language towards a noncommissioned officer on 3 March 2010; the applicant was disrespectful in language and deport towards a noncommissioned officer on or about 3 March 2010; on or about 12 December 2009, the applicant failed to be at the appointed place of duty; on or about 21 October 2009, the applicant failed to obey a lawful order by not getting a haircut; and on or about 9 September 2009, the applicant was counseled for being overweight between on or about year 2008 to 9 September 2009 and was placed on the Army Weight Control Program.

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

(4) **Legal Consultation Date:** 6 January 2011

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

(6) Separation Decision Date / Characterization: 16 February 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 20 September 2006 / 6 years
- b. Age at Enlistment / Education / GT Score:** 21 / GED / 109
- c. Highest Grade Achieved / MOS / Total Service:** E-4 / 15R10, AH-64 Attack Helicopter Repairer / 4 years, 5 months, 19 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** Korea / None
- f. Awards and Decorations:** AAM, NDSM, GWOTSM, KDSM, ASR, OSR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:**

(1) CG Article 15, 6 April 2010, reflects the applicant was disrespectful in language and deportment towards a noncommissioned officer on or about 4 March 2010 and was disrespectful on language and deportment towards a noncommissioned officer on or about 3 March 2010. The punishment consisted of reduction to private first class/ E-3; forfeiture of \$488; and extra duty and restriction for 14 days.

(2) The applicant was counseled on multiple occasions for various forms of misconduct.

(3) A Report of Behavioral Health Evaluation, 23 November 2010, reflects the applicant had the mental capacity to understand and participate in the proceedings and was mentally responsible. The applicant was diagnosed with occupational problem.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: On-Line Application

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) Chapter 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, that 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. Army policy states that a general, under honorable conditions discharge is normally considered appropriate; however, an honorable discharge may be granted in meritorious cases.

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 honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) indicates the applicant was discharged under the provisions of AR 635-200, paragraph 13, by reason of Unsatisfactory Performance, with a characterization of service of General (Under Honorable Conditions).

The applicant contends the applicant was given a general (under honorable conditions) discharge due to failing the APFT because the command wanted to set an example and used the discharge to intimidate other Soldiers who were not doing well on the APFT due to long workdays, but the discharge should have been honorable.

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(s): The applicant contends the applicant was given a general (under honorable conditions) discharge due to failing the APFT because the command wanted to set an example and used the discharge to intimidate other Soldiers who were not doing well on the APFT due to long workdays, but the discharge should have been honorable. The Board considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not 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, despite applying liberal consideration of all the evidence before the Board, the applicant was not found to hold an in-service behavioral health condition that would mitigate or excuse the discharge. The Board considered the applicant's contention regarding the command wanted to set an example and used the discharge to intimidate other Soldiers who were not doing well on the APFT due to long workdays and found that the totality of the applicant's record does not warrant a discharge upgrade. The board noted that along with failing consecutive APFTs, the applicant was counseled multiple times for various forms of misconduct to include disrespectful language towards an NCO, disrespectful in language and deport towards an NCO, failed to obey a lawful order, and was placed on the Army Weight Control Program since 2008. 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. Therefore, the applicant's General, Under Honorable Conditions discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to an Honorable discharge.

(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:

9/12/2024

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