

1. Applicant's Name:

- a. **Application Date:** 22 March 2021
- b. **Date Received:** 5 April 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 honorable. The applicant further requests correction to the DD Form 214 (Certificate of Release or Discharge from Active Duty) and backpay.

The applicant seeks relief contending, in effect, the medical condition for which the applicant was released for is service-connected and was not the applicant's fault.

b. **Board Type and Decision:** In a records review conducted on 7 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:** Condition, Not a Disability / AR 635-200, Paragraph 5-17 / JFV / RE-3 / Uncharacterized

b. **Date of Discharge:** 5 March 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 11 February 2020

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was seen by the Fort Sill Troop medical clinic on 31 October 2019, for bilateral knee pain. On 5 November 2019, a bone scan showed stress injuries. An MRI on 22 November 2020, represented Delayed Onset Muscle Soreness. The applicant followed up with physical therapy multiple times using different modalities without improvement. Dr. Winningham and the applicant's Chain of Command recommend a Ch 5-17 discharge.

(3) **Recommended Characterization:** Uncharacterized

(4) **Legal Consultation Date:** 18 February 2020

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

(6) **Separation Decision Date / Characterization:** NIF / Uncharacterized

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 2 May 2019 / 8 years (USAR)
- b. **Age at Enlistment / Education / GT Score:** 31 / 1 year college / 101
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 / None / 4 months, 28 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:** NA
- 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, DD Form 149-2, DD Form 214, Department of Veteran Affairs Rating Decision, DA Form 4187 (Personnel Action), Application For Arrears In Pay)

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) Paragraph 5-17 specifically provides that a Soldier may be separated for other physical or mental conditions not amounting to a disability, which interferes with assignment to or performance of duty and requires that the diagnosis be so severe that the Soldier's ability to function in the military environment is significantly impaired.

(6) Paragraph 5-1, states that a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. It further states no Soldier will be awarded a character of service under honorable conditions under this chapter unless the Soldier is notified of the specific factors in his/her record that warrants such a characterization, using the notification system. A general (under honorable conditions) characterization is normally inappropriate for Soldiers separated under the provisions of paragraph 5-4, 5-11, 5-12, 5-15, 5-16, or 5-17.

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 was discharged under the provisions of AR 635-200, paragraph 5-17, due to a Condition, Not a Disability, with an uncharacterized characterization of service. Paragraph 5-1, states, a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in ELS. The applicant was in an ELS at the time of the separation.

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 separation.

The applicant contends the medical condition for which the applicant was released for is service-connected and was not the applicant's fault.

In reference to the applicant's request for correction to the DD Form 214 and backpay does not fall within the purview of the Army Discharge Review Board, these requests will be addressed by the Army Board for Corrections of Military Records under separate correspondence.

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? **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: Major Depressive Disorder.

(2) Did the condition exist, or experience occur during military service? **No.** No evidence of Major Depressive Disorder in-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 discharge was medically proper and equitable. Additionally, although the applicant is post service-connected for Major Depressive Disorder, this developed secondary to the claimed knee pain. Accordingly, there is no medical mitigation.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s): The applicant contends the medical condition for which the applicant was released for is service-connected and was not the applicant's fault. The Board considered this contention and concurred with the Board's Medical Advisor that the discharge was medically proper and equitable. The applicant is post service-connected for Major Depressive Disorder, this developed secondary to the claimed knee pain. Accordingly, there is no medical mitigation.

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, in accordance with AR 635-200 and based on the applicant's official record the applicant was separated while in an entry level status and 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.

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(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:

8/28/2024

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