

1. Applicant's Name:

- a. **Application Date:** 25 March 2021
- b. **Date Received:** 17 May 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review uncharacterized. The applicant requests an upgrade of their character of service and a change of their reentry code.

(2) The applicant seeks relief contending, they had unresolved medical issues and felt they were not physically ready to go to the Physical Training and Rehabilitation Program (PTRP) after their surgery. They had multiple Army doctors regarding their recovery issues did not improve. They were discharged from the Army with an uncharacterized discharge because the Army stated they refused PTRP because they didn't want to train become a Soldier. That was not the case, they wanted to be a Soldier, they just needed more time to recover from their surgery. After they were discharged they went to a civilian hospital and the doctors there concluded that the surgery they had in the Army had failed which led to another surgery in August 2012. The surgery was a success, they fully recovered, and have had no medical issues since the second surgery.

(3) They still want to serve in the military and has worked with an Air Force Reserve recruiter to join as a chaplain; however, their uncharacterized discharge is preventing them from joining the Air Force Reserve.

(4) They were a victim of an abuse of discretion. Their chain of command exercise their discretion to discharge them before their medical treatment was completed and they could complete Basic Training. The Army's exercise of discretion to not allow them and their doctors to get things right, is not proper. Their case is not involving intentional or unintentional misconduct or refusal to serve, they simply became ill and need two surgeries to finally correct their medical issues.

(5) According to the Wilkie memorandum, the Board should consider positive post service conduct. Since they were discharged they returned to work as a high school English teacher and pursued their calling in the pastoral ministry. They graduated with their Master in Divinity in May 2019. They currently work as the Director of Family Ministry and Administration at their church.

b. Board Type and Decision: In a records review conducted on 20 November 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: Entry Level Performance and Conduct / Army Regulation 635-200, Chapter 11 / JGA / RE-3 / Uncharacterized

b. Date of Discharge: 13 August 2012

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 1 August 2012

(2) Basis for Separation: refused to transfer to the PTRP; therefore, refused to train to become a Soldier.

(3) Recommended Characterization: Uncharacterized

(4) Legal Consultation Date: 1 August 2012

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: 3 August 2012

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 June 2012 / 5 Years

b. Age at Enlistment / Education / GT Score: 33 / Baccalaureate Degree / 113

c. Highest Grade Achieved / MOS / Total Service: E-1 / NA / 1 month, 25 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: NA

f. Awards and Decorations: None

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Individual Sick Slip dated 18 July 2012 reflects the medical officer's remarks, the applicant refuses PTRP transition. Return to unit recommend medical hold, coordinate with troop medical clinic medical director and Nurse Care Manager for clearance to chapter or referral to Medical Evaluation Board.

(2) In an email exchange, subject: Regarding [Applicant], dated 30 July 2012, the Medical Director, Reynolds Army Community Hospital, Dr. L____, states once applicant is medically cleared by Urology which should be within the next 2 weeks, the applicant should be chapter for refusal to train as the urologist indicated the applicant should be able to continue with the military and the applicant has elected not to do that. It would not be an Existed Prior to Service (EPTS) as the applicant got into the service with a waiver and would not be a Medical Evaluation Board as the applicant meets retention standards but has elected not to proceed.

(3) A Southwestern Urology Encounter Summary, dated 1 August 2012, reflects in –

(a) Surgical History, the applicant had a pyeloplasty performed in 2003 and a revision pyeloplasty performed on 2 July 2012. The applicant is 4 weeks status post revision thyroplasty and is progressing as expected. They have discomfort in the incision with jogging but has no symptoms of colic. They are currently waling 1/2 miles three times a day with fatigue. Their appetite is still not perfect but they are eating full meals. They are still taking naps during the day.

(b) Assessment/Plan states the applicant is progressing actually quite well following their repeat pyeloplasty and is reassured that they will still have some discomfort at this point in time particular with the level of activity. A radiographic study 3-6 months following their surgery should be performed to confirm the ureter anastomosis remains open. The applicant was told to avoid heavy lifting of more than 50 pounds for at least the next 2 weeks to prevent hernia formation. After 2 weeks the applicant should be cleared to do any activity.

(4) A DA Form 4856 (Developmental Counseling Form) dated 1 August 2012, reflects the applicant received counseling from their battery commander with the recommendation for chapter 11, Entry Level Separation, due to failure to adapt to military service.

(a) The Key Points of Discussion reflects the specific reason for the proposed action is the applicant refused to transfer to the PTRP. Therefore, they refused to train to become a Soldier. Since they arrived a [Basic Training] there were admitted to Reynolds Army Community Hospital (RACH) and the Southwestern Medical Facility where they stayed from 29 June 2012 through 11 July 2012. On 18 July 2012 the applicant told Major S_____ that they refuse to go to PTRP. On 24 July 2012 they had a follow up to remove staples. Then they took it upon themselves to call and schedule their own follow up appointment on 1 August 2012 where they failed to inform their Dr. L_____ and their chain of command. Thus, they directly disobeyed a direct order from an Officer in the Army that all appointments would be through Dr. L_____. This is in violation of Article 92 (Failure to Obey Order, Regulation), Uniform Code of Military Justice (UCMJ). Their choice to refuse PRTP shows a lack of reasonable effort. It is the Medical Doctors recommendation that they be separated from the Army in accordance with Army Regulation 635-200, chapter 11. The battery commander agreed with their assessments and recommendations and also believe this action would be in the best interest of the applicant and the U.S. Army.

(b) The applicant disagreed with the information and provided remarks stating their situation experiencing pain and seeking medical assistance. They were unaware that they had to inform Dr. L_____ of their appointment at Southwestern Urology, had they known they would have informed Dr. L_____.

(5) A memorandum, Delta Company, 1st Battalion, 31st Field Artillery, subject: Proposed Separation Action under the Provision of Entry Level Performance and Conduct, dated 1 August 2012, reflects the applicant's notification for separation from their company commander. The company commander states the proposed action is the applicant has refused to transfer to the PTRP. Therefore, they refused to train be become a Soldier. Since they have arrived at the company, they have not conducted one day of Basic Combat Training. Their choice to refuse PTRP shows a Lack of Reasonable effort. The company commander stated if the proposed separation action is approved they will receive an entry-level separation with uncharacterized service.

(6) In the applicant's memorandum, subject: Acknowledgment of Notification of Proposed Separation Action, dated 1 August 2012 they completed their Election of Rights

regarding separation under Army Regulation 635-200, chapter 11, stating they have been advised by their consulting counsel of the basis of the contemplated action to separate them for Entry Level Performance and Conduct, and its effects; of the rights available to them; and of the effect of any action taken by them in waiving their rights. They elected to waive consulting counsel, elected not to submit statements in their own behalf, and elected not to request a separation physical.

(7) A memorandum, Headquarters, 1st Battalion, 31st Field Artillery, subject: Separation under Army Regulation 635-200, Chapter 11, dated 3 August 2012, reflects the separation authority directed the applicant be separated from the Army prior to the expiration of their current term of service. The separation authority directed the requirement for rehabilitative transfer in this case be waived and the applicant's service be uncharacterized.

(8) On 13 August 2012, the applicant was discharged from the Regular Army. Their DD Form 214 shows in: item 12c (Net Active Service This Period) – 1 month, 25 days, item 18 (Remarks) – in part, Member Has Not Completed First Full Term Of Service, item 24 (Character of Service) – Uncharacterized, item 25 (Separation Authority) – Army Regulation 635-200, Chapter 11, item 26 (Separation Code) – JGA, item 27 (Reentry Code) – 3, item 28 (Narrative Reason for Separation) – Entry Level Performance and Conduct.

(9) A Scott and White Memorial Hospital Operative Report dated 29 August 2012, reflects the applicant's operation of a left nephrectomy complicated due to previous surgery. The operative findings stated extensively stuck kidney because of their previous surgery. They have had two phalloplasties and two endopyelotomies.

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

j. **Behavioral Health Condition(s):** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), Counsel's letter regarding Application of [Applicant] for Upgrade of Discharge Characterization from "Uncharacterized" to "Honorable", Medical Record, Army Military Human Resource Record documents, Post-Service Medical Documents, Initial Inpatient Consultation and Operative Report, DD Form 2088 (Statement of Ecclesiastical Endorsement), Applicant's Affidavit and letter, Certificate of Ordination, Lahey Health Letter, Certificate of The Evangelical Church Alliance, Department of the Air Force memorandum, and Photographs.

6. POST SERVICE ACCOMPLISHMENTS: Certificate of Ordination and Certificate of The Evangelical Church Alliance

7. STATUTORY, REGULATORY AND POLICY REFERENCE(s):

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for

a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 11 provides for the separation of personnel due to unsatisfactory performance, conduct, or both, while in an entry level status.

(5) Paragraph 11-3a (2) stipulates the policy applies to Soldiers who are in entry-level status, undergoing Initial Entry Training, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous Active Duty or Initial Active Duty Training.

(6) Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(7) Paragraph 11-8 stipulates service will be described as uncharacterized under the provisions of this chapter.

(8) Glossary defines entry-level status for Regular Army Soldiers is the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

f. Army Regulation 635-5-1 (Separation Program Designator (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 "JGA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 11 (Entry Level Performance and Conduct).

g. 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 DoD Instructions 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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):

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides the applicant received developmental counseling for refusing to transfer to the PTRP, refusing to train to become a Soldier, and was discharge from the Army for Entry Level Performance and Conduct. Their DD Form 214 provides the applicant was discharged with a character of service of Uncharacterized under the provisions of Army Regulation 635-200, chapter 11. They completed 1 month and 25 days of their 5-year contractual enlistment obligation and did not complete their first full term of service.

c. Army Regulation 635-200 states a separation will be described as entry-level with service uncharacterized if, at the time separation action is initiated, the Soldier has less than 180 days of continuous active duty service. Based on the time in service, the applicant was in an Entry Level Status and the Uncharacterized discharge was appropriate.

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 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):

(1) The applicant contends they had unresolved medical issues and felt they were not physically ready to go to the PTRP after their surgery.

The Board considered this contention and determined the applicant's physician at the time cleared the applicant to transfer to PTRP where the applicant would have received physical therapy in order to return to military training. There is insufficient evidence to support the applicant's contention and does not warrant an upgrade to the applicant's discharge. The Board determined the discharge is proper and equitable.

(2) The applicant contends they were discharged from the Army with an uncharacterized discharge because the Army stated they refused PTRP because they didn't want to train become a Soldier. That was not the case, they wanted to be a Soldier, they just needed more time to recover from their surgery.

The Board considered this contention and determined the applicant's physician at the time cleared the applicant to transfer to PTRP where the applicant would have received physical therapy in order to return to military training. Because the applicant refused to transfer to PTRP, which was the next step in the applicant's training process, the applicant refused to train. There is insufficient evidence to support an upgrade to the applicant's discharge. The discharge is proper and equitable.

(3) The applicant contends after they were discharged they went to a civilian hospital and the doctors there concluded that the surgery they had in the Army had failed which led to another surgery in August 2012. The surgery was a success, they fully recovered, and have had no medical issues since the second surgery.

The Board considered this contention and determined this contention does not outweigh or excuse the applicant's refusal to transfer to PTRP. The applicant's discharge is proper and equitable.

(4) The applicant contends they still want to serve in the military and has worked with an Air Force Reserve recruiter to join as a chaplain; however, their uncharacterized discharge is preventing them from joining the Air Force Reserve.

The Board considered this contention and determined in accordance with AR 635-200 that, based on the applicant's official record, the applicant was separated while in an entry level status and an 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, a change to the discharge is not warranted.

(5) The applicant contends they were a victim of an abuse of discretion. Their chain of command exercise their discretion to discharge them before their medical treatment was completed and they could complete Basic Training.

The Board considered this contention and determined this contention does not outweigh or excuse the applicant's refusal to transfer to PTRP. The applicant's discharge is proper and equitable.

(6) The applicant contends according to the Wilkie memorandum the Board should consider positive post service conduct. Since they were discharged they returned to work as a high school English teacher and pursued their calling in the pastoral ministry. They graduated with their master's in divinity in May 2019. They currently work as the Director of Family Ministry and Administration at their church.

The Board considered this contention and determined that the applicant's post-service accomplishments, and totality of the applicant's record do not outweigh the applicant's refusal to train by refusing to transfer to the PTRP, thus the discharge is proper and equitable.

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 there were no mitigating factors for the Board to consider. The applicant was discharged for refusing to transfer to the PTRP after surgery, therefore the applicant refused to train to become a Soldier. Therefore, the Uncharacterized discharge is proper and equitable. 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.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210015406

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:

11/20/2024

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