

1. Applicant's Name:

- a. **Application Date:** 24 April 2020
- b. **Date Received:** 8 May 2023
- 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 is general honorable conditions. The applicant requests a change to honorable.

(2) The applicant seeks relief contending, according to Army Regulation 535-200 (Active Duty Enlisted Administrative Separation), paragraph 13-2e, the commander is only allowed to approve honorable discharges. Their reason for a medical discharge is because their body was too broken to pass the Army Physical Fitness Test (APFT). They were injured during a training operation and the injury was noticed by their unit upon returning. They were denied the ability to see their primary care provider, including physical therapy, although they informed them of being in pain. Their unit basically just shrugged their shoulders to show as if their body and health were of no concern to them. It has been proven, when a unit is about to deploy, they attempt to get rid of the Soldiers, who could no longer serve under circumstances they cannot control. The easiest way possible was by discharging. Their unit was deploying to Korea at the time of the discharge. They were basically put on hold, or put on the back burner, which resulted in the type of discharge received on their DD Form 214.

b. Board Type and Decision: In a records review conducted on 28 August 2024, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Physical Standards / Army Regulation 635-200, Paragraph 13-2E / JFT / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 19 June 2019

c. Separation Facts: The applicant's case files for approved separation are void of several documents from their Army Military Resource Record (AMHRR). The only document filed is the applicant's notification of separation memorandum.

(1) **Date of Notification of Intent to Separate:** the applicant's receipt of notification of separation is not in evidence

(2) **Basis for Separation:** NIF

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** NIF

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

(6) Separation Decision Date / Characterization: NIF**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 4 June 2018/ 3 years, 18 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Diploma / 96
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 13B1O, Cannon Crewmember / 1 year, 16 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A memorandum, Charlie Battery, 1st Battalion, 7th Field Artillery, subject: Separation under Army Regulation 635-200, Paragraph 13-2e, Unsatisfactory Performance, APFT Failure, [Applicant], dated 30 May 2019, the applicant's company commander notified the applicant of initiating actions to separate them for Unsatisfactory Performance, APFT failure. The reason for their proposed actions is the applicant failed two APFTs within 90 days. [Note: the applicant's acknowledgment of notification of separation is not in evidence.]

(2) On 19 June 2019, the applicant was discharged, their DD Form 214 (Certificate of Release or Discharge from Active Duty) provides they completed 1 year and 16 days of net active service this period. Their DD Form 214 shows in –

- item 18 (Remarks) – MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) –General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 13-2e
- item 26 (Separation Code) – JFT [Physical Standards]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Physical Standards

(3) An Enlisted Record Brief dated 20 June 2019 reflects the applicant had suspensions of favorable personnel actions (Flag) for APFT failure on 13 December 2018 and Elimination on 6 May 2019

- 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)
- VA letter

- VA Rating Decision

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

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 DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, 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 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.

(5) Paragraph 13-2e states initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the APFT or who are eliminated for cause from NCO Education System courses.

(6) Paragraph 13-10 (Characterization of Service) stated the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

(7) Chapter 15 (Secretarial Plenary Authority), currently in effect, 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.

e. 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 "JFT" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, in effect at the time, Chapter 13-2e, Physical Standards.

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 DoD Instruction 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 waivable and nonwaivable 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.

g. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

8. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the applicant's AMHRR case files for approved separation only contains their notification of separation for Unsatisfactory Performance, APFT failure. The DD Form 214 provides the applicant was discharged with a character of service of General (Under Honorable Conditions), for Physical Standards. They completed 1 year and 16 days of net active service this period and did not complete their first term of service: their 3-year, 18-week contractual enlistment obligation.

c. 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. Initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the APFT or who are eliminated for cause from NCO Education System courses. The service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or general (under honorable conditions) as warranted by their military records.

d. The applicant's AMHRR is void of any evidence of physical conditions not meeting medical retention. The applicant provided VA evidence of service connected disabilities, each rated at 10-percent; asthma, left knee strain, lumbosacral strain, neck condition, plantar fasciitis, right knee strain, and ringing in ears.

e. Published DoD 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 diagnoses: No known conditions or profiles at the time of the APFT failure. 10% service connected for a variety of conditions due to showing pain with movement but no further evidence to raise the rating.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant is asserting injuries in-service contributing to the APFT failure.

(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 did not have a known injury or medical condition that would have impacted the APFT. However, the Board could consider the lack of additional misconduct when discussing characterization.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the board's application of liberal consideration, the board considered the opinion of the Board's Medical Advisor, a voting member, the board found insufficient evidence of in-service mitigating factors and the applicant does not have a behavioral health condition that mitigates the applicant's Unsatisfactory Performance (two APFT failures) - basis for applicant's separation.

b. Response to Contention(s):

(1) The applicant contends according to Army Regulation 535-200, paragraph 13-2, the commander is only allowed to approve honorable discharges. The board considered the totality of the applicant's service record but determined in accordance with AR 635-200, paragraph 13-2 (3c), commanders will initiate separation for unsatisfactory performance when the Soldier fails two consecutive record APFTs. Based on a preponderance of evidence, the board determined the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable.

(2) APFTs under AR 350 – 1. The APFT failures must be within the timeline set forth in AR 350 – 1. The board reviewed the applicant's available AMHRR and submitted documents and found no evidence of the command acting in an arbitrary or capricious manner. Therefore, the board found the applicant's discharge was proper and equitable.

(3) The applicant contends their reason for a medical discharge is because their body was too broken to pass the physical fitness test. They were injured during a training operation and the injury was noticed by the unit upon returning. The board considered this contention and determined that Army Regulation 635-200, in pertinent part, stipulates Commanders will separate Soldiers who fail two consecutive APFTs and have no underlying medical limitations. Also, the applicant's AMHRR is void of any evidence of physical conditions not meeting medical retention.

(4) The applicant contends they were denied the ability to see the primary care provider, including physical therapy, although the applicant informed the unit of being in pain. The board reviewed the applicant's available AMHRR and submitted documents and found no evidence of the command acting in an arbitrary or capricious manner and the applicant did not submit any evidence to support this contention. Therefore, the applicant's discharge was proper and equitable.

c. The board determined that the discharge is, at this time, proper and equitable, considering 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 board found insufficient evidence of in-service mitigating factors and the applicant does not have a behavioral health condition that mitigates the applicant's Unsatisfactory Performance (failed two APFTs within 90 days) – basis of separation. Based on a preponderance of evidence 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 reentry 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

AR20230005598

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