

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 24 June 2020
- b. **Date Received:** 23 February 2023
- 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 Army physical fitness test (APFT) failure alone does not warrant a general discharge. The applicant has no other misconduct or Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ). The applicant's platoon sergeant was biased and did not believe the applicant deserved an honorable discharge despite having no regulatory grounds. The applicant's platoon sergeant hazed the applicant on numerous occasions and made empty threats if the applicant went to Trial Defense Services. The separation process began without the applicant being able to seek counseling.

c. **Board Type and Decision:** In a records review conducted on 6 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's APFTs failure with no other misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a. No change to the narrative reason for separation or the reentry code.

Please see Section 9 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

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

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

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 16 January 2020

(2) **Basis for Separation:** The applicant was informed of the following reasons: Between on or about 2 October 2019 and on or about 14 November 2019, the applicant failed two consecutive record APFTs.

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

(4) **Legal Consultation Date:** On 7 January 2020, the applicant waived legal counsel.

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

(6) Separation Decision Date / Characterization: 17 January 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 January 2019 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / NIF

c. Highest Grade Achieved / MOS / Total Service: E-2 / 68W10, Health Care Specialist / 1 year, 1 month, and 13 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) Developmental Counseling Form shows the applicant was counseled on 12 September 2019 for insubordination because the applicant failed to have their individual first aid kit attached to their improvised outer tactical vest although the applicant had it with them and did not bring their canteen and canteen cover.

(2) APFT Scorecards shows the applicant failed record APFTs on 2 October, 14 and 18 November 2019.

(3) Three developmental counseling forms shows the applicant was counseled on 4 October, 14 and 18 November 2019 for APFT failures on 2 October, 14 and 18 November 2019.

(4) On 21 November 2019, the company commander requested a separation health assessment for the applicant.

(5) On 2 December 2019, the company commander requested medical and mental examinations, and dental, central issue facility, finance, and legal appointments for the applicant because of an intent to administratively separate the applicant under chapter 13.

(6) Report of Medical History, 3 December 2019, shows the examining medical physician noted in the comments section: The applicant was treated at Embedded Behavioral Health for panic and anxiety attacks in September 2019. The applicant reports resolution of anxiety.

(7) Developmental counseling form shows the applicant was counseled on 9 December 2019 for November 2019 monthly performance. The applicant's overall performance was unsatisfactory. The applicant has been observed attempting to improve themselves by going to the gym, running more, and building body strength. The applicant was told to improve on discipline, accountability, resiliency, professionalism, and adaptation. The applicant's personal issue was anxiety.

(8) On an unknown date the company commander-initiated action to separate the applicant for physical fitness standards.

(9) On 7 January 2020:

(a) The applicant declined the opportunity to consult with legal counsel.

(b) The applicant was advised by a Paralegal Specialist of the basis for their contemplated separation and its effects, the rights available to them, and the right to waive of their rights.

(c) On 16 January 2020, the applicant acknowledged receipt of the pending separation action against them and was advised of their right to consult counsel prior to making any elections of rights. The applicant had 7 days to respond, failure to respond would constitute a waiver up their rights in paragraphs six, seven, and eight of the notice.

(10) On 17 January 2020:

(a) The company commander's report states the applicant received rehabilitation attempts through supplement physical training with the battery. The applicant had no other disciplinary action, including nonjudicial punishment.

(b) The separation authority approved the request to separate the applicant under paragraph 13-2e, Physical Fitness Standards with a general (under honorable conditions) characterization of service. The applicant was promoted to private two (PV2/E-2) on 1 September 2019.

(11) The applicant provided defense counsel's Memorandum for Commander, Response to Proposed Separation of (Applicant) Under AR 635-200, Chapter 13-2e, Physical Fitness Standards, 20 January 2020, that states in accordance with AR 635-200, Chapter 13, paragraph 13-10, a general characterization may only be directed if it was warranted by the Soldier's military records. No provision under AR 635-200, the Manual for Courts-Martial, or the UCMJ defines a Soldier's inability to pass an APFT as "misconduct" that warrants a general discharge, and chapter 13 makes this distinction because "unsatisfactory performance" alone is not sufficient to warrant a general characterization of service. The administrative separation packet contained separation and characterization determinations made by the applicant's commanders on 17 January 2020, prior to the applicant having the opportunity to consult counsel and have matters submitted on their behalf. The initial commander's report shows the applicant had no disciplinary action that would warrant a downgrade from an honorable to a general discharge.

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; Memorandum, Response to Proposed Separation of (Applicant) under AR 635-200, Chapter 13-2e, Physical Fitness Standards.

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. AR 350-1 (Army Training and Leader Development) prescribes policies, procedures, and responsibilities for developing, managing, and conducting Army training and leader development. It states Soldiers must take a record APFT every 6 months for Regular Army and Active Guard and Reserve Soldiers, and annually for all other U.S. Army Reserve and Army National Guard Soldiers. If a Soldier fails a record APFT, commanders may allow Soldiers to retake the test as soon as the Soldier and commander feel the Soldier is ready to test (not to exceed 90 days). A repetitive APFT failure occurs when a Soldier fails a record test, is provided adequate time and assistance to condition (not to exceed 90 days), and fails again. Soldiers without medical profiles that fail a retest or fail to take the APFT with no authorized waiver within the required time will be barred from re-enlistment or processed for separation from the service.

e. Army Regulation 635-200 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 (previously paragraph 13-10), stipulates the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

(6) Chapter 15 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.

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 "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.

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 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 shows the applicant served 1 year, 1 month, and 13 days of service. The applicant received five developmental counseling forms which included failing three consecutive record APFTs between 2 October and 18 November 2019. The applicant was discharged under the provisions of AR 635-200, Chapter 13, paragraph 13-2e, by reason of physical standards with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, the APFT failure alone does not warrant a general discharge. 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. Paragraph 13-8 (previously paragraph 13-10), stipulates the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

d. The applicant contends, in effect, the applicant has no other misconduct or Record of Proceedings under Article 15, UCMJ. The applicant's AMHRR contains the company commander's report which states the applicant had no other disciplinary action, including nonjudicial punishment.

e. The applicant contends, in effect, the applicant's platoon sergeant was biased and did not believe the applicant deserved an honorable discharge despite having no regulatory

grounds. The applicant's platoon sergeant hazed the applicant on numerous occasions and made empty threats if the applicant went to Trial Defense Services. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

f. The applicant contends, in effect, the separation process began without the applicant being able to seek counseling. The applicant's AMHRR contains the applicant's election of rights, 7 January 2020, that shows the applicant declined the opportunity to consult with legal counsel. Also, the applicant was advised by a Paralegal Specialist of the basis for their contemplated separation and its effects, the rights available to them, and the right to waive of their rights on 7 January 2020.

g. 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 diagnoses/experiences: Adjustment DO, unspecified; Adjustment DO with mixed anxiety and depressed mood.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant has an in-service diagnosis of Adjustment DO, unspecified; Adjustment DO with mixed anxiety and depressed mood.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the applicant was diagnosed with Adjustment DO, unspecified and Adjustment DO with mixed anxiety and depressed mood, neither of these conditions is associated with an inability to pass a physical fitness examination.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition did not outweigh the APFT failures basis of separation.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends, in effect, the APFT failure alone does not warrant a general discharge. The Board determined this contention is valid.

(2) The applicant contends, in effect, the applicant has no other misconduct or Record of Proceedings under Article 15, UCMJ. The Board determined this contention is valid.

(3) The applicant contends, in effect, the applicant's platoon sergeant was biased and did not believe the applicant deserved an honorable discharge despite having no regulatory grounds. The applicant's platoon sergeant hazed the applicant on numerous occasions and made empty threats if the applicant went to Trial Defense Services. The Board acknowledged this contention.

(4) The applicant contends, in effect, the separation process began without the applicant being able to seek counseling. The Board acknowledged this contention.

d. The Board determined the discharge is inequitable based on the applicant's APFT failures with no other misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a. No change to the narrative reason for separation or the reentry code.

e. Rationale for Decision:

(1) The Board voted to upgrade the characterization of service to Honorable based on the following reasons. The applicant has an in-service diagnosis of Adjustment DO, unspecified; Adjustment DO with mixed anxiety and depressed mood. The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the applicant was diagnosed with Adjustment DO, unspecified and Adjustment DO with mixed anxiety and depressed mood, neither of these conditions is associated with an inability to pass a physical fitness examination. The Board discussed the applicant's contentions and carefully considered the applicant's request, supporting documents, medical review, and evidence in the records. Based on the APFT failure with no misconduct, the Board determined the current discharge is inequitable and warrants an upgrade.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230005914

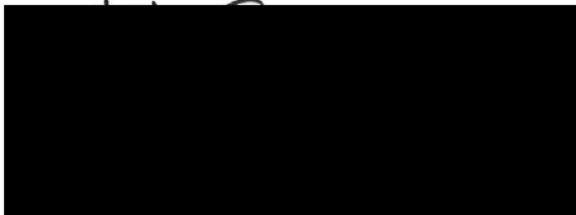
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: 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, paragraph 14- 12a

Authenticating Official:

4/29/2024



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