

1. Applicant's Name:

- a. **Application Date:** 1 August 2023
- b. **Date Received:** 14 August 2023
- 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.

b. The applicant seeks relief contending, in effect, discrimination and harassment from the commander and some of the drill sergeants towards the applicant. Captain C___, commander took the applicant's weapon away from the applicant. The applicant was gaslighted by the drill sergeants, however the applicant completed all that was asked of the applicant. Directions kept being changed around and the commander refused to let the applicant train and made the applicant stand apart and not participate. The applicant was also discriminated and retaliated against for filing a complaint against drill sergeants for harassing the applicant about the applicant's birth origin of Colorado and the applicant's white skin color. Comments were made about the applicant's white skin color. The commander pulled the applicant into the office five times a day and had female Soldiers to taunt the applicant in various ways. In addition, the applicant was retaliated against for filing an Inspector General complaint against Drill Sergeant S___.

(1) The applicant was forced to sign papers against the applicant's will for refusing to train and received a general (under honorable conditions) (analyst notes the applicant received an uncharacterized discharge). The applicant believes that this was a form of harassment to be forced to agree to have the military harass the applicant as a civilian by not receiving employment, housing, and preventing opportunities.

(2) The applicant states they are not guilty of refusing to train and did everything that was asked of the applicant by the commander, drill sergeants, and staff. This was a hate crime.

c. **Board Type and Decision:** In a records review conducted on 18 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 10 of this document for more detail regarding the Board's decision.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Entry Level Performance and Conduct / AR 635-200, Chapter 11 / JGA / RE-3 / Uncharacterized

b. **Date of Discharge:** 25 February 2021

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** NIF

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

- (3) Recommended Characterization:** NIF
- (4) Legal Consultation Date:** NIF
- (5) Administrative Separation Board:** NIF
- (6) Separation Decision Date / Characterization:** NIF

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 19 January 2021 / 3 years and 27 weeks
- b. Age at Enlistment / Education / GT Score:** 28 / High School Graduate / 115
- c. Highest Grade Achieved / MOS / Total Service:** E-1 / None / 1 month and 7 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:**

(1) Department of the Army Inspector General Action Request System, Electronic Case Form, was opened on 2 February 2021 and closed on 9 February 2021. It states:

(a) On 1 February 2021, the applicant informed the Inspector General that when the applicant was screened for Covid-19 at the 30th Adjutant General Battalion an unnamed Drill Sergeant singled the applicant out because the applicant was having a hard time relaxing for the test in order to get a proper swab for the test. The applicant's second issue was with another trainee, which the applicant referred to as number 207, stating that number 207 was elbowing the applicant making physical contact. The applicant stated that because the applicant is a white female and the Drill Sergeant and reference of number 207 are of Hispanic descent is why the applicant was being treated this way.

(b) On 5 February 2021, the Inspector General team determined that the case would be referred through the chain of command to Equal Opportunity to properly address the issues discussed.

(2) Department of Defense Hotline Completion Report, 28 July 2021, states the applicant submitted the following Inspector General complaints:

- Allegation 1: CPT T__ C__ improperly separated the applicant from the Army in February 2021
- Allegation 2: Private Two (PV2) P__ E__-P__ failed to treat the applicant with dignity and respect
- Allegation 3: PV2 E__-P__ communicated a threat to the applicant
- Allegation 4: PV2 E__-P__ assaulted the applicant
- Allegation 5: Drill Sergeant L__ S__ bullied the applicant
- The investigating officer's findings of the five allegations were not substantiated

(a) Allegation 1: The battalion commander conducted an investigation into the applicant's chapter packet and did not find any process violations within the packet. The applicant was counseled in writing regarding the Army's intent to chapter. As part of the process, the command gave the applicant an opportunity to speak with a lawyer which the applicant invoked. The chain of command provided the applicant the opportunity to submit matters in the applicant's defense, which the command considered in making the decision to chapter (discharge) the applicant from the Army. The applicant failed to adapt to the U.S. Army during the applicant's time in basic training. The applicant was incredibly disruptive to the class and was not adjusting well to military life. The applicant's chapter was completed as a chapter 11 for "failure to adapt." The investigation found no evidence that the applicant was being discriminated against by CPT C__ or anyone else in the chain of command. In addition, the investigating officer found no evidence that suggests discrimination therefore, no nexus to the applicant's separation packet from the Army. The applicant was not trainable given the applicant's attitude toward drill sergeants, cadre, and the applicant's chain of command to include the inability to maintain military bearing. The applicant also exhibited behaviors that concerned the chain of command, to include waking up in the middle of the night, shouting, and slamming a wall locker. The applicant displayed behaviors which lead to a mental health assessment (AMHRR is void of a mental health evaluation). The preponderance of evidence suggests the applicant was not discriminated against in being improperly separated from the Army.

(b) Allegation 2: The applicant alleged that in January and February 2021, PV2 E__-P__ and battle buddies were failing to treat the applicant with dignity and respect. The investigation found no witness that provided any evidence to suggest anyone failed to treat the applicant with dignity and respect.

(c) Allegation 3: The applicant alleged that in January and February 2021, PV2 E__-P__ communicated a threat to the applicant. The applicant did not provide any additional clarity or information about PV2 E__-P__ pointing a weapon at the applicant. Furthermore, no witness corroborated the applicant's version of events listed in the Hotline complaint alleging PV2 E__-P__ ever threatened the applicant in any situation. The evidence suggests that PV2 E__-P__ did not communicate a threat.

(d) Allegation 4: The applicant alleged that on or about 29 January 2021, PV2 E__-P__ assaulted the applicant. Several examples of when PV2 E__-P__ came in contact with the applicant were not defined as "assault," but are normal examples of how trainees and soldiers come in contact with one another on a daily basis. The evidence suggest PV2 E__-P__ did not assault the applicant at any time during initial entry training.

(e) Allegation 5: The applicant alleged that on or about 11 February 2021, Drill Sergeant S__ bullied the applicant. The investigating officer found that the applicant was often very disrespectful towards the drill sergeants and would not listen to them when they spoke to applicant. Multiple witnesses stated it would often take multiple drill sergeants to speak and/or raise voices at the applicant to get the applicant's attention. The investigating officer found no evidence to suggest Drill Sergeant S__ ever bullied the applicant.

(3) Orders 055-2216, 24 February 2021, reflect the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 25 February 2021 from the Regular Army.

(4) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not completed the first full term of service. The applicant was discharged on 25 February 2021 under the authority of AR 635-200, chapter 11, with a narrative

reason of Entry Level Performance and Conduct. The DD Form 214 was not authenticated with the applicant's electronic signature.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: None

The ARBA's medical advisor reviewed DoD and VA medical records.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; and self-authored hand-written statement.

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 635-8 (Separation Processing and Documents) and AR 600-8-104 (Army Military Human Resources Records Management) both require supporting documents for an approved separation action to be maintained in the affected Soldier's official military personnel file.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 2-2 (Notice), stated commanders were to notify the soldier in writing of the following:

(a) Provide the basis of the proposed separation, including the circumstances upon which the action was based, and a reference to the applicable regulatory separation provision.

(b) The Soldier will be advised of the following rights:

- whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army
- the least favorable characterization of service or description of separation they could receive
- the type of discharge and character of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander

(c) Further advise the Soldier of the following rights:

- consult with military or civilian counsel at their own expense

- submit statements in their own behalf
- obtain copies of documents that will be sent to the separation authority supporting the proposed separation
- to a hearing before an administrative separation board under section III of this chapter if they had 6 or more years of total active and Reserve service on the date of initiation of recommendation for separation
- waive their rights

(2) 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) 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.

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

(6) Paragraph 11-3a (2) stipulates the policy applies to Soldiers who are in entry-level status, undergoing IET, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous AD or IADT or no more than 90 days of Phase II under a split or alternate training option. (See the glossary for precise definition of entry-level status.)

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

(8) 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.

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

f. Army Regulation 635-5-1 (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 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. An honorable discharge may be given only in cases which are clearly warranted by unusual circumstances involving outstanding personal conduct and/or performance of duty. An HD is rarely ever granted.

c. The applicant's AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214, which was not authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged on 25 February 2021 under the provisions of AR 635-200, Chapter 11, by reason of entry-level performance and conduct, with a characterization of service of uncharacterized.

d. The applicant contends, in effect, discrimination and harassment from the commander and some of the drill sergeants towards the applicant. The applicant was also discriminated and retaliated against for filing a complaint against drill sergeants for harassing the applicant about the applicant's birth origin of Colorado and the applicant's white skin color. In addition, the applicant was retaliated against for filing an Inspector General complaint against Drill Sergeant S__. The U.S. Army Inspector General Agency provided:

(1) Department of the Army Inspector General Action Request System, Electronic Case Form, 9 February 2021, shows the applicant claimed an unnamed Drill Sergeant singled the applicant out because the applicant was having a hard time relaxing for the COVID-19 test. The applicant's second issue was with another trainee, which the applicant referred to as number 207, stating that number 207 was elbowing the applicant making physical contact. The applicant stated that because the applicant is a white female and the Drill Sergeant and reference of number 207 (another trainee) are of Hispanic descent is why the applicant was being treated this way. On 5 February 2021, the Inspector General team determined that the case would be referred through the chain of command to Equal Opportunity to properly address the issues discussed. Analyst notes there is no Equal Opportunity report for review.

(2) Department of Defense Hotline Completion Report, 28 July 2021, shows:

(a) The battalion commander conducted an investigation into the applicant's chapter packet and did not find any process violations within the packet. The investigation found no evidence that the applicant was being discriminated against by CPT C__ or anyone else in the chain of command. In addition, the investigating officer found no evidence that suggests discrimination therefore, no nexus to the applicant's separation packet from the Army.

(b) The applicant's Inspector General complaints in reference to another trainee failing to treat the applicant with dignity and respect, communicating a threat to the applicant, assaulting the applicant, and being bullied by Drill Sergeant S__ were found not substantiated.

e. The applicant contends, in effect, the applicant was forced to sign papers against the applicant's will for refusing to train and received a general (under honorable conditions) (analyst notes the applicant received an uncharacterized discharge). The applicant believes that this was a form of harassment to be forced to agree to have the military harass the applicant as a civilian by not receiving employment, housing, and preventing opportunities. The U.S. Army Inspector General Agency provided: Department of Defense Hotline Completion Report, 28 July 2021, shows the applicant filed a complaint through the Inspector General's office accusing CPT T__ C__, of improperly separating the applicant from the Army in February 2021. The battalion commander conducted an investigation into the applicant's chapter packet and did not find any process violations within the packet. The finding of the investigating officer was not substantiated.

f. 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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. The applicant submitted the following additional document(s): None

b. The applicant presented the following additional contention(s): None

c. Counsel / Witness(es) / Observer(s): None

10. 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 which were void of diagnoses or experiences for consideration. However, the applicant asserts PTSD and MST which may be sufficient evidence to establish the

existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant has asserted PTSD to the VA, but not diagnosed. On her ARBA application, she marked MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Unknown.** The Board's Medical Advisor applied liberal consideration and opined that the medical condition or experience asserted are void from the medical records and no further information has been offered by the applicant to assist in applying the assertions. However, as this is a PA Board, the testimony may allow for a clear determination.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's conditions outweighed the discharge.

b. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends, in effect, discrimination and harassment from the commander and some of the drill sergeants towards the applicant. The applicant contends they were also discriminated and retaliated against for filing a complaint against drill sergeants for harassing the applicant about the applicant's birth origin of Colorado and the applicant's white skin color. In addition, the applicant was retaliated against for filing an Inspector General complaint against Drill Sergeant S__.

The Board acknowledged this contention.

(2) The applicant contends, in effect, the applicant was forced to sign papers against the applicant's will for refusing to train and received a general (under honorable conditions) (analyst notes the applicant received an uncharacterized discharge). The applicant believes that this was a form of harassment to be forced to agree to have the military harass the applicant as a civilian by not receiving employment, housing, and preventing opportunities.

The Board acknowledged this contention.

d. 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 and/or inequitable.

e. 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, there is no medical mitigation (no diagnoses or experiences for mitigation), the applicant did not furnish any evidence to show the discharge was improper or inequitable, there was not enough information in the record to determine the basis for separation, and the applicant did not show up for the personal appearance to explain any extenuating circumstances surrounding the discharge.

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(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.

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

11. 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:

12/2/2024

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