

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 27 September 2023
- b. **Date Received:** 12 October 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 (under honorable conditions). The applicant requests a change to honorable.

(2) The applicant seeks relief stating they served honorably in the Army for 8 years and received multiple awards for their service. They got chaptered out due to their failure to pass the Army Physical Fitness Test (APFT). They were going through a divorce and it affected them more than they realized at the time. They were informed their character of service would be honorable, so they waived their rights to fight it. After they waived their rights, their battalion commander downgraded it to a general (under honorable conditions). They feel as if this was unjust and not equal to the previous 8 years in the Army.

b. Board Type and Decision: In a records review conducted on 24 July 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, and severe family matters at the time of discharge. 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. There will be no change to the narrative reason for separation or the reentry code.

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: 29 March 2021

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** on or before 3 March 2020, date of the applicant's Acknowledgment of Receipt of Separation Notice.

(2) **Basis for Separation:** failed two consecutive record APFTs, 22 June 2020 and 17 September 2020.

(3) **Recommended Characterization:** Honorable

(4) **Legal Consultation Date:** 3 March 2021

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

(6) **Separation Decision Date / Characterization:** 18 March 2021 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 24 May 2017/ 6 years
- b. **Age at Enlistment / Education / GT Score:** 23 / HS Diploma / 112
- c. **Highest Grade Achieved / MOS / Total Service:** E-6 / 13B3O, Cannon Crewmember / 8 years, 19 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Poland / None
- f. **Awards and Decorations:** ARCOM-2, AAM-3, AGCM-2, NDSM, GWTSM, ASR
- g. **Performance Ratings:** 1 December 2016 – 30 November 2017 / Highly Qualified
1 December 2017 – 31 December 2018 / Highly Qualified
1 January 2019 – 31 December 2019 / Qualified
1 January 2020 – 31 December 2020 / Qualified
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 1059 (Service School Academic Evaluation Report) covering the period 17 January 2019 through 22 January 2019, reflects the applicant received a referred report for failure to achieve course standards for the Drill Sergeant Course. The applicant was released from the Drill Sergeant Course for failure to pass the three event APFT.

(2) A DA Form 2166-9-2 (Noncommissioned Officer (NCO) Evaluation Report) covering the period 1 January 2019 through 31 December 2019 reflects in –

- Part IV (Performance Evaluation, Professionalism, Attributes, and Competences) the applicant failed the APFT on 11 October 2019, the applicant's rater commented "failed to meet Army Physical Fitness standards for the two mile run"
- Part IVd (Presence) the applicant's rater marked "Did Not Meet Standard" and commented "made satisfactory progress in run time but failed to meet the minimum time standard to pass the APFT"

(3) A DA Form 705 (APFT Scorecard) dated 22 June 2020, reflects the applicant did not meet the standard for the 2-mile run.

(4) A DA Form 4856 (Developmental Counseling Form) dated 22 June 2020, reflects the applicant received event-oriented counseling for their APFT failure. The Key Points of Discussion states the applicant failed to achieve a passing score in the 2-mile run event. The applicant was informed that they will have up to 90 days from initial failure in which to retake and pass the APFT. Two consecutive APFT failures are grounds for separation. The applicant agreed with the information and signed the form.

(5) A DA Form 705 (APFT Scorecard) dated 17 September 2020, reflects the applicant did not meet the standard for the 2-mile run.

(6) A DA Form 4856 (Developmental Counseling Form) dated 17 September 2020, reflects the applicant received event-oriented counseling. The Key Points of Discussion states

on 17 September 2020, they conducted an APFT which they failed the 2-mile run event. The applicant ran 18:49 and need to run a 16:36 to pass. This is their second consecutive APFT failure. They are being recommended for separation. The applicant agreed with the information and signed the form.

(7) A DA Form 2808 (Report of Medical Examination) dated 25 November 2020, reflects in –

- item 15c (Purpose of Examination) – Separation
- item 74a (Examinee/Applicant) – "Is Qualified for Service"
- item 77 (Summary of Defects and Diagnoses) – None
- item 78 (Recommendation) – None

(8) A DA Form 2166-9-2 (NCO Evaluation Report) covering the period 1 January 2020 through 31 December 2020 reflects in –

- Part IV (Performance Evaluation, Professionalism, Attributes, and Competences) the applicant failed the APFT on 29 September 2020, the applicant's rater commented "failed the 2-mile event on last APFT"
- Part IVd (Presence) the applicant's rater marked "Did Not Meet Standard" and commented "failed to meet minimum APFT standards repeatedly and lacks the willingness to improve"
- Rater Overall Performance – the applicant's rater marked "Met Standard" and commented "educated leader that has potential but needs to work on [applicant's] physical fitness"

(9) A memorandum, Charlie Battery, 3rd Battalion, 29th Field Artillery Regiment, subject: Separation under Army Regulation 635-200, Chapter 13-2e, Unsatisfactory Performance, APFT Failure, [Applicant], undated, notified the applicant of initiating actions to separate them for Unsatisfactory Performance, APFT Failure. The applicant's company commander recommended their service be characterized as Honorable and the separation authority will make the final decision. On the same day the applicant acknowledged receipt of notification for separation.

(10) On 3 March 2021, the applicant completed their election of rights signing they had been advised by counsel of the basis for the contemplated action to separation them for Unsatisfactory Performance, APFT Failure under Army Regulation 635-200, paragraph 13-2e, and its effects and of the rights available to them; and of the effect of any action taken by them in waving their rights.

(a) They understood that if they have 6 or more years of total active and reserve military service on the date of initiation of recommendation for separation, they are entitled to have their case considered by an administrative separation board. The elected to waive consideration of their case by an administrative separation board. They waived consulting counsel and representation by military counsel.

(b) They elected not to submit statements in their behalf. They understood that they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them and they may be ineligible for many, or all benefits as a veteran under both Federal and State laws.

(11) A memorandum, Charlie Battery, 3rd Battalion, 29th Field Artillery Regiment, subject: Commander's Report – Proposed Separation under Army Regulation 635-200,

Chapter 13-2e, Unsatisfactory Performance, APFT Failure, [Applicant], dated 16 March 2021, the applicant's company commander recommended they be separated from the Army prior to the expiration of their current term of service. The company commander states the applicant is unwilling to improve in the realm of physical fitness and has expressed desire to separate from the Army. The separation is in the best interest of both the Army and the Soldier.

(12) A memorandum, Headquarters, 3rd Brigade, 29th Field Artillery Regiment, subject: Separation under Army Regulation 635-200, Chapter 13-2e, Unsatisfactory Performance, APFT Failure, [Applicant], dated 18 March 2021, the separation authority, after careful consideration of all matters, directed the applicant be separated from the Army prior to their expiration of current term of service and their service be characterized as General (Under Honorable Conditions). After reviewing the rehabilitative transfer requirements the commander determined the requirements do not apply to this action.

(13) On 29 March 2021, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides they completed 8 year and 19 days of net active service this period. Their DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate or Rank) – Staff Sergeant
- item 4b (Pay Grade) – E-6
- item 12f (Effective Date of Pay Grade) – 1 October 2018
- item 18 (Remarks) – is void of a continuous honorable service remark
- 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

(14) An Enlisted Record Brief dated 6 April 2021 reflects the applicant's marital status as "Married."

- 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)
- excerpts of their Army Military Human Resource Record

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 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.

g. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedures regarding separation documents, it states in the preparation of the DD Form 214 for soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter in item 18 (Remarks) "Continuous Honorable Active Service From (first day of service which DD Form 214 was not issued) until (date before commencement of current enlistment).

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 applicant's Army Military Human Resource Record reflects the applicant was eliminated for cause from the Drill Sergeant course for failure to pass the APFT, received two negative NCO Evaluation Reports for failed APFTs, received developmental counseling for failure to pass two consecutive APFTs, and was involuntarily separated from the Army. The DD Form 214 provides the applicant was discharged with a character of service of General (Under Honorable Conditions), for Physical Standards. They completed 8 years and 19 days of net active service this period and completed their first time of service; however, they did not complete their 6 years contractual reenlistment obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

d. 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? **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. Prior Decisions Cited: None

c. Response to Contentions:

(1) The applicant contends they served honorably in the Army for 8 years and received multiple awards for their service. The Board acknowledged this contention.

(2) The applicant contends they got chaptered out due to their failure to pass the APFT. They were going through a divorce and it affected them more than they realized at the time. The Board acknowledged and considered this contention during deliberations.

(3) The applicant contends they were informed their character of service would be honorable, so they waived their rights to fight it. After they waived their rights, their battalion commander downgraded it to a general (under honorable conditions). They feel as if this was unjust and not equal to the previous 8 years in the Army. The Board acknowledged this contention.

d. The Board determined the discharge is inequitable based on the applicant's length and quality of service, and severe family matters at the time of discharge. 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. There will be no change to the narrative reason for separation or the reentry code.

e. Rationale for Decision:

(1) Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were inequitable. The Board Members noted the applicant's Length, Quality, Severe Family Matters (was not in the right mind frame due to a pending divorce), his commander recommended him for an Honorable Discharge but it was downgraded to a General (Under Honorable Conditions), and the applicant had four good NCOERS and deployed to Poland. Those positive factors mitigated the failure of two consecutive APFTs. The Board did not change the reason because the reason accurately reflects why the applicant was discharged, "Physical Standards."

(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

AR20230013400

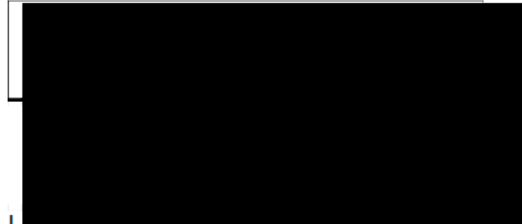
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: 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: No Change

Authenticating Official:

9/10/2024



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