

1. Applicant's Name:

- a. **Application Date:** 4 October 2023
- b. **Date Received:** 10 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 honorable conditions. The applicant requests an upgrade to honorable.

(2) The applicant seeks relief stating they tore their meniscus and anterior cruciate ligament (ACL) while on active duty and could not participate or pass physical training evaluations. They had ACL reconstructive and meniscus repair surgery. They are also filing a disability claim for their service-connected injury.

b. Board Type and Decision: In a records review conducted on 17 May 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: Unsatisfactory Performance / Army Regulation 635-200, Chapter 13 / JHJ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 24 May 2023

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 20 April 2023

(2) **Basis for Separation:** the applicant has not demonstrated the ability to affectively perform their duties.

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

(4) **Legal Consultation Date:** 20 April 2023

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

(6) **Separation Decision Date / Characterization:** 26 April 2023 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 January 2020 / 3 years, 24 weeks

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / 91

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B1O, Infantryman / 3 years, 3 month, 27 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM-2, NDSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Eight DA Forms 4856 (Developmental Counseling Form) dated 27 May 2021 through 17 August 2022, reflects the applicant received event-oriented counseling for multiple acts of misconduct, to include failure to report, driving without a license, lying to Noncommissioned Officers (NCO) regarding driver's license, and insubordinate conduct.

(2) A DA Form 4856, dated 25 August 2022, reflects the applicant received event oriented counseling from their platoon sergeant, with notification of recommendation for separation for unsatisfactory performance.

(3) A DD Form 2697 (Report of Medical Assessment) dated 9 November 2022, reflects the applicant reported their overall health was the same compared to their last medical assessment/physical examination. They reported they have suffered from lower back pain which they did not seek medical care and they had concerns about Post-Traumatic Stress Disorder (PTSD) and anxiety. The health care provider commented the applicant is fit for duty and cleared for chapter physical.

(4) A DD Form 2807-1 (Report of Medical History) dated 9 November 2022, reflects the applicant marked "Yes" to multiple conditions, to the question "Have you ever had or do you now have," to include knee trouble. In item 30a (Comments) the health care provider noted the applicant's knee pain and their ACL reconstruction surgery in January 2022.

(5) A DD Form 2808 (Report of Medical Examination) dated 9 November 2022, reflects the health care provide marked "Normal" to all examined physical anatomy. Item 74 (Examinee) reflects the applicant is medically qualified for chapter with no physical profile limitations.

(6) A DA Form 3822 (Report of Mental Status Evaluation) dated 9 November 2022, reflects the applicant has no duty limitations due to behavioral health reasons and meets behavioral health medical retention standards. No behavior health diagnoses were noted. They behavioral health provider noted the applicant is psychiatrically cleared for any administrative action deemed appropriate by command.

(7) A DA Form 4856, dated 19 January 2023, reflects the applicant received event-oriented counseling from their company commander to inform the applicant of their consideration of involuntary separation. Key Points of Discussion reflects –

(a) The applicant is notified that they are being considered for involuntary separation under Army Regulation 635-200, chapter 13 for unsatisfactory performance, because of minor disciplinary infractions and failure to adapt to a military lifestyle. Their conduct exhibits a pattern of discreditable involvement with good order and discipline of the unit and the U.S. Army. They have demonstrated that they are a liability to the unit as well as to the Army.

(b) The company commander believes the applicant's continued service will only result in their continued unsatisfactory performance. Attempts to rehabilitate and develop them as a satisfactory Soldier are unlikely, further effort is unlikely to succeed, and their potential for advancement to a leadership position is unlikely. The applicant agreed with the information and signed the form.

(8) A memorandum, Bravo Company, 2nd Battalion, 14th Infantry Regiment, subject: Notification of Administrative Separation under Army Regulation 635-200, Chapter 13, dated 20 April 2023, the applicant's company commander notified the applicant that under the provisions of Army Regulation 635-200, chapter 13, they are initiating action to separate them for Unsatisfactory Performance. The reason for the proposed action is the applicant has not demonstrated the ability to affectively perform their duties, and the company commander believes that training will not develop them into a satisfactory Soldier and that their potential for advancement and leadership is unlikely. On the same day, the applicant acknowledged the basis for the separation and of the right available to them.

(9) A memorandum, Bravo Company, 2nd Battalion, 14th Infantry Regiment, subject: Election of Rights under Army Regulation 635-200, Chapter 13, dated 20 April 2023, the applicant completed their election of rights signing they have been advised by consulting counsel of the basis for the contemplated action to separate them for unsatisfactory performance under Army Regulation 635-200, chapter 13, and its effects; of the rights available to them; and the effect of any action taken by them in waiving their rights. They elected not to submit statements in their behalf, and they waived consulting counsel. They understood that they may expect to encounter substantial prejudice in civilian life if a general (under honorable conditions) discharge is issued to them.

(10) A memorandum, Bravo Company, 2nd Battalion, 14th Infantry Regiment, subject: Commander's Report for Separation under Army Regulation 635-200, Chapter 13, dated 20 April 2023, the applicant's company commander submitted a request to separate them prior to their expiration term of service. The company commander states the reason for the proposed action is the applicant has not demonstrated the ability to affectively perform their duties, and the company commander believes that training will not develop them into a satisfactory Soldier and that they do not have potential for advancement and leadership is unlikely. The applicant struggles with the most basic aspects of being a Soldier.

(11) A memorandum, Headquarters, 2nd Battalion, 14th Infantry Regiment, subject: Administrative Separation under Army Regulation 635-200, Paragraph 13, dated 26 April 2023, the separation authority, having reviewed the separation packet of the applicant, directed the applicant be separated from the Army prior to the expiration of current term of service and their service be characterized as general (under honorable conditions). After reviewing he rehabilitative transfer requirement, the commander determined the requirements are waived as the transfer serves no useful purpose or will not product a quality Soldier.

(12) A DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects that applicant was discharged from active duty on 24 May 2023, shows in:

- item 4a (Grade, Rate or Rank) – Private Two
- item 4b (Pay Grade) – E-2
- item 12c (Net Active Service This Period) – 3 years, 3 months, 27 days
- item 12i (Effective Date of Pay Grade) – 16 September 2022
- item 18 (Remarks) – in part, 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, Chapter 13
- item 26 (Separation Code) – JHJ [Unsatisfactory Performance]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Unsatisfactory Performance

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)
- Post Operative Written Progress Note

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 Instruction 1332.28.

d. Army Regulation 601-280 (Army Retention Program), effective 28 February 2006, prescribed criteria for the Army Retention Program and set forth policies, command responsibilities for immediate reenlistment or extension of enlistment of Soldiers currently serving in the Active Army. Chapter 8 (Bar to Reenlistment Procedures) prescribed procedures to deny reenlistment to Soldiers whose immediate separation under administrative procedures is not warranted, but whose reentry into or service beyond expiration of term of service with the Active Army is not in the best interest of the military service. Paragraph 8-4d (Soldiers against whom a Bar to Reenlistment may be initiated), stated Soldier may be barred from reenlistment for one or a combination of the below listed infractions or reasons, to include, noncompetitive for promotion – declines attendance in professional development courses such as WLC.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, and general provisions governing the separation of Soldiers before expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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 (Separation for Unsatisfactory Performance) states a Soldier may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. Commanders may initiate separation for a Soldier for unsatisfactory performance when the three following conditions are met; the Soldier's performance has been unsatisfactory; after sufficient counseling and rehabilitative efforts have been made, the Soldier's performance continues to be unsatisfactory; and the Soldier's performance and potential that he or she will not develop sufficiently to become a fully satisfactory Soldier. 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.

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 "JHJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 13, separation for unsatisfactory performance.

g. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DoD Instructions 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is 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):

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

b. The applicant's AMHRR reflects the received event-oriented counseling multiple acts of minor disciplinary infractions and failure to adapt to a military lifestyle. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, chapter 13, separation for unsatisfactory performance, with a characterization of service of general (under honorable conditions). The applicant completed 3 years, 3 months, and 27 days

of net active service; however, the applicant did not complete their first full term of service obligation of 3 years and 24 weeks.

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. 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 Army Military Human Resource Record does not provide documentation showing their right knee condition was medically unacceptable at the time of their discharge from the U.S. Army, nor did the applicant provide documentation.

e. 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, which were void of a diagnosis or experience. However, the applicant Post Traumatic Stress Disorder suggestion could 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 noted Post Traumatic Stress Disorder on the DD2697.

(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 does not have a diagnosis and did not provide any for mitigation. Moreover, the applicant was recovering well from the ACL tear and returning to full duty with normal trajectory. Additionally, an ACL tear would not have contributed to the misconduct irrespective of healing.

(4) Does the condition or experience outweigh the discharge? **N/A**

(5) Response to Contention(s): The applicant contends they tore their meniscus and ACL while on active duty and could not participate or pass physical training evaluations. They had ACL reconstructive and meniscus repair surgery. The Board considered this contention but determined that the applicant's offense of Unsatisfactory Performance (the applicant did not demonstrate the ability to effectively perform their duties) can serve as the basis for separation and characterization in accordance with AR 635-200. Therefore, a discharge upgrade is not warranted.

b. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the

burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

c. 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 applicant's Post Traumatic Stress Disorder assertion did not excuse or mitigate the offenses of Unsatisfactory Performance (the applicant did not demonstrate the ability to effectively perform their duties). The Board also considered the applicant's contention regarding the applicant's contention of tearing their meniscus and ACL while on active duty and could not participate or pass physical training evaluations and found that totality of the applicant's record does not warrant a discharge upgrade. 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. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

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:

1/14/2025

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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs