

1. Applicant's Name:

- a. **Application Date:** 13 August 2023
- b. **Date Received:** 3 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 uncharacterized. The applicant requests an upgrade of their character of service.

(2) The applicant states their discharge should be changed due to their service connected disability from the Department of Veterans Affairs (VA). While on duty during Basic Training they injured their left knee which resulted in an injury in their right knee and hip, due to improper care, heavy ruck marches, difficult runs, and other required courses. Due to these injuries, they could no longer perform at their physical best during training resulting in an Army Physical Fitness Test (APFT) failure, which led to their discharge.

(3) It is their belief that if they were given the opportunity to properly recover with access to physical therapy, they would have been able to afford to continue their pursuit of a higher education. They are asking that their discharge be upgraded considering their service connected disability, so they may have access to their education benefits to earn a degree and better the lives of their family.

b. Board Type and Decision: In a records review conducted on 18 September 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: Entry Level Performance and Conduct / Army Regulation 635-200, Chapter 11 / JGA / RE-3 / Uncharacterized

b. Date of Discharge: 7 May 2012

c. Separation Facts: The applicant's case separation file is void from the Army Military Human Resource Record (AMHRR); however, the applicant provided a couple of separation documents. The information in 3c(1) through (6) were derived from those documents.

(1) Date of Notification of Intent to Separate: 24 April 2012

(2) Basis for Separation: the applicant has been given two opportunities to pass the APFT, which is a requirement for graduation, they have failed to do so.

(3) Recommended Characterization: Uncharacterized

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: NIF

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 7 November 2011 / 6 Years

b. Age at Enlistment / Education / GT Score: 21 / NIF / NIF

c. Highest Grade Achieved / MOS / Total Service: E-3 / NA / 6 months, 1 day

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: NA

f. Awards and Decorations: None

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DD Form 2807-1 (Record of Medical History) dated 23 April 2012, reflects the applicant checked "Yes" for item 12g (impaired use of arms, legs, hands or feet), item 12i (Swollen or painful joints) and item 12i (Knee troubles) for the question "have you ever had or do you know have." Item 29 Explanation of "Yes" Answers) reflects the applicant's left hip pain 29 February 2012; left knee and ankle sprain 29 November 2011; and bilateral Knee pain, 26 January 2012. (Note: only pages 1 and 2, were in evidence for review, no other medical documents were provided by the applicant or in the applicant's Army Military Human Resource Record (AMHRR)).

(2) A memorandum, Echo Company, 791st Military Police Battalion, 14th Military Police Brigade, subject: Separation under Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, [Applicant], dated 24 April 2012, reflects the applicant's notification for separation from their company commander. The company commander states the applicant has been given two opportunities to pass the APFT which is a requirement for graduation, they have failed to do so. They are therefore recommended for separation in accordance with Army Regulation 635-200, Chapter 11 (Lack of Reasonable Effort). The company commander recommended their service be characterized as Uncharacterized.

(3) On 7 May 2012, the applicant was discharged from the Regular Army. Their DD Form 214 shows in:

- item 18 (Remarks) – in part, MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) – Uncharacterized
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 11
- item 26 (Separation Code) – JGA
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Entry Level Performance and Conduct

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), with letter
- DA Form 5286-R (Individual Training Record)
- Pages 1 & 2 of DD Form 2807-1 (Record of Medical History)
- Notification of Separation Memorandum
- DD Form 214
- VA Decision Letter and Summary of Benefits Letter
- three 3rd Party Statement

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 635-200 (Active Duty Enlisted Administrative Separations), dated 6 September 2011, 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 11 provides for the separation of personnel due to unsatisfactory performance, conduct, or both, while in an entry level status.

(5) Paragraph 11-3a (2) stipulates the policy applies to Soldiers who are in entry-level status, undergoing Initial Entry Training, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous Active Duty or Initial Active Duty Training.

(6) Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

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

(8) 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.

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, authority for separation of Soldiers, and the 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. Chapter 15 (Secretarial Plenary Authority) 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 "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 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.

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

8. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the case files for approved separation. Notwithstanding the absence of records, their DD Form 214 provides the applicant was discharged with a character of service of Uncharacterized under the provisions of Army Regulation 635-200, chapter 11. They completed 6 months and 1 day of their 5-year contractual enlistment obligation and did not complete their first full term of service.

c. Army Regulation 635-200 states a separation will be described as entry-level with service uncharacterized if, at the time separation action is initiated, the Soldier has less than 180 days of continuous active duty service. The evidence of the AMHRR reflects the applicant was notified on 4 April 2012 of the intent to initiate separation proceedings from the Army. At the time of the notification, the applicant had 170 days of continuous active duty service. Based on the time in service, the applicant was in an Entry Level Status and the Uncharacterized discharge was appropriate.

d. 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? **No.** The Board's Medical Advisor, a voting member, 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. Response to Contention(s):

(1) The applicant contends their discharge should be changed due to their service connected disability from the VA. While on duty during Basic Training they injured their left knee which resulted in an injury in their right knee and hip, due to improper care, heavy ruck marches, difficult runs, and other required courses.

The Board considered this contention and determined in accordance with AR 635-200 that, based on the applicant's official record, the applicant was separated while in an entry level status and an Uncharacterized is the proper characterization of service except when the DCS, G-1 determines that an Honorable discharge is warranted based on unusual circumstances involving personal conduct and performance of duty, which is not applicable in this case. Therefore, no change is warranted.

(2) The applicant contends due to their injuries, they could no longer perform at their physical best during training resulting in an APFT failure, which led to their discharge.

The Board considered this contention and determined this contention is valid. However, the applicant's discharge is appropriate based on the applicant's official record, applicant was separated while in an entry level status and an UNC is the proper characterization of service except when the DCS, G-1 determines that an HD is warranted based on unusual circumstances involving personal conduct and performance of duty, which is not applicable in this case. Therefore, no change is warranted.

(3) The applicant contends it is their belief that if they were given the opportunity to properly recover with access to physical therapy, they would have been able to afford to continue their pursuit of a higher education.

The Board considered this contention and determined the applicant was given the appropriate time for recovery based on the requirements of ELS and the applicant was not able to meet requirements for continued military service. The applicant's discharge is appropriate based on the applicant's official record, applicant was separated while in an entry level status and an UNC is the proper characterization of service except when the DCS, G-1 determines that an HD is warranted based on unusual circumstances involving personal conduct and performance of duty, which is not applicable in this case. Therefore, no change is warranted.

(4) The applicant contends they are asking that their discharge be upgraded considering their service connected disability so they may have access to their education benefits to earn a degree and better the lives of their family.

The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

c. 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.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because there were no mitigating factors for the Board to consider. Since the applicant was discharged while in Entry Level Separation for failing the APFT, a requirement for graduation, Uncharacterized is proper and equitable. The discharge was consistent with the procedural and

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20230015119**

substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, as the reason the applicant was discharged was both proper and equitable.

(3) The 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:

1/16/2025

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