

1. Applicant's Name: [REDACTED]**a. Application Date:** 6 October 2023**b. Date Received:** 18 December 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 honorable. The applicant requests a change to the narrative reason for separation from Unsatisfactory Performance to a Disability discharge.

(2) The applicant seeks relief stating the reason they were discharged was due to an injury, not unsatisfactory performance. They had plantar fasciitis, stress fractures and quadratus femoris muscles bilaterally that occurred while they were still in Basic Training/Advanced Individual Training. They were pulled from training and discharged shortly thereafter. They feel as though they should have been given a medical discharge versus an unsatisfactory performance.

b. Board Type and Decision: In a records review conducted on 17 May 2024, and by a 5-0 vote, the Board determined the narrative reason for the applicant's separation is improper based on the circumstances surrounding the discharge (the Board concurred with the medical review that the discharge was improper, and with the recommendation for a Secretarial Authority reason due to improper discharge including the pre-separation exam misrepresenting the applicant's status to allow Command to separate. The provider minimized the physical issues of the applicant during the pre-separation examination.) Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined the RE code was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Unsatisfactory Performance / Army Regulation 635-200, Chapter 13 / JHJ / RE-3 / Honorable

b. Date of Discharge: 5 October 2009

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 23 September 2009

(2) **Basis for Separation:** inability to meet the minimum standards of the Army Physical Fitness Test (APFT), given numerous opportunities to meet this requirement but have failed to achieve a passing score in all three events.

(3) **Recommended Characterization:** Honorable

(4) Legal Consultation Date: On 23 September 2009, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 24 September 2009 / Honorable

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 January 2009 / 8 years (Army National Guard)

b. Age at Enlistment / Education / GT Score: 24 / HS Equivalency Graduate / 118

c. Highest Grade Achieved / MOS / Total Service: E-1 / NA / 10 month, 14 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) A DD Form 2807-2 (Medical Prescreen of Medical History Report) dated 23 January 2009, reflects the applicant initialed "NO" to all medical questions "Have you ever had or do you now have."

(2) A DD Form 2807-1 (Report of Medical History) dated 28 January 2009, reflects the applicant checked "NO" to all medical questions "Have you ever had, or you now have."

(3) A DD Form 2808 (Report of Medical Examination) dated 28 January 2009, reflects the examiner checked that the applicant is qualified for service; however, item 77 (Summary of Defects and Diagnoses) the examiner indicated the applicant is overweight but passed the Body Fat Content percentage.

(4) Military Entrance Processing Station, Denver, CO Orders 9030017, dated 30 January 2009, ordered the applicant to initial active duty for training (IADT) with a reporting date of 11 March 2009.

(5) A DA Form 705 (Army Physical Fitness Scorecard) dated 9 July 2009 through 29 July 2009, reflects the applicant failed the 2-mile run event on four AFPTs.

(6) A DA Form 4856 (Developmental Counseling Form) dated 3 August 2009, reflects the applicant received event-oriented counseling from their Drill Sergeant, to inform the applicant of their recommendation for separating the applicant from Military Service under Army Regulation 636-200, Chapter 11, APFT Failure. The applicant agreed with the information and signed the form.

(7) A DD Form 2697 (Report of Medical Assessment) dated 15 September 2009, reflects the applicant reported since their last medical assessment they have been seen health

care provider for ear infection, stress fractures, rector femoris strain in hips and upper respiratory infection.

(8) A DD Form 2807-1 (Report of Medical History) dated 21 September 2009, reflects the applicant checked "Yes" to the medical questions "Have you ever had, or you now have," to include, worn contact lenses or glasses, and foot trouble. In item 30 (Examiner's Summary and Elaboration of All Pertinent Data) reflects the examiner states –

- Metatarsal stress fractures – healed, no residual pain
- Plantar Fasciitis – treated, minimal residual discomfort, no affecting function
- Rectus Femoris muscle strain – healed/resolved

(9) A DD Form 2808 (Report of Medical Examination) dated 21 September 2009; the examiner indicated in –

- item 35 (Feet) – normal arch and wrote, minimal tenderness of plantar fasciitis bilaterally
- item 74 (Examinee/Applicant) - is qualified for service with no physical profile restrictions
- item 77 (Summary of Defects and Diagnoses) – Bilateral Metatarsal Stress Fracture – Healed, resolved; Plantar Fasciitis – minimal residual discomfort not affecting function; Muscle Strain, Rectus Femoris – resolved
- item 78 (Recommendations) – Cleared for Separation

(10) A Report of Mental Status Evaluation dated 23 September 2009, reflects the applicant has the mental capacity to understand and participate in the proceedings, was mentally responsible, psychiatrically cleared for any administrative action deemed appropriate by command and is fit for pay purposes.

(11) A memorandum, 43rd Adjutant General Battalion (Reception), 3rd Chemical Brigade, subject: Notification of Separate under the Provisions of Army Regulation 635-200, Chapter 13, Unsatisfactory Performance, dated 23 September 2009, 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 shown an inability to meet the minimum standards of the APFT.

(12) In the applicant's memorandum (Receipt of Notification & Acknowledgement and Election of Rights (Army Regulation 635-200, Chapter 13 – [Applicant], 23 September 2009, the applicant acknowledged being notified by their commander of the basis for the contemplated action to separate them for unsatisfactory performance. The applicant waived consulting counsel, elected not to submit statements in their behalf and elected not to request copies of documents that will be sent to the separation authority.

(13) A memorandum, 43rd Adjutant General Battalion (Reception), 3rd Chemical Brigade, subject: Recommendation of Separate Army Regulation 635-200, Chapter 13, Unsatisfactory Performance, dated 23 September 2009, the applicant's company commander recommended the applicant be released from the custody and control of the Army prior to the expiration of their term of service. The company commander states they do not consider any other disposition feasible or appropriate as the applicant is unwilling to pass their APFT.

(14) A memorandum, 43rd Adjutant General Battalion (Reception), 3rd Chemical Brigade, subject: Proposed Separation Action under the Provision of Army Regulation 635-200,

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Paragraph 13, Unsatisfactory Performance [Applicant], dated 24 September 2009, the separation authority, reviewed and approved the proposed separation case of the applicant, directed the applicant's service be characterized of honorable. The applicant was thereby released from the custody and control of the U.S. Army. The separation authority states the requirement for rehabilitative transfer is waived as a transfer will serve no useful purpose or produce a quality Soldier.

(15) On 5 October 2009, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 6 months and 29 days of net active service this period. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 6 month, 29 days
- item 12i (Effective Date of Pay Grade) – 28 January 2009
- item 18 (Remarks) – Member has not completed first full term of service
- item 24 (Character of Service) –Honorable
- 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

(16) Colorado Army National Guard, Joint Force Headquarters (-Detachment 1) Orders 006-033, dated 6 January 2010, discharged the applicant from the Army National Guard and as a reserve of the Army, effective 11 December 2009. Their type of discharge is shown as Uncharacterized.

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 enclosures
- Radiologic Examination Reports, performed during applicant's military service
- Podiatry Clinic Notes, recorded approximately 14 years after release from active duty

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 635-40 (Physical Evaluation for Retention, Retirement, or Separation) dated 15 September 1990, established the Army Physical Disability Evaluation System according to the provisions of Title 10, U.S. Code, chapter 61 and Department of Defense Directive 1332.18. It sets forth policies, responsibilities, and procedures that apply in

determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of their office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 July 2005, 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 (Separation for Unsatisfactory Performance) 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.

(5) 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.

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 they received event-oriented counseling for failure to pass the APFT on four attempts. Their medical examination at the time of separation shows they were qualified for service with no physical profile limitations. 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 honorable. The applicant was then discharged from the Army National Guard with an Uncharacterized type of discharge. They completed 10 months and 14 days of total service; however, the applicant did not complete their first full term of service obligation of 8 years.

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. 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 reviewed DoD and VA medical records, applicant's statement, and/or civilian provider documentation and found that although the applicant had no mitigating behavioral health diagnoses or experiences that meet the Kurta guidance. However, the Board Medical Advisor raised an issue of impropriety based on the circumstances surrounding the discharge (the applicant's pre-separation exam misrepresented the applicant's status to allow Command to separate. The provider minimized the physical issues of the applicant during the pre-separation examination.)

(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 the reason they were discharged was due to an injury, not unsatisfactory performance. They had plantar fasciitis, stress fractures and quadratus femoris muscles bilaterally that occurred while they were still in Basic Training/Advanced Individual Training. The Board liberally considered this contention and determined the current characterization of service is honorable, there is no further relief available with respect to characterization. Liberal consideration was applied to the narrative reason and the Board concurred with the medical review that the discharge was improper due to the pre-separation exam misrepresenting the applicant's status to allow Command to separate. The provider minimized the physical issues of the applicant during the pre-separation examination. Therefore, the Board voted to change the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF.

(2) The applicant contends they feel as though they should have been given a medical discharge versus an unsatisfactory performance. The Board liberally considered this contention and determined the current characterization of service is honorable, there is no further relief available with respect to characterization. Liberal consideration was applied to the narrative reason and the Board concurred with the medical review that the discharge was improper due to the pre-separation exam misrepresenting the applicant's status to allow Command to separate. The provider minimized the physical issues of the applicant during the pre-separation examination. Therefore, the Board voted to change the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF.

c. The Board determined the narrative reason for the applicant's separation is improper based on the circumstances surrounding the discharge (the Board concurred with the medical review that the discharge was improper, and with the recommendation for a Secretarial Authority reason due to improper discharge including the pre-separation exam misrepresenting the applicant's status to allow Command to separate. The provider minimized the physical issues of the applicant during the pre-separation examination.) Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The Board determined the RE code was proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization because the current characterization of service is honorable, there is no further relief available with respect to characterization.

(2) The Board voted to change the reason for discharge to Secretarial Authority due to an improper discharge (the pre-separation exam misrepresented the applicant's status to allow Command to separate. The provider minimized the physical issues of the applicant during the pre-separation examination), thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

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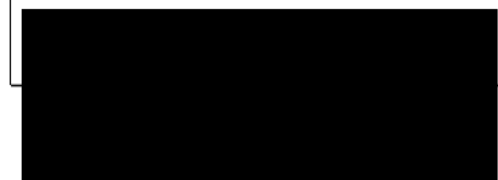
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

4/3/2025



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