

1. Applicant's Name:

- a. **Application Date:** 14 December 2023
- b. **Date Received:** 14 December 2023
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is uncharacterized. The applicant requests an upgrade to honorable.

b. The applicant seeks relief contending, in effect, their discharge should be upgraded because their disability compensation decision lists their service as honorable. The applicant was unaware that an uncharacterized character of service was on their DD Form 214 because the applicant based their discharge on the Legal Action Form. The applicant has been denied education benefits because of their uncharacterized discharge.

c. **Board Type and Decision:** In a records review conducted on 18 December 2023, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. **Date of Discharge:** 12 December 2021

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 8 December 2021

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant failed to adapt to military setting, despite command and behavioral health efforts. The applicant was unlikely to adapt to and complete training.

(3) **Recommended Characterization:** Uncharacterized

(4) **Legal Consultation Date:** On 10 December 2021, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 13 December 2021 / Uncharacterized

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 29 June 2021 / 3 years and 21 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 98
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / None / 5 months and 19 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) On 2 and 19 November 2021, the applicant was recommended for separation.

(2) On 7 December 2021, the applicant was flagged for involuntary separation/field initiated (BA).

(3) On 8 December 2021, the commander initiated action to separate the applicant for failing to adapt to military setting and was unlikely to adapt to and complete training.

- i. **Lost Time / Mode of Return:** None

- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:**

(a) VA Rating Decision, 26 October 2023, shows the applicant was rated 70 percent for PTSD (claimed as PTSD personal trauma, depression, and anxiety condition).

(b) VA Benefits letter, date not shown, shows the applicant was rated 80 percent disabled (70 percent for PTSD (claimed as PTSD personal trauma, depression, and anxiety condition)).

(2) **AMHRR Listed:**

(a) Report of Mental Status Evaluation, 26 October 2021, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; and could appreciate the difference between right and wrong. The applicant had been screened for PTSD, depression, TBI, substance misuse, and sexual trauma. The applicant was a high risk to harm themselves. The applicant was being seen by the Behavioral Health Clinic and had follow up appointments. The applicant had a condition that was likely to impair their judgment or reality to protect classified information. The applicant was recommended for a Chapter 11 for failure to adapt to military setting, despite the command's and behavioral health efforts. The applicant was unlikely to adapt and complete training. The command was advised to consider the influence of these conditions. The applicant was diagnosed with adjustment disorder with mixed anxiety and depressed mood.

(b) Report of Medical Assessment, 19 November 2021, shows the examining medical physician noted in the comments section: Admitted to in-patient psych.

(c) Memorandum for Record, Chapter 11 Failure to Adapt Recommendation (Applicant), 6 December 2021, shows the below timeline for the applicant:

- 10 September - arrived to D Company
- 14 September - started course with class 26L-21
- 15 September - missed appointment with behavioral health (scheduled during basic combat training)
- 19 September - received quarters from fainting after blood donation
- 20 September - on hold status and rolled to next class due to missing 8 hours of course
- 24 September - attended sick call for foot and shin pain, received 24 hours quarters and crutches
- 25 September - scheduled to begin course on 28 September with class 26L-21
- 28 September - went to behavioral health for suicidal ideations and was not cleared for training
- 30 September - behavioral health follow up and was found fit and returned to duty
- 4 October - begins course with class 01L-22
- 18 October - went to behavioral health for suicidal ideations and was not cleared for training
- 19 October - on hold status, rolled to next class due to missing hands on test, attempts suicide, enrolled in 4C, and recommended for chapter 11

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; the following is listed on the application, however, was not provided, DD Form 214; Legal Action Form; two VA Rating Decisions; and two VA Benefits letters.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names

(2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

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

(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) Paragraph 3-9 states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

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

(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 AD or IADT or no more than 90 days of Phase II under a split or alternate training option. (See the glossary for precise definition of ELS.)

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

(7) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

(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 635-5-1 (SPD Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JGA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 11, entry-level performance and conduct.

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 DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

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

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable.

b. 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.

c. The applicant's DD Form 214 shows the applicant served 5 months and 19 days. The DD Form 214 shows the applicant was discharged on 17 December 2021 under the provisions of AR 635-200, Chapter 11, by reason of Entry-level performance and conduct, with a characterization of service of uncharacterized.

d. 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 shows the applicant was notified on 8 December 2021 of the intent to initiate separation proceedings from the Army. At the time of the notification, the applicant had 163 days (5 months and 10 days) of continuous active duty service. Based on the time in service, the applicant was in an ELS status, and the uncharacterized discharge was appropriate.

e. The applicant contends, in effect, their discharge should be upgraded because the VA determined the applicant's service was honorable. The applicant provided a VA Benefits letter, date not shown, that shows the applicant was rated 80 percent disabled (70 percent for PTSD (claimed as PTSD personal trauma, depression, and anxiety condition)), however it does not show a character of service. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than used by the Army when determining a member's discharge.

f. The applicant contends, in effect, to have been unaware that an uncharacterized character of service was on their DD Form 214 because the applicant based their discharge on the Legal Action Form. The applicant provided a Legal Action Form; however, it does not show a character of service.

g. The applicant contends, in effect, education benefits are denied because of the uncharacterized discharge. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does 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.

h. 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 the applicant was not discharged for misconduct so there is nothing to mitigate.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found applicant has been awarded 70% service connection by the VA for PTSD secondary to molestation as a child. They have also reported they were assaulted" while in the Army. They deny any sexual harassment or Military Sexual Trauma (MST).

(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's Uncharacterized service characterization for Entry Level Performance and Conduct, AR 635-200, Chapter 11 was proper, equitable and free of error. Review of the military medical records indicates that the applicant's primary BH issues while on active duty involved symptoms of situational depression/anxiety, suicidal thoughts, and self-cutting behaviors. These self harm behaviors began when the applicant was 13 years, many years prior to their entry into the Army. While the applicant has reported to the VA they was assaulted while in the military, there is no documentation of this event in their military medical records. There is also no documentation of the applicant meeting diagnostic criterion A. for PTSD in their military medical records. The applicant requests that their separation characterization be upgraded to Honorable given that the VA has upgraded it to Honorable for treatment purposes and has awarded service connection for PTSD. Review of their military medical records indicates that there is insufficient evidence to support a disability separation or referral to IDES process at this time as all records support that they were fit for duty, met medical retention standards, and did not yet have a diagnosis that would be considered for an MEB. Applicant cites their VA disability rating as evidence of error in discharge. However, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service.

(4) Does the condition or experience outweigh the discharge? **No** Based on liberally considering all the evidence before the Board, the ADRB determined that the applicant's VA service connected PTSD (secondary to childhood molestation) and self-asserted being assaulted while in the Army did not outweighed the basis of separation, applicant failed to adapt to military setting, despite command and behavioral health efforts; and the applicant was unlikely to adapt to and complete training.

b. Prior Decisions Cited: None

c. Response to Contention(s):

(1) The applicant contends their discharge should be upgraded because the VA determined the applicant's service was honorable. The Board considered this contention and found that the applicant's military medical records provided insufficient evidence to support a disability separation or referral to IDES process as all records support that they were fit for duty, met medical retention standards, and did not yet have a diagnosis that would be considered for an MEB. VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to

meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service, and does not warrant an upgrade.

(2) The applicant contends to have been unaware that an uncharacterized character of service was on their DD Form 214 because the applicant based their discharge on the Legal Action Form. The Board considered this contention but found the applicant signed the notice memorandum on 08DEC2021 in which they were counseled on their pending Uncharacterized discharge, as well as two signed counselling statements discussing the chapter 11 discharge, and the signed legal rights memorandum on 10DEC2021. No instances of impropriety were found to justify an upgrade.

(3) The applicant contends, in effect, education benefits are denied because of the uncharacterized discharge. 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.

d. The Board determined: Based on liberally considering all the evidence, the Board determined that the applicant's VA service connected PTSD (secondary to childhood molestation) and self-asserted being assaulted while in the Army did not outweighed the basis of separation, applicant failed to adapt to military setting, despite command and behavioral health efforts; and the applicant was unlikely to adapt to and complete training. Without medical mitigation, the Board voted 5-0 that the current discharge is Proper and Equitable.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant did not have any misconduct to mitigate. 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.

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

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Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

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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