

1. Applicant's Name:

- a. **Application Date:** 9 November 2023
- b. **Date Received:** 20 November 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 to honorable and a change of the narrative reason for separation.

(2) The applicant seeks relief contending, they feel they should be granted their request mainly because they completed all training, examinations and test involved with their Military Occupational Specialty (MOS) and were preparing to report to their first duty station when they fell sick the morning of physical training. When they were filling out their DD Form 214 (Certificate of Release of Discharge from Active Duty) they were informed step by step as to what to fill out and how to do so.

b. Board Type and Decision: In a records review conducted on 15 November 2024, 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: Failed Medical/Physical/Procurement Standards / Army Regulation 635-200, Paragraph 5-11 / JFW / RE-3 / Uncharacterized

b. Date of Discharge: 18 July 2014

c. Separation Facts:

(1) Date Entrance Physical Standards Board (EPSBD) convened: 6 June 2014

(2) EPSBD Findings: The applicant was medically unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians the condition existed prior to service. The applicant's medical condition and/or physical defect is seizure activity.

(3) Date Applicant Reviewed and Concurred with the Findings, and Requested Discharge without Delay: 2 July 2014

(4) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 10 February 2014 / 3 years, 23 weeks
- b. **Age at Enlistment / Education / GT Score:** 20 / HS Graduate / 85
- c. **Highest Grade Achieved / MOS / Total Service:** E-1 / NA / 5 months, 9 days
- 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 (Report of Medical History) dated 22 November 2013 reflects the applicant marked "No" to "Have You Ever Had Or Do You Now Have" and "Yes" to item 14c (Currently in good health). Item 8 (Current Medications) reflects the applicant was not on any medication.

(2) A DD Form 2808 (Report of Medical Examination) dated 22 November 2013 reflects the examining physician marked the applicant is qualified for service with no physical profile limitations.

(3) A DA Form 4707 (Entrance Physical Standards Board Proceedings) dated 6 June 2014, reflects the applicant was seen in the Emergency Room on 1 May 2014 for a witnessed seizure that lasted approximately one minute followed by a brief postictal period. They disclosed to the emergency room provider a history of seizures since age 18, although they failed to report history during Military Entrance Processing (MEPS) physical. Prior to joining the military, they were being seen by a neurologist and their seizures were controlled on Keppra. They also revealed they have been on Keppra at half dose since beginning of training. They went home on emergency leave and failed to take their medication for two days. They had another seizure in the airport and was transported to a local emergency room on 24 May 2014. They were discharged with a diagnosis of epileptic seizure associated with sub-therapeutic anticonvulsant (Dilantin) level. The applicant does not meet induction or enlistment standards; therefore, Existed Prior to Service (EPTS) is recommended. The applicant's diagnosis is shown as Epilepsy and Recurrent Seizures. Applicant has been informed of the medical findings, concurred with the proceedings, and requested to be discharged from the U.S. Army without delay.

(4) A DA Form 4856 (Developmental Counseling Form) dated 30 June 2014 reflects the applicant received counseling from their Advanced Individual Training platoon sergeant, to inform them of being recommended for separation from the Army under Army Regulation 635-200, chapter 5-11, EPTS. The Key Points of Discussion states the applicant has been deemed by medical personnel to have a condition that existed prior to their enlistment that may disqualify them for future service. The applicant acknowledged this discussion with their initials.

(5) On 18 July 2014, the applicant was discharged from the Regular Army. Their DD Form 214 reflects they completed 5 months and 9 days of net active service this period. The DD Form 214 shows in –

- item 18 (Remarks) – Member has not completed first full term of service
- item 24 (Character of Service) – Uncharacterized

- item 28 (Narrative Reason for Separation) – Failed Medical Physical Procurement Standards

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)
- DD Form 214

6. POST SERVICE ACCOMPLISHMENTS: None submitted with application.

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

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

b. Multiple Department of Defense (DoD) Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

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

condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

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

d. Army Regulation 40-501 (Standards of Medical Fitness) governed medical fitness standards for enlistment, physical profiles, and medical examinations. Enlisted Soldiers identified within the first 6 months of active duty with a condition that EPTS that does not meet the standards of chapter 2 (Physical Standards for Enlistment, Appointment, and Induction) may be separated (or receive a waiver to remain on active duty) following an evaluation by an Entrance Physical Standards Board.

e. 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) Paragraph 3-9 stated 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 5 (Separation for Convenience of the Government) provided for the basic separation of enlisted personnel for the convenience of the government.

(5) Paragraph 5-1 (Characterization of Service or Description of Separation) stated that a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status.

(6) Paragraph 5-11, specifically provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on active duty or active duty training or initial entry training may be separated. Such conditions must be discovered during the first 6 months of Active Duty. Such findings will result in an entrance physical standard board. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation under this chapter. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at that time, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501, Chapter 3.

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

f. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provided 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 "JFW" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, paragraph 5-11, Failed Medical/Physical/Procurement Standards.

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 provides the applicant was identified as having an EPTS condition that they did not disclose at MEPS and was involuntarily separated from the Regular Army. A properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's signature which provides the applicant was discharged under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of Failed Medical/Physical/Procurement Standards, with a characterization of service of uncharacterized. The applicant completed 5 months and 9 days of net active service and has not completed their first full term of service of 3 years and 23 weeks of their enlistment obligation.

c. Paragraph 5-11, specifically provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on active duty or active duty training or initial entry training may be separated. Such conditions must be discovered during the first 6 months of Active Duty. Such findings will result in an entrance physical standard board. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation under this chapter.

d. Published DoD guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **No.** The Board's Medical Advisor reviewed DoD, and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

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

b. Response to Contention(s): The applicant contends they feel they should be granted their request mainly because they completed all training, examinations and test involved with their MOS and were preparing to report to their first duty station when they fell sick the morning of physical training.

The board considered this contention and concurred with the opinion of the Board's Medical Advisor, a voting member, and determined that the applicant's medical condition of epileptic and reoccurring seizures existed prior to military service, therefore the uncharacterized discharge is proper and equitable.

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c. The board determined that the discharge is, at this time, proper and equitable, considering the current evidentiary record. However, the applicant may request a personal appearance hearing to address 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 the applicant was discharged for failing medical procurement standards due to epileptic and reoccurring seizures that existed prior to military service. 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 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:

11/20/2024

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