

1. Applicant's Name:

- a. **Application Date:** 10 December 2023
- b. **Date Received:** 26 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 changes to the SPD code and narrative reason. The applicant did not properly annotate the enclosed application requesting a possible discharge upgrade. The Army Discharge Review Board considered the applicant for a possible upgrade as instructed in pertinent part by Department of Defense Instruction 1332.28, which stipulates a request for review from an applicant without an honorable discharge shall be treated as a request for a change to an honorable discharge unless the applicant requests a specific change to another character of discharge.

b. The applicant seeks relief contending, in effect, an upgrade would assist the applicant with receiving medical care for an injury that occurred in the line of duty.

c. **Board Type and Decision:** In a records review conducted on 9 September 2024, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

Please see Section 10 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 / AR 635-200, Paragraph 5-11 / JFW / RE-3 / Uncharacterized

b. **Date of Discharge:** 27 November 2023

c. **Separation Facts:**

(1) **Date Entrance Physical Standards Board (EPSBD) convened:** 25 October 2023

(2) **EPSBD Findings:** The findings of the evaluating physicians indicate 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 was diagnosed with: Patella Alta.

(3) **Date Applicant Reviewed and Concurred with the Findings, and Requested Discharge without Delay:** 31 October 2023

(4) **Separation Decision Date / Characterization:** 4 November 2023 / NIF

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 10 October 2023 / 3 years and 29 weeks

- b. Age at Enlistment / Education / GT Score:** 18 / High School Graduate / NIF
- c. Highest Grade Achieved / MOS / Total Service:** E-1 / None / 1 month and 17 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) Accessions Medical Pre-screen Report, 1 August 2023, does not reflect a knee injury.

(2) The applicant provided MRI Results, 20 October 2023, that shows the applicant had an MRI of the right knee without contrast. Findings:

(a) No discrete tear involving the medial and lateral menisci.

(b) Anterior Cruciate Ligament and Posterior Cruciate Ligament are intact. Intercondylar eminence is intact.

(c) Quadriceps tendon is intact. Moderate distal patellar tendinosis. There is also minimal proximal and mid patellar tendinosis. Incompletely visualized moderate to large knee joint effusion, and with synovitis. Tiny Baker's cyst.

(d) Moderate subcutaneous soft tissue edema at the knee, and is more pronounced anteriorly, anterolaterally, and anteromedially. There is also edema noted within the superficial and deep fascial planes of the knee.

(e) Minimal to small amount of edema involving the vastus medialis, vastus lateralis, short head of the biceps femoris, soleus, popliteus, and the lateral head of the gastrocnemius.

(f) Small to moderate amount of edema within Hoffa's fat pad.

(g) Moderate marrow edema at the medial aspect of the patella and at the anterolateral/lateral aspect of the lateral femoral condyle and is compatible with a transient lateral patellar dislocation bone contusion pattern. There is also an associated intra-articular impaction fracture involving the anterolateral aspect of the lateral femoral condyle (for example images 12:4, 16:4, and 6:5). There is also contour irregularity noted at the medial aspect of patella (for example images 19 and 20:3), and likely reflects the sequela of an impaction fracture. There is also a partial tear involving the medial patellar retinaculum and the medial patellofemoral ligament. There is also lateral patellar tilt and lateral patellar subluxation. There is borderline Patella Alta. There is also trochlear dysplasia, with a decreased trochlear depth. No significant focal edema within the superolateral aspect of Hoffa's fat pad.

(h) Edema is noted adjacent to the superficial fibers of the Medial Collateral Ligament (MCL) and can be seen with a grade 1 MCL. The lateral collateral ligamentous complex is intact. Small amount of fluid within the popliteus tendon recess.

(i) The articular cartilage at the patella, the trochlea, the medial femoral condyle, and the medial and lateral tibial plateaus is grossly intact. Small bone islands are identified.

(3) EPSBD proceedings, 25 October 2023, states the applicant dislocated their right knee on day 1 of training. The applicant was seen by Physical Therapy and referred for an EPTS discharge citing Patella Alta and shallow trochlear groove. The applicant was offered an appointment with Orthopedics but preferred to be discharged. The applicant was unable to continue in BCT.

(4) Orders 320-1320, 16 November 2023, reflects the applicant was to be reassigned to the U.S. Army Transition Point and discharged on 27 November 2023 from the Regular Army.

(5) The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant had not completed the first full term of service. The applicant was discharged on 27 November 2023 under the authority of AR 635-200, Chapter 5, paragraph 5-11, by reason of Failed Medical/Physical/ Procurement Standards, with a characterization of service of uncharacterized. The DD Form 214 was not authenticated with the applicant's electronic signature.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

The ARBA's medical advisor reviewed DoD and VA medical records.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; and MRI results.

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) 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.

(3) Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government.

(4) Paragraph 5-1, states 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.

(5) Paragraph 5-10 (previously paragraph 5-11) specifically provides 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 will be separated. 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 AR 40-501, Chapter 3.

(6) 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.

(7) Glossary prescribes 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), in effect at the time, 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, Chapter 5-11, Failed Medical/ Physical/ Procurement Standards.

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 changes to the SPD code and narrative reason. The applicant will also be considered for an upgrade to honorable. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The proceedings of the EPSBD revealed the applicant had Patella Alta, which was disqualifying for enlistment and existed prior to entry on active duty. These findings were approved by competent medical authority and the applicant agreed with the findings and proposed action for administrative separation from the Army.

c. The applicant's DD Form 214 shows the applicant served 1 month and 17 days. The applicant's DD Form 214 also shows the applicant was discharged on 27 November 2023 under the provisions of AR 635-200, Chapter 5, paragraph 5-11, by reason of Failed Medical/Physical/Procurement Standards, with a characterization of service of uncharacterized.

d. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions, at the time, of Chapter 5-11, AR 635-200, with an uncharacterized discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Failed Medical/Physical/Procurement Standards," and the separation code is "JFW." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

e. The applicant requests the SPD code to be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (SPD Codes) to track types of separations. The SPD code specified by Army Regulations in effect at the time for a discharge under Chapter 5, paragraph 5-11, is "JFW."

f. The applicant contends, in effect, an upgrade would assist the applicant with receiving medical care for an injury that occurred in the line of duty. Eligibility for veteran's benefits 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.

g. 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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

- a. The applicant submitted the following additional document(s):
- b. The applicant presented the following additional contention(s):
- c. Counsel / Witness(es) / Observer(s):

10. 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: The applicant contends, in effect, an upgrade would assist the applicant with receiving medical care for an injury that occurred in the line of duty. The board considered this contention and voted not to change the applicant's characterization of service because, in accordance with AR 635-200 and based on the applicant's official record the applicant was separated while in an entry level status and uncharacterized description of service accurately reflects the applicant's overall record of service. Therefore, no change is warranted.

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. The applicant was discharged for entry level performance conduct due to refusal of ongoing rehabilitation to return to duty, therefore an Uncharacterized discharge is proper and equitable. 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.

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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.

11. 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:

9/23/2024

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