

1. Applicant's Name:

- a. **Application Date:** 24 April 2024
- b. **Date Received:** 31 May 2024
- 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 reconsideration for an upgrade of their characterization of service and an appearance before the Board.

b. **Board Type and Decision:** In a telephonic personal appearance hearing conducted on 18 November 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. Please see paragraph 10e for reason for decision.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Erroneous Entry / Army Regulations 635-200, Chapter 7, Section III / JFC / RE-3 / Uncharacterized

b. **Date of Discharge:** 12 August 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 28 July 2009

(2) **Basis for Separation:** The applicant enlisted as an 09L (Translator Aide) and did not pass the Counterintelligence (CI)/Force Protection screening interview. They were disqualified for force protection, numerous issues regarding false or misleading information concerning their personal history and background.

(3) **Recommended Characterization:** Entry Level Status (Uncharacterized)

(4) **Legal Consultation Date:** 29 July 2009

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

(6) **Separation Decision Date / Characterization:** 8 August 2009

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 26 February 2009 / 8 years (Army National Guard of the United States (ARNGUS))

b. **Age at Enlistment / Education / GT Score:** 28 / Associate Degree / NIF

- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / NA / 6 months, 8 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 memorandum, Bravo Company, 308th Military Intelligence Battalion, 902nd Military Intelligence Group, dated 7 July 2009, reflects the applicant, a 09L Translator recruit has not passed the final CI/Force Protection Screening interview. Based on the CI Screener's findings, resulting from information developed during the screening process, the aforementioned individual was determined to have numerous issues regarding false or misleading information concerning their personal history and background. These conditions raise security concerns which resulted in an unfavorable CI Screening.

(2) A memorandum, Delta Company, 120th Adjutant General Battalion (Reception), subject: Recommendation for Separation under Army Regulation 635-200, Chapter 7, Paragraph 7-15, Erroneous Enlistment, undated, the applicant's company commander notified the applicant of their intent to separate for Erroneous Enlistment. The reason for the proposed actions is described above in paragraph 3c (2). The company commander recommended the applicant receive an Entry Level Status (Uncharacterized) separation. On 28 July 2009, the applicant acknowledged the basis for the separation.

(3) The applicant's memorandum, subject: Recommendation for Separation under Army Regulation 635-200, Chapter 7, Paragraph 7-15, Erroneous Enlistment, undated, the applicant completed their election of rights signing they have been advised by consulting counsel of the basis for the contemplated action to separate them for Erroneous Enlistment, and its effects; of the rights available to them; and of the effect of any action taken by them in waiving their rights. The applicant, having been given the opportunity to consult with counsel, declined the opportunity to consult with counsel. They elected not to submit statements in their own behalf.

(4) A memorandum, Delta Company, 120th Adjutant General Battalion (Reception), subject: Recommendation for Separation under Army Regulation 635-200, Chapter 7, Paragraph 7-15, Erroneous Enlistment, undated, the applicant's company commander submitted a request to separate them prior to their expiration term of service with the issuance of an Entry Level Separation. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant is ineligible for a waiver at this time.

(5) A memorandum, Headquarters, 120th Adjutant General Battalion (Reception), subject: Recommendation for Separation under Army Regulation 635-200, Chapter 7,

Paragraph 7-15, Erroneous Enlistment, date is illegible, the applicant's battalion recommended the applicant receive a term of service as uncharacterized with the issuance of an Entry Level Separation.

(6) A memorandum, Headquarters, 171st Infantry Brigade, subject: Recommendation for Separation under Army Regulation 635-200, Chapter 7, Paragraph 7-15, Erroneous Enlistment, dated 8 August 2009, the separation authority approved the recommendation for the applicant's separation. The applicant's term of service is uncharacterized with the issuance of an Entry Level Separation and will not be transferred to the Individual Ready Reserve.

(7) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was released from active duty for training, discharged from the Reserve of Army and returned to the Army National Guard (ARNG) on 12 August 2009, with 1 month and 20 days of net active service this period. The applicant has not completed their first full term of service. The DD Form 214 shows in –

- item 24 (Character of Service) – Uncharacterized
- item 26 (Separation Code) – JFC
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Erroneous Entry

(8) A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) reflects the applicant was discharged from the ARNG on 3 September 2009, completing 6 months and 8 days of net service this period. The NGB Form 22 shows in –

- item 18 (Remarks) – NGB Form 22 was mailed to individual's last known address as shown in item 19 (Mailing Address After Separation), Basic Combat Training – 20090623 – 20090812 (Member Did Not Complete Basic Combat Training)
- item 24 (Character of Service)- Uncharacterized
- item 25 (Reenlistment Eligibility) – RE-3

(9) On 30 July 2020, the applicant completed a DD Form 149 (Application for Correction of Military Records under the Provision Title 10, U.S. Code, Section 1552) requesting an upgrade of their characterization of service to honorable or general (under honorable conditions) due to injustice that they received from their recruiter and the Military Entrance Processing Station. They were prevented from passing their CI Screening and received an uncharacterized discharge, which doesn't show that they left their family and children to go serve their country. Their recruiter was aware of their condition, which was credit debt. They mentioned the credit debt in their counseling. They faced dishonesty and discrimination from the Military Entrance Processing Station because they were from the Middle East and have an accent.

(10) On 18 September 2023, the Army Discharge Review Board denied the applicant's request for a change in their characterization of service and narrative reason for discharge. The Board determined there were no mitigating factors for the Board to consider. Since the applicant was discharged for erroneous entry and the applicant's inability to pass the CI/Force Protection Screening interview, uncharacterized 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. The applicant was discharged was both proper and equitable.

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

j. **Behavioral Health Condition(s):** None

5. **APPLICANT-PROVIDED EVIDENCE:** None submitted with the application.

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 DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 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) An Entry-Level Status is a separation with service uncharacterized if processing is initiated while a Soldier is in entry-level status except when, to include, the Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded a military occupational specialty, and has reported for duty at a follow-on unit of assignment.

(5) Paragraph 7-15 stipulated a Soldier may be separated based on an erroneous enlistment, induction, or extension of enlistment. Soldiers separated under this paragraph will be awarded an honorable character of service or order of release from custody and control of the Army unless an uncharacterized description of service is required for Soldiers in entry-level status.

(6) 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.

(7) Glossary defined entry-level status for ARNGUS, begins upon enlistment in the ARNG. For Soldiers, ordered to IADT for one continuous period, it terminates 180 days after beginning training.

e. 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 "JFC" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 7, Section III, Erroneous Entry.

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 ARNG 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.

g. Army Regulation 135-178 (Enlisted Administrative Separations) dated 13 April 2007, set police, standards, and procedures to ensure the readiness and competency of the U.S. Army

while providing for the orderly administrative separation of ARNGUS and U.S. Army Reserve enlisted Soldiers for a variety of reasons. Paragraph 7-2 (Erroneous Enlistment, Reenlistment, and Extension) stated a Soldier may be discharged on the basis of an erroneous enlistment, reenlistment, or extension of enlistment in the following circumstances, if -it would not have occurred had the relevant facts been known by the Government or had appropriate regulations been followed; it was not the result of fraudulent conduct on the part of the Soldier; and the defect is unchanged in material respects. The separation will be described as a release from custody and control of the Army and service will not be characterized.

8. SUMMARY OF FACT(S):

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

b. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant did not pass a CI/Force Protection Screening interview raising security concerns, was involuntarily discharged from the Regular Army and the ARNG. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 7, by reason of Erroneous Entry, with a characterization of service of Uncharacterized. The applicant completed 1 month and 20 days of net active service this period; however, the applicant did not complete their 8-year contractual ARNG enlistment obligation.

c. Chapter 7, paragraph 7-15 stipulated a Soldier may be separated based on an erroneous enlistment, induction, or extension of enlistment. Soldiers separated under this paragraph will be awarded an honorable character of service or order of release from custody and control of the Army unless an uncharacterized description of service is required for Soldiers in entry-level status.

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. 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):** None

b. **The applicant presented the following additional contention(s):** None

c. **Counsel / Witness(es) / Observer(s):** None

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 Behavioral Health 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. Prior Decisions Cited: RR 2023

c. Response to Contention(s): NA

d. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service based on the fact the applicant did not provide any evidence or proof that the CI/Force Protection Screening was improper or inequitable. The Board empathized with the applicant based on her contention her recruiter lied to her and stated she had to give up custody of her son in order to enlist in the Army, and the applicant stated she faced discrimination from the MEPS based on her origin and having an accent. However, the applicant did not pass the CI/Force Protection Screening which is a requirement to serve in the applicant's chosen MOS, 09L Translator.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code 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:

12/2/2024

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