

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable and a change to the reentry eligibility code for separation.

The applicant seeks relief contending, in effect, they would like to reenlist in the military. The applicant believes they were unlawfully imprisoned and mistreated because of their Native American Heritage. The applicant contends they were falsely accused of having drug paraphernalia which were ceremonial pipes. The applicant did not receive an Article 15, for the incident. At the time, the applicant was enrolled in the Army Substance Abuse Program (ASAP) for underage drinking and because of the incident the applicant stopped attending treatment. The applicant was declared an alcohol rehabilitation failure and discharged.

b. Board Type and Decision: In a records review conducted on 14 January 2025, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's ASAP failure. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.
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: Alcohol Rehabilitation Failure / AR 635-200, Chapter 9 / JPD / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 1 June 2010**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 28 April 2010

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant failed to adhere to their established treatment plan by failing to make satisfactory progress scheduled by Alcohol Substance Abuse Program (ASAP) and are unable to remain free from abuse of alcohol.

(3) Recommended Characterization: General (Under Honorable Conditions)

(4) Legal Consultation Date: 7 May 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 13 May 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 20 January 2009 / 3 years, 18 weeks
- b. Age at Enlistment / Education / GT Score:** 19 / High School Graduate / 105
- c. Highest Grade Achieved / MOS / Total Service:** E-3 / 13B10, Cannon Crewmember / 1 year, 4 months, 12 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** None
- f. Awards and Decorations:** AAM, NDSM, GWOTSM, ASR
- g. Performance Ratings:** NA

h. Disciplinary Action(s) / Evidentiary Record: Summary of Army Substance Abuse Program Rehabilitation Failure Memorandum, 19 February 2010, reflects the applicant had a medical diagnosis of Alcohol Dependence; Cannabis Related disorder NOS, Opioid Related Disorder NOS. The applicant was enrolled in the Army Substance Abuse Program (ASAP) at Fort Bliss on 21 September 2009. Since then, the applicant had been provided outpatient ASAP treatment with an emphasis on relapse prevention. The applicant had failed to make progress in treatment by not completing objectives on their treatment plan they agreed to and signed on 8 October 2009. On 19 February 2010, the Rehabilitation Treatment Team determined the applicant was a rehabilitation failure and provisions of paragraph 4-7b, AR 600-85 were applicable. Command was cleared to move forward with any administrative action deemed necessary.

Patient Progress Report, 19 February 2010, reflects the applicant was released from the Army Substance Abuse Program (ASAP). The applicant's in-progress evaluation was poor, and the counselor recommended terminating treatment and separation. The unit commander's appraisal of the applicant's performance was unsatisfactory. The reason for separation from the ASAP program was "Separation/Termination as Alcohol/Drug Abuse Rehab Failure."

CG Article 15, 17 August 2009, for on or about 27 June 2009, wrongfully consume alcohol while being under the age of 21, resulting in a BAC of 0.196 percent, to wit: State of Texas Alcoholic Beverage Code, §106.04 Consuming of Alcohol by a Minor. This was in violation of Article 134, UCMJ. The punishment consisted of a forfeiture of \$326 pay per month for one month (suspended); and extra duty and restriction for 7 days.

Developmental Counseling Forms, for underage drinking.

i. Lost Time / Mode of Return: None**j. Behavioral Health Condition(s):**

(1) Applicant provided: None

(2) **AMHRR Listed:** Report of Medical History, 22 March 2010, the examining medical physician noted in the comments section: The applicant was diagnosed with anxiety.

5. APPLICANT-PROVIDED EVIDENCE: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; Driver's license; Certificate of Navajo Indian blood; native American Church of South Dakota; American Indian religious Freedom Act; Freedom of Information Office letter; Receipt for Inmate or Detained Person; Rights Warning Procedure/Waiver Certificate; Sworn Statement; Mugshot one through three; Evidence location of drugs picture; Photo of Military Identification; Arizona Photo; Police dispatch sequence; Military Police Report 3378-2009; Directorate of Emergency Services; four letters of support.

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) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states 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.

(3) Paragraph 3-7b states 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.

(4) Chapter 9 outlines the procedures for discharging individuals because of alcohol or other drug abuse. A member who has been referred to the Army Substance Abuse Program (ASAP) for alcohol or drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

(5) Paragraph 9-4, stipulates the service of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600-85.

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 "JPD" as

the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 9, for alcohol rehabilitation failure.

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:

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.

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.

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.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

Summary of Army Substance Abuse Program Rehabilitation Failure Memorandum, 19 February 2010, reflecting the applicant had a medical diagnosis of Alcohol Dependence; Cannabis Related disorder NOS, Opioid Related Disorder NOS. The applicant was enrolled in the Army Substance Abuse Program (ASAP) at Fort Bliss on 21 September 2009. Since then, the applicant had been provided outpatient ASAP treatment with an emphasis on relapse prevention. The applicant had failed to make progress in treatment by not completing objectives on their treatment plan they agreed to and signed on 8 October 2009. On 19 February 2010, the Rehabilitation Treatment Team determined the applicant was a rehabilitation failure and provisions of paragraph 4-7b, AR 600-85 were applicable. Command was cleared to move forward with any administrative action deemed necessary.

The applicant contends they were unlawfully imprisoned and mistreated because of their Native American Heritage. The applicant contends they were falsely accused of having drug paraphernalia which were ceremonial pipes. The applicant provided a letter of support from their former retired First Sergeant D. D. They contend during a health and welfare check; a pipe was found in the applicant's barracks room and before realizing it was a ceremonial pipe from their Native American culture the applicant was charged with drug paraphernalia. Once this happened the applicant was very upset and was in trouble for underage drinking. So, by the regulations, the applicant was command referred to ASAP. The first sergeant believes because of this incident, the applicant became upset with the military system causing them to fail ASAP. The applicant was considered a rehabilitation failure due to non-attendance. The first sergeant supports the applicant's request to reenlist in the military and believes a mistake was made when the applicant was discharged from the military. The AMHRR includes a Patient Progress

Report, 19 February 2010, reflecting the applicant was released from the Army Substance Abuse Program (ASAP). The applicant's in-progress evaluation was poor, and the counselor recommended terminating treatment and separation. The unit commander's appraisal of the applicant's performance was unsatisfactory. The reason for separation from the ASAP programs was "Separation/Termination as Alcohol/Drug Abuse Rehab Failure". The AMHRR does not include any indication or evidence of arbitrary or capricious actions by the command.

The applicant desires to rejoin the military service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment matter.

The third-party statements provided with the application reflect the applicant in no way, demonstrated their character to be anything other than respectful, courteous, honest and dependable. In their observation, over the past three years, the applicant has never consumed or housed any drug or alcohol of any kind or endorsed such behavior. The applicant demonstrates the character which would be a credit to the United States Army.

The AMHRR includes a Report of Medical History, 22 March 2010, wherein the examining medical physician noted in the comments section: The applicant was diagnosed with anxiety.

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? **Yes.** The Board's reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD, MDD, Anxiety Disorder, Unspecified Trauma and Stressor Related Disorder, Adjustment Disorder w/Disturbance of Emotion and Conduct.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 70 percent SC for PTSD and has an in-service diagnosis of Depressive Disorder NOS.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions mitigate the discharge. Given the nexus between Depressive Disorder and decreased motivation, and the nexus between trauma-related disorders and problems with authority, the applicant's ASAP rehabilitation failure is mitigated. The applicant's lack of motivation and oppositional behavior, are natural sequelae of the BH conditions.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's ASAP failure.

b. Response to Contention(s):

(1) The applicant contends they were unlawfully imprisoned and mistreated because of their Native American Heritage. The applicant contends they were falsely accused of having drug paraphernalia which were ceremonial pipes. The Board acknowledged and considered this contention during proceedings.

(2) The applicant desires to rejoin the military service. The Board considered this contention and voted to change the RE-code to a RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate.

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's ASAP failure. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder and Major Depressive Disorder outweighed the applicant's ASAP failure. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

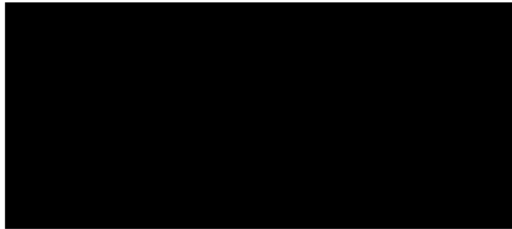
- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** RE-3
- e. **Change Authority to:** AR 635-200

Authenticating Official:

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000507

1/16/2025



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