

1. Applicant's Name:

- 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 period under review is general (under honorable conditions). The applicant requests an upgrade to honorable and a change to the narrative reason for separation.

The applicant seeks relief contending, in effect, the discharge was because the applicant requested a way out of their contract. The applicant state returning home from Afghanistan in 2011, to an empty house and the children gone. The applicant did not know where to turn and turned to the command for guidance. The command informed the applicant the command knew the spouse was gone with another person and had the children with them. The applicant was removed from the home so the spouse could get everything left they wanted. The applicant was referred to the Naval Base rehab center because the applicant's spouse told the command the applicant was not following orders and was driving by the home while the spouse was there. The command told the applicant if they agreed to attend rehab, then quit, it would be an easy way to get out of the enlistment. The applicant wanted to stay in to advance their career; however, was told the applicant would have no chance on getting the children back, so the applicant agreed. The applicant regrets agreeing to these terms and only did because they were told it was the only way they had a chance of getting the children back. The applicant never needed rehab; this was a way out as instructed by the command. The applicant is requesting this change to better oneself and possibly rejoin the brothers in arms.

b. Board Type and Decision: In a records review conducted on 26 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: Alcohol Rehabilitation Failure / AR 635-200, Chapter 9 / JPD / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 28 November 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 24 October 2011

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant was deemed a rehabilitation failure after previous Army Substance Abuse Program (ASAP) treatment in Hawaii in April 2009, due to the fact they were command referred to ASAP for the second time on 15 August 2011, for alleged spousal abuse while drinking.

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

(4) Legal Consultation Date: 25 October 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 2 November 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 23 April 2008 / NIF

b. Age at Enlistment / Education / GT Score: 19 / GED / 100

c. Highest Grade Achieved / MOS / Total Service: E-4 / 88N10, Transportation Management Coordinator / 5 years, 16 days

d. Prior Service / Characterizations: USAR, 13 November 2006 – 22 April 2008 / NIF
IADT, 13 February 2007 – 21 June 2007 / HD
(Concurrent Service)

e. Overseas Service / Combat Service: Hawaii, SWA / Afghanistan (7 January 2010 – 7 January 2011)

f. Awards and Decorations: ARCOM, AAM-2, AGCM, NDSM, ACM-2CS, GWOTSM, ASR, OSR, NATOMDL

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Army Substance Abuse Program (ASAP) Enrollment form, 10 August 2011, reflects the applicant command-referred in the ASAP.

SIR 7SB-7STB-382-070051Aug11-T2-FU, reflects the applicant was arrested by the Military Police at the post quarters on 070051LAUG11 due to a domestic dispute with the spouse. A verbal altercation between the applicant and spouse turned physical when the applicant pushed the spouse. The spouse sustained no visible injuries and declined medical attention. The applicant was apprehended and transported to the military police station where they were advised of their legal rights, which they waived, denying to the offense. The applicant consented to a breathalyzer resulting in BAC reading of .075.

MPR# 91969-211-MPC222, 7 August 2011, reflects the applicant was the subject of an investigation for Domestic Assault (Art 128 UCMJ) (On Post).

Military Protective Order, 7 August 2011, reflects the applicant was issued an order not to contact or communicate with the spouse and was to remain 200 feet away from the spouse.

Memorandum, Rehabilitation Treatment Failure, 29 August 2011, reflects the applicant was command referred to the ASAP on 15 August 2011 as a result of alleged spousal abuse while drinking. The applicant met the diagnostic criteria for alcohol abuse and would have been recommend for Level III treatment; however, the applicant had previous treatment with ASAP in Hawaii in April 2009. The applicant had failed to rehabilitate after given treatment, as evidence by the continued use of alcohol. Due to the applicant's lack of compliance with treatment, it was

in the consensus of Rehabilitation Team Meeting the applicant be deemed a rehabilitation failure. The applicant should be considered for administrative action as deemed appropriate by the command and in accordance with AR 600-85.

Several Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation (MSE), 24 August 2011, reflects the applicant could understand and participate in administrative proceedings; was non suicidal or homicidal; however, due to history of poor impulse, control, the applicant may become suicidal in the face of new stressors, and needs to be assessed for suicidal ideation on a regular basis. The applicant was diagnosed with Axis I: Adjustment disorder with disturbance in emotions and conduct.

Report of Medical History, 31 August 2011, the examining medical physician noted insomnia in the comments section.

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; self-authored statement; Enlisted Records Brief; two Certificates of Release or Discharge from Active Duty.

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 evidence of Army Military Human Resource Record (AMHRR) indicates on 15 August 2011, as a result of alleged spousal abuse while drinking. The applicant met the diagnostic criteria for alcohol abuse and would have been recommend for Level III treatment; however, the applicant had previous treatment with ASAP in Hawaii in April 2009. The applicant had failed to rehabilitate after given treatment, as evidence by the continued use of alcohol. Due to the applicant's lack of compliance with treatment, it was in the consensus of Rehabilitation Team Meeting the applicant be deemed a rehabilitation failure. The applicant should be considered for administrative action as deemed appropriate by the command and in accordance with AR 600-85.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 9, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge

under this paragraph is "alcohol rehabilitation failure," and the separation code is "JPD." 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 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends good service, including a combat tour.

The applicant contends the discharge was due to the applicant requesting a way out of their contract. When the applicant returned from Afghanistan in 2011, the applicant returned home to an empty house and their children were gone. The applicant did not know where to turn and turned to the command for guidance. The command informed the applicant the command knew the spouse was gone with another person and had the children with them. The applicant was removed from the home so the applicant's spouse could get everything left they wanted. The applicant was referred to the Naval Base rehab center because the spouse told the command the applicant was not following orders and was driving by the home while the spouse was there. The command told the applicant if they agreed to attend rehab then quit, it would be an easy way to get out of the enlistment. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review. 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.

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 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: Adjustment Disorder w/Disturbance in Emotion and Conduct, Anxiety Disorder, Counseling Unspecified.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant has an in-service diagnosis of Adjustment Disorder w/Disturbance in Emotion and Conduct.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions do not mitigate the discharge. The applicant has an in-service BH condition of Adjustment Disorder with Disturbance in Emotion and Conduct and post-service diagnosis of Counseling Unspecified and Anxiety Disorder. Records reflect the applicant's history of alcohol use/abuse predated the Adjustment Disorder diagnosis, and there is no indication in the record that his substance use was exacerbated by the Adjustment Disorder. The applicant's post-service diagnoses of Counseling Unspecified and Anxiety Disorder were related to psychosocial

and environmental issues proximal on June-July 2020 and not associated with military service. As such neither BH condition mitigates the applicant's alcohol-related misconduct. Further, records show that while enrolled in Level III treatment, the applicant made an informed decision to disenroll from treatment, and willfully did so, against medical advice, with the expressed understanding that it would result in treatment failure.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder and Anxiety Disorder outweighed the applicant's medically unmitigated Alcohol Rehabilitation Failure.

b. Response to Contention(s):

(1) The applicant contends the discharge was due to the applicant requesting a way out of their contract. The command told the applicant if they agreed to attend rehab, then quit, it would be an easy way to get out of the enlistment. The Board considered this contention but did not find that this explanation of the applicant's actions mitigates the applicant's discharge.

(2) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention but found insufficient mitigating factors to warrant a change to the applicant's Alcohol Rehabilitation Failure narrative reason for separation.

(3) The applicant contends good service, including a combat tour. The Board considered the applicant's five years of service, including a combat tour in Afghanistan, but determined that the applicant's record did not outweigh the applicant's Alcohol Rehabilitation Failure.

(4) The applicant desires to rejoin the military service. The Board considered this contention but found insufficient mitigating factors to warrant a change to the applicant's reentry eligibility code.

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, despite applying liberal consideration to all evidence before the Board, the applicant's Adjustment Disorder and Anxiety Disorder did not outweigh the medically unmitigated Alcohol Rehabilitation Failure. The Board also considered the applicant's contentions regarding good service and being advised to fail rehabilitation as a way out of the Army but found that the totality of the applicant's record does not warrant a discharge upgrade. The applicant did not present any issues of impropriety for the Board's consideration. 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. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000549

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

Authenticating Official:

12/5/2024

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
UOTH – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs