

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 honorable. The applicant requests a narrative reason change.

The applicant seeks relief contending, in effect, the applicant finished and completed rehab; however, while in rehab, the applicant came down on orders. The applicant did not want to go and wanted to get out of the Army due to the rough deployment to Afghanistan. The 1SG said the applicant could get them out on a drug rehab failure and was told they would receive a general (under honorable conditions) discharge; however, the RE code is preventing the applicant from going back in the Army. The applicant was a good Soldier and misses serving the country and being deployed. The applicant has regret every day of their life, and joined when they were 17 so the Army is all they really know. The applicant's life has not been the same since they have been discharged and would like to serve again.

b. **Board Type and Decision:** In a records review conducted on 7 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:** Drug Rehabilitation Failure / AR 635-200, Chapter 9 / JPC / RE-4 / Honorable

b. **Date of Discharge:** 25 April 2012

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 15 March 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 17 January 2012, the applicant failed to complete the Army Substance Abuse Program (ASAP)

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

(4) **Legal Consultation Date:** On 15 March 2012, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** undated / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 12 November 2008 / 3 years, 18 weeks
- b. **Age at Enlistment / Education / GT Score:** 17 / GED / 94
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 3 years, 5 months, 14 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** SWA / Afghanistan (2 April 2010 – 11 February 2011)
- f. **Awards and Decorations:** ACM-CS, ARCOM-2, NATOMDL, AGCM, NDSM, GWOTSM, ASR, OSR, CIB
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Army Substance Abuse Program (ASAP) Enrollment form, 5 October 2011, reflects the applicant self-referred in the ASAP.

Electronic Copy of DD Form 2624, 9 December 2011, reflects the applicant tested positive for OXMOR 209 (oxymorphone), during an Inspection Random (IR) urinalysis testing, conducted on 29 November 2011.

Synopsis of Rehabilitation Efforts (memo), 24 January 2012, reflects the applicant self-referred to the Fort Drum Army Substance Abuse Program (ASAP) on 5 October 2011. The applicant was evaluated on 17 October 2011 and met DSM IV diagnostic criteria for a diagnosis of Alcohol Abuse. A Rehabilitation Team Meeting (RTM) was held on 27 October with the applicant, 1SG, and ASAP Counselor at which time they were enrolled in the ASAP Level I Outpatient Program which included abstinence for alcohol and other drug use, attending weekly group counseling sessions and individual counseling sessions as directed. The applicant attended two individual counseling sessions (2 and 9 November 2011) and was excused from one group session by the chain of command. On 30 November 2011, one of the applicant's psychologists from the TBI Program reported the applicant had reported they were smoking spice on a daily basis and drinking alcohol occasionally. The applicant confirmed they were smoking spice daily, snorting non prescribed pain medication and had been drinking alcohol. On 30 November 2011 the applicant's 1SG was informed of the applicant's admission to continued substance use. An RTM was held on 1 December 2011 with the applicant, 1SG, supervisor and ASAP Counselor at which time it was determined the applicant required a higher level of care. The applicant was admitted to the Starlight Inpatient Chemical Dependency Treatment Program on 2 December 2011 and successfully completed the program on 3 January 2012 and returned to duty at Fort Drum. Another RTM was held on 17 January 2012, with the applicant, 1SG and ASAP Counselor during which time the applicant admitted they had smoked cannabis. The 1SG declared the applicant a rehabilitation failure with the recommendation the applicant be separated from the service under the provision of chapter 9, AR 635-200.

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 Medical Examination, 12 February 2016, the examining medical physician noted: seen/continue with BH and ASAP.

Report of Medical History, 16 February 2012, the examining medical physician noted: seen by BH no SI, HI, plan or intent in the comments section.

5. APPLICANT-PROVIDED EVIDENCE: Online application and Certificate 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 600-85 (The Army Substance Abuse Program Headquarters Department) defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes: A Soldier's self-referral to BH for SUD treatment.

e. 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) 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.

(4) 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.

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

g. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per 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 evidence of Army Military Human Resource Record (AMHRR) indicates on 17 January 2012, an RTM was held with the applicant, 1SG and ASAP Counselor during which time the applicant admitted they had smoked cannabis. The 1SG declared the applicant a rehabilitation failure with the recommendation the applicant be separated from the service under the provision of chapter 9, AR 635-200.

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 an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "drug rehabilitation failure," and the separation code is "JPC." 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 and receiving the Combat Infantry Badge.

The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The AMHRR shows the applicant met entrance qualification standards to include age.

The applicant contends completing rehab; however, while in rehab, the applicant came down on orders. The applicant did not want to go and wanted to get out of the Army due to the rough deployment to Afghanistan. The 1SG said they could get the applicant out on a drug rehab failure and was told the applicant they would receive a general (under honorable conditions) discharge. The evidence of Army Military Human Resource Record (AMHRR) indicates on 17 January 2012, an RTM was held with the applicant, 1SG and ASAP Counselor during which time the applicant admitted they had smoked cannabis. The 1SG declared the applicant a rehabilitation failure with the recommendation the applicant be separated from the service under the provision of chapter 9, AR 635-200. The applicant's 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, PTSD, Depression, TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with an Adjustment Disorder, PTSD, Depression, and TBI, and the VA has service connected the PTSD and TBI.

(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. Given the nexus between PTSD, TBI, Depression, and self-medicating with substances, the applicant's BH conditions likely contributed to the separation for drug rehabilitation failure. While these conditions are noted and liberal consideration is applied, the applicant has already been upgraded to an HD and the narrative reason remains appropriate. The BH conditions provide no further mitigation.

(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, Post Traumatic Stress Disorder, Depression, and Traumatic Brain Injury outweighed the applicant's discharge as the applicant already holds an honorable characterization with a Drug Rehabilitation Failure narrative reason for separation.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention but determined that the applicant's narrative reason for separation is proper and equitable. Changing the applicant's separation to a misconduct narrative reason would not represent an upgrade and the applicant's circumstances do not warrant a change to Secretarial Authority.

(2) The applicant contends good service, including a combat tour and receiving the Combat Infantry Badge. The Board considered the totality of the applicant's record of service and determined that the applicant's honorable characterization of service is proper and equitable.

(3) The applicant contends finishing rehab; however, while in rehab, the applicant came down on orders. The applicant did not want to go and wanted to get out of the Army due to the rough deployment to Afghanistan. The 1SG said they could get the applicant out on a drug rehab failure and told the applicant would receive a general (under honorable conditions) discharge. The Board considered this contention but determined that it did not change the Board's finding that the applicant's honorable characterization with a Drug Rehabilitation Failure narrative reason was proper and equitable.

(4) The applicant desires to rejoin the military service. The Board considered this contention but determined that the applicant's reentry eligibility code of RE-4 is proper and equitable given the applicant's behavioral health conditions.

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 as the applicant already holds an honorable characterization and further relief is not available.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000623

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

11/13/2024

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