

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 week of graduation from the rehabilitation program, the applicant was informed the drinking was related to their military service and the applicant was being removed from the program to be discharged. The applicant's desire was to complete the program to deploy with their unit to Afghanistan. The applicant reacted negatively when they were informed they were being discharged and would not deploy with their unit. The applicant was a young and single Soldier. The applicant is currently a spouse and a parent and responsible for more people than oneself. An upgrade, a narrative reason change, and a reenry eligibility code change will allow the applicant to reenlist, obtain employment using their veteran's status, and use the GI Bill benefits. The applicant has been a good citizen and has not had any issues with alcohol or had any issues with alcohol. The applicant is a member of their community's volunteer fire department, married with four children / stepchildren, maintaining full-time employment, and is a member of their Veterans of Foreign Wars (VFW) post and previously held the adjutant position. The applicant was informed the applicant had to wait seven years before requesting a discharge upgrade.

b. **Board Type and Decision:** In a records review conducted on 12 September 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more details 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 September 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 26 August 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 1 June 2011, the applicant was considered a rehabilitation failure because of non-compliance with the Army Substance Abuse Program (ASAP) recommendations and failure to meet ASAP requirements. The applicant was enrolled in ASAP in Grafenwoehr on 14 February 2011 for being drunk on duty. The applicant reported on 9 March 2011, the applicant was involved in a bar fight while intoxicated and then drove an automobile erratically. The applicant made statements to other Soldiers the applicant's

non-compliance with treatment was part of a plan to secure an early honorable discharge from the Army.

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

(4) Legal Consultation Date: On 30 August 2011, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 8 September 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 May 2009 / 3 years, 25 weeks

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 103

c. Highest Grade Achieved / MOS / Total Service: E-2 / 91M10, Bradley Fighting Vehicle System Maintainer / 2 years, 4 months, 23 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Germany / None

f. Awards and Decorations: NDSM, GWOTSM, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Company Grade Article 15, 15 February 2011, for failing to go at the time to the prescribed time to the appointed place of duty (14 January 2011), and as a result of wrongful previous overindulgence in intoxicating liquor or drugs, incapacitated for the proper performance of duties (14 January 2011). The punishment consisted of a reduction to E-1; forfeiture of \$342 pay; and extra duty and restriction for 14 days.

Memorandum, 16 February 2011, reflects the applicant was evaluated and assessed for a substance-related problem and met the criteria for enrollment in ASAP. The memorandum provided details of Soldier's responsibilities and recommendations for the command.

Developmental Counseling Form, 15 June 2011, for pending administrative separation under Army Regulation, Chapter 9.

Memorandum for Record, 15 July 2011, reflects the immediate commander suspended the applicant's pass and alcohol privileges because of an alcohol-related incident.

Election of Rights, 30 August 2011, reflects the applicant understood if the applicant received a discharge / character of service less than honorable, the applicant may make a request to the Army Discharge Review Board (ADRB) or the Army Board of Corrections of Military Records (ABCMR) for upgrading; however, an act of consideration by either board did not imply the discharge would be upgraded.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Memorandum, subject: Synopsis of ASAP treatment / Failure to Rehabilitate, 1 June 2011, reflects the applicant was assessed at ASAP on 9 August 2010 because of driving under the influence, with a blood alcohol content of .069. The applicant completed Prime for Life and was not enrolled into ASAP. The applicant returned on 14 February 2011, as a command-referral for allegedly being drunk on duty. The applicant was enrolled with a diagnosis of alcohol dependence. After the applicant displayed a poor attitude and non-compliance to treatment, the applicant's rehabilitation team determined the applicant failed to successfully respond to rehabilitation and declared the applicant an ASAP Rehabilitation Failure in accordance with Army Regulation 600-85. Discharge from military service should be affected.

Report of Medical History, 15 June 2011, the examining medical physician noted in the comments section: Numerous times for alcohol dependence, depression, attempted suicide, and memory loss after blacking out for alcohol use, LSL inpatient Behavioral Health for alcohol abuse. The applicant's AMHRR is void of page 2 of the form.

Report of Medical Examination, 15 June 2011, the examining medical physician noted in the summary of defects and diagnoses section: Depression, alcohol abuse, suicide attempt (previous).

5. APPLICANT-PROVIDED EVIDENCE: Application for Correction of Military Record; Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; self-authored statement; and Joint Services Transcript.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is a good citizen; has not had any issues with alcohol; volunteers with the community's volunteer fire department; married with children; maintains employment; and is a member of their Veterans of Foreign Wars (VFW).

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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

The evidence of Army Military Human Resource Record (AMHRR) indicates, the unit commander in consultation with the Clinical Director/Army Substance Abuse Program (ASAP), declared the applicant a rehabilitation failure. The applicant failed to successfully respond to rehabilitation in accordance with Army Regulation 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 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 being informed the applicant had to wait seven years before applying for a discharge upgrade. The applicant's AMHRR reflects in the Election of Rights the applicant was informed and understood if the applicant received a character of service of less than honorable, the applicant had the right to submit a request to the ADRB or ABCMR for an upgrade. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends an upgrade would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends being a good citizen; having no issues with alcohol; volunteering with the community's volunteer fire department; being married with children; maintaining employment; and being a member of their VFW. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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's Medical Advisor, a voting member, 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 and Major Depression.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and Major Depression.

(3) Does the condition or experience 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 basis of separation. The applicant was diagnosed in service with an Adjustment Disorder and Major Depression. However, both conditions were diagnosed after the applicant was determined to be an Alcohol Rehabilitation Failure and was pending separation. Both conditions were diagnosed secondary to the applicant's substance abuse, rehabilitation failure, and pending separation. There is no evidence that the Adjustment Disorder or Major Depression existed at the time of the Alcohol Rehabilitation Failure or contributed in any way. Accordingly, the applicant's BH conditions provide no mitigation for the Alcohol Rehabilitation Failure that led to the separation.

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

b. Response to Contention(s):

(1) 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.

(2) The applicant contends youth and immaturity affected the applicant's behavior at the time of the discharge. The Board considered this contention but did not find that it outweighed the discharge. The applicant met minimum age requirements for the Army.

(3) The applicant contends being informed the applicant had to wait seven years before applying for a discharge upgrade. The Board considered this contention and found that the applicant's Election of Rights in the separation documents did not inform the applicant that the applicant needed to wait seven years to apply for a discharge upgrade.

(4) The applicant contends good service. The Board considered the applicant's two years of service and did not find that the service record outweighed the applicant's discharge.

(5) The applicant contends an upgrade would allow educational benefits through the GI Bill. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA

loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(6) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(7) The applicant contends being a good citizen; having no issues with alcohol; volunteering with the community's volunteer fire department; being married with children; maintaining employment; and being a member of their VFW. The Board considered the applicant's post-service accomplishments and did not find that they outweighed the discharge.

(8) The applicant desires to rejoin the military service. The Board considered this contention and found that the applicant's RE-4 is proper and equitable given the behavioral health diagnoses.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a 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 Major Depression did not outweigh the applicant's medically unmitigated Alcohol Rehabilitation Failure, particularly since these diagnoses occurred after the failure. The Board also considered the applicant's contentions regarding good service and post-service accomplishments 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 Honorable characterization.

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

(3) The RE code will not change given the behavioral health conditions. 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:

9/13/2024

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