

**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.

The applicant seeks relief contending, in effect, the discharge was inequitable because it was based on an isolated incident in seven years of active duty. The applicant received two Army Good Conduct Medals, an Army Commendation Medal for a 15-month deployment to Iraq, and an honorable discharge for the first enlistment. The applicant is very proud to have served and was discharged two months before the expiration term of service (ETS). The applicant believes they served honorably, and 82 months of service should not be characterized by one incident. The applicant earned the Army Substance Abuse Program (ASAP) Prime For Life Certificate after completion of the class and after the positive urinalysis. The applicant believes the applicant did not receive a complete opportunity to use the ASAP. The applicant tested positive on the urinalysis for hydrocodone. The applicant was prescribed the medication on several occasions for an ongoing back problem. The medicine was expired, but the applicant was unaware of the expiration because it was not on the medicine container. The applicant had a valid prescription issued in the applicant's name. The applicant used the medication when they were hurt.

**b. Board Type and Decision:** In a records review conducted on 3 October 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's Anxiety Disorder, Panic Disorder, Post Traumatic Stress Disorder outweighing the applicant's cocaine abuse. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.  
*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 / General (Under Honorable Conditions)

**b. Date of Discharge:** 1 November 2013**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 17 September 2013

**(2) Basis for Separation:** The applicant was informed of the following reasons: The applicant wrongfully used cocaine and was deemed a rehabilitation failure.

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

**(4) Legal Consultation Date:** 18 September 2013

**(5) Administrative Separation Board:** On 18 September 2013, the applicant unconditionally waived consideration of the case before an administrative separation board.

**(6) Separation Decision Date / Characterization:** 27 September 2013 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 19 January 2010 / 4 years

**b. Age at Enlistment / Education / GT Score:** 27 / HS Graduate / 103

**c. Highest Grade Achieved / MOS / Total Service:** E-4 / 12N10, Horizontal Construction Specialist / 6 years, 9 months, 20 days

**d. Prior Service / Characterizations:** RA, 10 January 2007 – 18 January 2010 / HD

**e. Overseas Service / Combat Service:** Alaska, SWA / Iraq (1 October 2007 – 31 December 2008)

**f. Awards and Decorations:** ARCOM, AGCM-2, NDSM, GWOTSM, ICM-CS, NCOPDR, ASR, OSR-2

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** Electronic Copy of DD Form 2624, 29 May 2013, reflects the applicant tested positive for HYCOD 840 (hydrocodone) and HYMOR 1447 (hydromorphone), during an Inspection Random (IR) urinalysis testing, conducted on 17 May 2013.

Rights Waiver / Non-Waiver Certificate, 6 June 2013, reflects the applicant was accused of having a random drug test positive result for hydrocodone and hydromorphone. The investigator commented the applicant states the applicant did not know about the six-month term, but the command states the applicant did know.

Medical Record Consultation Sheet, 10 July 2013, reflects the applicant's medical records were reviewed because the applicant tested positive for hydrocodone and hydromorphone, and a former medical review officer (MRO) deemed the use of the drugs illegitimate, but the commander's attorney requested a second opinion. The prescriptions from 1 June 2010 to 3 July 2013 were reviewed. The most recent violation prescription before the urinalysis on 17 May 2013 was 24 October 2011. All patients were required to sign an understanding of six-month limitation on narcotic prescriptions. The review revealed the applicant was prescribed oxycodone on 2 and 5 April 2013. However, these prescriptions were filled at Elmendorf, and the applicant may not have been informed of the six-month rule unless the applicant was informed by the command.

Electronic Copy of DD Form 2624, 22 July 2013, reflects the applicant tested positive for COC 298 (cocaine), during an Inspection Random (IR) urinalysis testing, conducted on 9 July 2013.

The applicant provided Elmendorf Air Force Base medication prescription list, 29 July 2013, reflecting the applicant was prescribed various medications, including hydrocodone, percocet, oxycodone, diazepam, and clonazepam, with prescription and expiration dates.

Summary of Army Substance Abuse Program (ASAP) Rehabilitation Failure (memo), 31 July 2013, reflects the applicant was a biochemical referral to the ASAP on 18 June 2013, following a positive urinalysis for hydrocodone and hydromorphone. The unit commander in consultation with the Clinical Director/Army Substance Abuse Program (ASAP) determined the applicant failed to achieve satisfactory progress as evidenced by the applicant's positive urinalysis while enrolled in the ASAP. The applicant's prognosis for successful completion was poor. The applicant's demonstration of lack of motivation to comply and failure to remain abstinent were contributing factors in declaring the applicant a rehabilitation failure.

Report of Mental Status Evaluation, 10 September 2013, reflects the applicant was cleared for administrative action under Chapter 14. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and mTBI. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions.

Developmental Counseling Form, 13 September 2013, for being recommended for separation under Chapter 9, Drug Rehabilitation Failure because of positive urinalysis for cocaine while enrolled in the ASAP for a previous positive urinalysis.

The applicant's Enlisted Record Brief (ERB), 29 October 2013, reflects the applicant was flagged for Drug Abuse (Adverse Action), effective 14 June 2013; (UA) Involuntary Separation or Discharge (Field Initiated) (BA), effective 17 June 2013; Adverse Action (AA), effective 17 June 2013; and was ineligible for reenlistment because of Pending Separation (9V). The applicant was reduced from E-4 to E-1 effective 15 October 2013.

**i. Lost Time / Mode of Return:** 1 day (NIF, 10 February 2010 – 11 February 2010) / NIF

**j. Behavioral Health Condition(s):**

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Report of Medical Examination, 3 September 2013, the examining medical physician noted in the summary of defects and diagnoses section: Anxiety disorder, not otherwise specified (NOS); substance abuse; recurrent lumbar strain (temporary profile); and bilateral knee pain, subjective.

**5. APPLICANT-PROVIDED EVIDENCE:** Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; Army Good Conduct Medal Orders; medication list; and two Army Substance Abuse Program Prime For Life Certificates.

**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 Directive 2021-21 (Use of Prescribed Controlled Medications), paragraph 4, 18 May 2021, states a patient's prescription for controlled medication is valid only for the patient and only for the period as written by the prescribing authority. Absent an otherwise specified date from the prescriber, use of prescription substances defined as schedules II-V in 21 U.S.C. 812 will be considered expired and illegitimate for use six months after the most recent date of

fill, as indicated on the prescription label. The time frame for illegitimate use is based on the dispensing date, not the labeled expiration date of the medication itself. The provision of the directive takes precedence over Army Regulation 600-85, paragraph 4-14, to preclude the need for medical review officers to determine illegitimate use in cases where a positive test has resulted from the use of expired prescription medications for substances defined as schedules II-V in 21 U.S.C. 812.

**d.** 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.

**e.** Army Regulation 600-85, (The Army Substance Abuse Program), provides comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components, DA Civilians, and other personnel eligible for Army Substance Abuse Program (ASAP) services. Chapter 4 prescribes the military personnel deterrence drug testing program.

**(1)** Paragraph 4-2I(7) provides Soldiers are prohibited from using the following substances for the purpose of inducing excitement, intoxication, or stupefaction of the central nervous system, including: Any prescription drug without a current prescription written specifically for the Soldier; prescription or over-the-counter drugs and medications when used in a manner contrary to their intended medical purpose, in excess of the prescribed dosage, or in a manner other than what is specifically prescribed.

**(2)** Paragraph 4-14 states MROs are directed to consider any legal prescription that explains the UA positive result for a controlled substance when evaluation "authorized use." A Soldier's use of their lawfully prescribed and dispensed medication, for medical purposes, after the prescription's expiration date, does not in itself constitute a violation of Article 112a, UCMJ and such use does not require an automatic "illegitimate use" finding under this regulation.

**f.** 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.

g. 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.

h. 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-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 or about 31 July 2013, the unit commander in consultation with the Clinical Director/Army Substance Abuse Program (ASAP), declared the applicant a rehabilitation failure. The applicant's prognosis for successful completion was poor. The applicant's demonstration of lack of motivation to comply, and failure to remain abstinent were contributing factors in declaring the applicant a rehabilitation failure.

The applicant contends the event which led to the discharge from the Army was an isolated incident. The applicant's AMHRR reflects the applicant tested positive on two occasions and was declared a rehabilitation failure after the second positive urinalysis. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends being prescribed hydrocodone for a recurrent back problem and was unaware of the expiration date, and the applicant was not given an opportunity to use ASAP. The applicant's AMHRR reflects the applicant was prescribed hydrocodone and was diagnosed with a recurrent lumbar strain. The applicant was enrolled in the ASAP for a positive urinalysis for hydrocodone and hydromorphone, and subsequently tested positive for cocaine and declared a rehabilitation failure. The applicant's medical records were reviewed, and the MRO determined there was no legitimate medical use at the time of the urinalysis for the hydrocodone or hydromorphone. However, according to the MRO, the applicant may not have been aware of the six-month expiration date rule for a prescription of oxycodone. The applicant underwent a medical examination, which reflects diagnoses anxiety disorder, NOS; substance abuse; recurrent lumbar strain (temporary profile); and bilateral knee pain, subjective. Army Regulation

600-85, Paragraph 4-2l (7) provides Soldiers are prohibited from using the following substances for the purpose of inducing excitement, intoxication, or stupefaction of the central nervous system, including any prescription drug without a current prescription written specifically for the Soldier.

The applicant contends good service, including a combat tour.

The applicant contends being discharged two months before the applicant's ETS date. The applicant's AMHRR reflects the applicant reenlisted on 19 January 2010 for four years, indicating the applicant's ETS date was 19 January 2014. The applicant was involuntarily discharged on 1 November 2013.

#### **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: Anxiety Disorder NOS, Panic Disorder, PTSD.

**(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 Anxiety Disorder NOS and Panic Disorder and is service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD also existed during military service.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with Anxiety Disorder NOS and Panic Disorder and is service connected by the VA for PTSD. Given the nexus between Anxiety Disorder NOS, Panic Disorder, PTSD and self-medicating with substances, the applicant's BH conditions likely contributed the use of cocaine and subsequent drug rehabilitation failure that led to the separation. Therefore, the applicant's basis of separation is mitigated.

**(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 Anxiety Disorder, Panic Disorder, Post Traumatic Stress Disorder outweighed the applicant's cocaine abuse.

**b.** Response to Contention(s):

**(1)** The applicant contends being prescribed hydrocodone for a recurrent back problem and was unaware of the expiration date, and the applicant was not given an opportunity to use ASAP. The Board liberally considered this contention and determined that the applicant's Anxiety Disorder, Panic Disorder, Post Traumatic Stress Disorder outweighed the applicant's cocaine abuse.

**(2)** The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but determined that further upgrade, beyond what was decided based on medical mitigation, was not warranted.

**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE****AR20210000884**

(3) The applicant contends good service, including a combat tour. The Board considered the applicant's service record but determined that further upgrade, beyond what was decided based on medical mitigation, was not warranted.

(4) The applicant contends being discharged two months before the applicant's ETS date. The Board considered this contention but determined that it did not warrant further upgrade above what was decided based on medical mitigation.

c. The Board determined that the characterization of service was inequitable based on the applicant's Anxiety Disorder, Panic Disorder, Post Traumatic Stress Disorder outweighing the applicant's cocaine abuse. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Anxiety Disorder, Panic Disorder, Post Traumatic Stress Disorder outweighed the applicant's cocaine abuse. Thus, the prior characterization is no longer appropriate.

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

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

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

**Authenticating Official:**

10/16/2024

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)



# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

**AR20210000884**

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