

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.

The applicant seeks relief contending, in effect, the discharge was for alcohol rehabilitation failure. The applicant contends drinking to self-medicate after suffering from post-traumatic stress disorder (PTSD) because of the horrors of war. The applicant claims being diagnosed with PTSD from the VA. after they left the military.

b. **Board Type and Decision:** In a records review conducted on 13 August 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:** 29 May 2009

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 22 April 2009

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 1 May 2008, the applicant was scheduled for Alcohol and Drug Prevention Training (ADAPT) on 9 and 10 July. The applicant was a no show for the scheduled ADAPT course. The applicant attended inpatient treatment at Red River Hospital from 23 October to 20 November 2008. The applicant was discharged with Poly Substance Dependence. On 20 December 2008, The applicant was involved in an alcohol related car accident. The acting chief of Substance Abuse Services believes the applicant either cannot or will not discontinue their substance abuse.

(3) **Recommended Characterization:** Honorable / The intermediate commander recommended a general (under honorable conditions) discharge.

(4) **Legal Consultation Date:** 22 April 2009

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

(6) Separation Decision Date / Characterization: 12 May 2009 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 January 2006 / 3 years

b. Age at Enlistment / Education / GT Score: 18 / High School Graduate / 94

c. Highest Grade Achieved / MOS / Total Service: E-4 / 25L1P, Cable Systems Installer/Maintainer / 4 years, 5 months, 16 days

d. Prior Service / Characterizations: ARNG, 14 December 2004 – 27 June 2005 / NA
IADT, 28 June 2005 – 3 November 2005 / HD
ARNG, 4 November – 23 January 2006 / HD

e. Overseas Service / Combat Service: SWA / Iraq (3 October 2006 – 14 November 2007)

f. Awards and Decorations: NDSM, GWOTSM, ICM-CS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Summary of Army Substance Abuse Program Rehabilitation Failure (memo), 15 January 2006, reflects in light of the treatment opportunities the applicant had had, it appears they either could not or would not discontinue their substance use. If the applicant's use was not arrested, they would most certainly be involved in another substance-related incident. After almost five months of rehabilitation services, and the applicant's response to treatment; it would be appropriate for the command to consider and initiate appropriate administrative action.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Mental Health note, 17 June 2014, which includes a medical diagnosis.

(2) AMHRR Listed: Mental Status Evaluation, 1 January 2023, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant evaluation included a medical diagnosis.:

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; letter of support; medical note.

6. POST SERVICE ACCOMPLISHMENTS: The applicant sought treatment for their mental health from the VA.

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-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) includes a Summary of Army Substance Abuse Program Rehabilitation Failure (memo), 15 January 2006, reflecting in light of the treatment opportunities the applicant had had, it appears they either could not or would not discontinue their substance use. If the applicant's use was not arrested, they will most certainly be involved in another substance-related incident. After almost five months of rehabilitation services, and the applicant's response to treatment; it would be appropriate for the command to consider and initiate appropriate administrative action.

The applicant contends drinking to self-medicate after suffering from post-traumatic stress disorder (PTSD). The applicant claims being diagnosed with PTSD from the VA. after they left the military. The applicant provided a Mental Health note, 17 June 2014, which includes a medical diagnosis. The AMHRR includes a Mental Status Evaluation, 1 January 2023, reflecting the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. The applicant evaluation included a medical diagnosis. The mental status evaluation was considered by the separation authority.

The applicant contends seeking treatment for their mental health from the VA. 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.

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: Depressive Disorder, Adjustment Disorder, Adjustment Disorder with Depressed Mood. Additionally, the applicant asserts PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant asserts the misconduct was related to PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available evidence reflects the applicant has BH conditions that potentially mitigated applicant's misconduct. Applicant has in-service diagnoses of Depressive Disorder, Adjustment Disorder, Adjustment Disorder with Depressed Mood, and a post-service diagnosis of depression. However, records reflect the applicant with a history of affective disorders and substance use treatment that existed prior to service, and a history of substance use that persisted during

service to include the use of MDMA for a 4-month period from February to June 2006, abuse of over-the-counter cough syrup in a deployed environment from June through July 2007, to get high, and repeated use of alcohol upon redeployment. Additionally, records reflect the applicant's Depression and existed prior to service and was not exacerbated by service, and the applicant's adjustment disorders were not of a severity to causes changes in behavior, cognition, judgement. Further, although the applicant asserts a diagnosis of PTSD by the VA, records reflect the diagnosis rendered in error while the applicant was enrolled in a VA substance abuse treatment program but upon thorough evaluations in the VA PTSD clinic and Initial PTSD DBQ Evaluation reflected the applicant did not meet criteria for the disorder and applicant's VA rating letter noted service connection for PTSD was denied due, in part, to a lack of medical evidence linking current symptoms to an in-service stressor, and lack of evidence that the claimed stressors occurred. Given that liberal consideration is not afforded under Kurta for conditions that existed prior to service and not exacerbated by service, the applicant's alcohol rehabilitation failure basis for separation is not mitigated by any BH Conditions.

(4) Does the condition or experience outweigh the discharge? N/A.

b. Response to Contention(s):

(1) The applicant contends drinking to self-medicate after suffering from post-traumatic stress disorder (PTSD). The applicant claims being diagnosed with PTSD from the VA. after they left the military. The Board considered this contention and determined there is insufficient evidence in the file to support the applicant has PTSD as stated in section 9a(3) above. The discharge is proper and equitable, an upgrade is not warranted.

(2) The applicant contends seeking treatment for their mental health from the VA. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Army when determining a member's discharge characterization. After liberally considering all the evidence, including the VA. determination, the Board found that the applicant's alcohol rehabilitation failure is unmitigated.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 of all the evidence before the Board, the Depressive Disorder, Adjustment Disorder, Adjustment Disorder with Depressed Mood and the applicant's asserted PTSD did not excuse or mitigate the alcohol rehabilitation failure. 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.

(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.

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(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:

8/22/2024

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