

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000962

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, they want the opportunity to enroll in college to further their knowledge and have a chance to have a career outside of the military.

b. Board Type and Decision: In a records review conducted on 8 October 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service (to include combat service in Afghanistan) outweighing the separating DUI offense. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and the reentry code to RE-3. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them.

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: 30 January 2014

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 21 November 2013

(2) Basis for Separation: The applicant was informed of the following reasons: On or about 27 March 2013, the applicant was command referred to participate in Army Substance Abuse Program (ASAP) due to a DUI on 27 March 2013. The applicant was discharged from ASAP on 15 July 2013, as a successful completion with the recommendation to terminate treatment/separation from the Military.

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

(4) Legal Consultation Date: On 26 November 2013, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 9 January 2014 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 28 December 2010 / 3 years, 20 weeks

b. Age at Enlistment / Education / GT Score: 22 / High School Graduate / 104

c. Highest Grade Achieved / MOS / Total Service: E-4 / 91L10, Construction Equipment Repairer / 3 years, 1 month, 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (9 October 2011 – 8 October 2012)

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

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: MPR# 05490-2011-MPC033, 21 August 2011, investigation revealed the applicant was observed operating a vehicle and when approached gate #4, rendered identification. An odor of an alcoholic beverage emitting from the applicant's person. The applicant was administered a series of field sobriety tests which the applicant failed. The applicant was apprehended and transported to the installation provost marshal's office where the applicant submitted to Intoximeter test, with a result of .183 percent BAC.

Memorandum for, Administrative Reprimand, 15 September 2011, reflects the applicant was reprimanded for driving a motor vehicle on 21 August 2011, in the state of Kentucky with a blood alcohol content of .183 percent, in violation of Kentucky law.

San Antonio Police Department DWI/Traffic Case Report, 27 March 2013, reflects the applicant was arrested and charged with DWI.

Synopsis of Treatment Memorandum, 15 July 2013, reflects the applicant's rehabilitation team met on 11 April 2013. The applicant was Command referred due to a DUI on 27 March 2013. The applicant was seen on 9 April 2013 for a Bio-psycho-social Assessment. The applicant met the diagnostic criteria for Alcohol Abuse. The applicant was enrolled and referred to outpatient Substance Abuse Education (SAE) group. The applicant attended six SAE group sessions. The applicant reported abstinence from substance throughout ASAP enrollment, attended one AA meeting, participated in the treatment groups and completed all assigned homework. The applicant was discharged from the ASAP on 15 July 2013. At the time, Command representative 1SG A. determined the applicant had satisfactorily participated in treatment. The applicant was discharged as a successful completion with the recommendation to terminate treatment/separation from the military.

Patient Progress Report, 15 July 2013, reflects the applicant was released from the ASAP. The applicant's in-progress evaluation was good, and the counselor recommended terminating treatment and separation. The unit commander's appraisal of the applicant's performance was satisfactory, and the commander's decision was terminating treatment and separation.

Developmental Counseling Form, informing the applicant they meet the requirements for administrative separation IAW Chapter 9, AR 635-200.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 15 August 2013, the examining medical physician noted the applicant's medical conditions in the comments section.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Memorandum for Commander; four third-party letters; DD Form 214.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the

time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 9 outlines the procedures for discharging individuals because of alcohol or other drug abuse. A member who has been referred to the Army Substance Abuse Program (ASAP) for alcohol or drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

(5) Paragraph 9-4 stipulates the service of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600-85.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JPD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 9, for alcohol rehabilitation failure.

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-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 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 on 15 July 2013, the unit 1SG determined the applicant had satisfactorily participated in treatment. The applicant was discharged as a successful completion with the recommendation to terminate treatment/separation from the military.

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 third-party statements provided with the application reflect the applicant's hard work, good character and performance while serving on active duty.

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? **No.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: none. The applicant has an in-service diagnosis of Alcohol Abuse; however, substance use related

disorders in absence of a comorbid BH condition is not covered for potential relief, even under liberal guidance.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience excuse or mitigate the discharge? **N/A**

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

b. Response to Contention(s):

(1) 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.

(2) 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.

c. The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service (to include combat service in Afghanistan) outweighing the separating DUI offense. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable and the reentry code to RE-3. The Board determined the narrative reason/SPD 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 length and quality of service (to include combat service in Afghanistan) outweighing the separating DUI offense. 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. The applicant did in fact fail a rehabilitation program.

(3) The RE code will change to RE-3 given the history of challenges with alcohol.

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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: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

10/17/2024



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