

**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, they were discharged under the wrong regulation. The applicant was discharged for failure to complete ASAP; however, the applicant completed the program successfully. The applicant is seeking a law degree and would like to use the GI Bill.

b. **Board Type and Decision:** In a records review conducted on 25 June 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:** 30 December 2008

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 3 December 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: On 30 October 2007, the applicant was referred to the Army Substance Abuse Program (ASAP). In December 2007 and May 2008, the applicant relapsed while in treatment. The applicant was discharged from the Army Substance Abuse Program on 30 September 2008; however, on 20 October 2008, the applicant was arrested for public intoxication in Dallas, Texas.

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

(4) **Legal Consultation Date:** On 4 December 2008, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 18 December 2008 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 17 April 2007 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 25 / GED / 119
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 89B10, Ammunition Specialist / 1 year, 8 months, 14 days
- d. **Prior Service / Characterizations:** NA
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** CG Article 15, 19 December 2007, for failing to go at the time prescribed to the appointed place of duty on or about 29 October 2007; and was disrespectful in language and deportment toward a senior noncommissioned officer on or about 29 October 2007. The punishment consisted of a reduction to E-1; forfeiture of \$303 pay for one month; extra duty and restriction for 14 days; and an oral reprimand.

Synopsis of Treatment (memo), 4 January 2008, reflects the applicant was command referred to ASAP on 30 October 2007. The applicant appeared to meet DSM-IV-TR diagnostic criteria for Alcohol Dependence. The applicant's rehabilitation team met on 16 November 2007, and the applicant was enrolled in intensive outpatient treatment. It was specified in the meeting the applicant would [a] attend group therapy sessions three times a week [b] attend three self help meetings weekly in the community, and [c] not use alcohol or other mood-altering drugs. Thus far the applicant had attended 8:11 IOP group meetings, 1:2 individual meetings, 1:1 RTM meetings. The applicant reported attending 9 AA meetings. The applicant's overall progress in treatment was poor due to recent alcohol related incident. Prior to the incident the applicant's progress appeared to be fair to good.

Patient Progress Report, 30 September 2008, reflects the applicant was released from the Army Substance Abuse Program (ASAP). The applicant's in-progress evaluation was good, and the counselor recommended terminating treatment and retain on active duty. The unit commander's appraisal of the applicant's performance was satisfactory. The reason for separation from the ASAP programs was "Program Completed, Returned to Duty."

Synopsis of Treatment (memo), 28 October 2008, reflects the applicant was command referred to ASAP on 30 October 2007. The applicant appeared to meet DSM-IV-TR diagnostic criteria for Alcohol Dependence. The applicant's rehabilitation team met on 16 November 2007 and the applicant was enrolled in intensive outpatient treatment. The applicant attended 32:37 groups, 12:14 individual meetings, and 3:3 RTM's. Based on the applicant's self-report and signed verification sheet the applicant attended an average of 90 AA meetings in 90 days beginning after the relapse in December 2007. In addition, the applicant reported actively working with the sponsor. The applicant relapsed in December 2007 and in May 2008 while in treatment. At the time the applicant was referred to Lincoln Trails Inpatient program. The applicant successfully completed Lincoln Trails Inpatient Treatment program and returned to ASAP Intensive Outpatient program. Despite the applicant's two relapses, the applicant was able to demonstrate positive progress in treatment. The applicant was able to move forward in treatment resulting in being discharged on 30 September 2008 with overall good progress.

Memorandum for Record, Disposition of Further Rehabilitative Attempts, 24 November 2008, reflects the applicant was command referred into the ASAP on 30 October 2007 where it was confirmed by a clinical consultant, the applicant suffered from Alcohol Dependency. While enrolled in ASAP, the applicant attended Individual, Group and Rehabilitation Team Meetings. In December 2007 and May 2008, the applicant relapsed while in treatment. The applicant was referred to Lincoln Trails Inpatient program. Upon completion of the program, the applicant returned to the ASAP Intensive Outpatient program and was discharged from ASAP on 30 September 2008. On 20 October 2008, the applicant relapsed again and was found unconscious due to alcohol consumption. In the opinion of a licensed professional counselor for the ASAP, the applicant's overall treatment progress was poor due to the recent alcohol related incidents. The applicant had been given every opportunity for rehabilitation available to the command.

Two Developmental Counseling Forms, for disrespecting a noncommissioned officer x2, failure to report to first formation and being an ASAP failure.

**i. Lost Time / Mode of Return:** None

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** Health Record, 7 November 2008, reflects a diagnosis.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293 and DD Form 214.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is seeking a law degree.

**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.

(6) Paragraph 9-5, stipulates the commanders specified in paragraph 1-19 are authorized to take final action on cases processed under this chapter. The separation authority will approve separation in cases processed without an administrative board if the documentation in the file indicates that rehabilitative efforts have been made, further rehabilitative efforts are not practical, rendering the Soldier a rehabilitation failure, and the Soldier's potential for fully effective service is substantially reduced by alcohol or drug abuse.

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 contends being discharged under the wrong regulation. The applicant was discharged under Chapter 9 for failure to complete ASAP. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The AMHRR indicates the applicant was command referred to the ASAP on 30 October 2007, where it was confirmed by a clinical consultant, the applicant suffered from Alcohol Dependency. While enrolled in ASAP, the applicant attended Individual, Group and Rehabilitation Team Meetings. In December 2007 and May 2008, the applicant relapsed while in treatment. The applicant was referred to Lincoln Trails Inpatient program. Upon completion of the program, the applicant returned to the ASAP Intensive Outpatient program and was discharged from ASAP on

30 September 2008. On 20 October 2008, the applicant relapsed again and was found unconscious due to alcohol consumption. In the opinion of a licensed professional counselor for the ASAP, the applicant's overall treatment progress was poor due to the recent alcohol related incidents. The applicant had been given every opportunity for rehabilitation available to the command.

The applicant contends seeking a law degree and would like to utilize 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.

#### **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.

**(2)** Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant with an in-service diagnosis of Adjustment Disorder.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant contends being improperly separated under provision of Chapter 9 of AR 635-200. A review of the records reflects the applicant relapsed on two occasions while enrolled in treatment and relapsed on a 3 occasion after successfully completing treatment. The applicant's multiple relapses constitute treatment failure and the command's decision to administratively separate the applicant appears proper and equitable. The applicant has a potentially mitigating diagnosis of Adjustment Disorder, however, the condition was not a level of severity that impaired applicant's cognition or judgement, and the condition did not render the applicant unable to differentiate between right and wrong and adhere to the right. While there may be merit in the applicant assertion that applicant began drinking to address social anxiety, there were appropriate treatment options the applicant could have used prior to facing UCMJ action but chose not to.

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

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

**(1)** The applicant contends being discharged under the wrong regulation. The applicant was discharged under AR 635-200, Chapter 9 for failure to complete ASAP. The Board considered this contention and determined the applicant's discharge is correct based on the discharge documentation. 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

(2) The applicant contends seeking a law degree and would like to utilize 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.

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 applicant's Adjustment Disorder did not excuse or mitigate the offense of 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.

(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:**

11/13/2024

**X**

---

Presiding Officer, COL, U.S. ARMY  
Army Discharge Review Board

**Legend:**  
AWOL – Absent Without Leave

## ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

**AR20210001078**

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