

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, honorable military service.

b. **Board Type and Decision:** In a records review conducted on 17 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:** 27 October 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 8 September 2008

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant received an Article 15 for an alcohol related incident to include being drunk and disorderly. After being enrolled in the Army Substance Abuse Program (ASAP), the applicant's dependence and abuse of alcohol continued. As a result, the applicant was involved in a hit and run while under the influence of alcohol.

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

(4) **Legal Consultation Date:** On 8 September 2010, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 16 September 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 31 December 2008 / 6 years, 30 weeks

- b. Age at Enlistment / Education / GT Score:** 20 / GED / 132
- c. Highest Grade Achieved / MOS / Total Service:** E-3 / 25Q10, 7D Multichannel Transmission Systems Operator-Maintainer / 1 year, 9 months, 27 days
- d. Prior Service / Characterizations:** None
- e. Overseas Service / Combat Service:** SWA / Iraq (24 September 2009 – 8 January 2010)
- f. Awards and Decorations:** NDSM, GWOTSM, ICM-CS, ASR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 2 September 2009, reflects the applicant was apprehended for: resisting apprehension and drunk and disorderly (on post). Investigation revealed on 23 August 2009, patrol officers responded to a notice of a drunk and disorderly Soldier. The applicant had been consuming alcohol and became disorderly by refusing to obey the chain of command. The applicant walked away and went in the applicant's barracks room, locked the door, and refused to leave. Barracks management opened the door, the patrol officer detected a strong odor of alcohol. The applicant was apprehended but failed to comply with oral instructions.
- Army Substance Abuse Program (ASAP) Enrollment form, 6 October 2009, reflects the applicant was command-referred in the Alcohol and Drug Abuse Prevention Training (ADAPT) because of disorderly conduct while drinking.
- Army Drug and Alcohol Prevention Training (ADAPT) Certificate of Completion, 9 October 2009, reflects the applicant completed 12 hours of training and met the requirements of Army Regulation 600-85 and the Army Center for Substance Abuse Programs (ACSAP).
- Company Grade Article 15, 14 October 2009, for on 23 August 2009, willfully disobeying a lawful order from a noncommissioned officer (NCO); resisting apprehension; and being drunk and disorderly. The punishment consisted of a reduction to E-1; forfeiture of \$349 pay; and extra duty for 14 days.
- Army Substance Abuse Program (ASAP) Enrollment form, 9 December 2009, reflects the applicant self-referred in the ASAP. The applicant had a record of liquor possession under the age of 21, and disorderly intoxication. The applicant was referred because of flushed face; hangovers on the job; unexcused absences; irritability; increased defensiveness; and intolerant of co-workers or subordinates.
- Sobriety Examination, Blood Alcohol collection, custody, determination, and destruction, 15 March 2010, reflects at the time of the examination, the applicant was intoxicated, with a blood alcohol content of .20 percent.
- Serious Incident Report, 14 March 2010, reflects the applicant was the subject of a hit and run, driving while intoxicated, evading Military Police, and reckless driving. The applicant hit a parked vehicle in the barracks parking lot and left the scene at a high rate of speed. The Military Police attempted to stop the applicant and the applicant attempted to evade police when the applicant flipped the applicant's vehicle. The Paramedics responded and transported the applicant to the Darnall Army Medical Center (DAMC). The applicant was over the legal limit for blood alcohol

content and too intoxicated to be released to the Military Police. There were no major injuries, but the applicant was treated for alcohol poisoning. The report further revealed before this incident, after arriving at Division Special Troop Battalion (DSTB) on 20 July 2009, the applicant was arrested for being drunk and disorderly, and sent to ADAPC, but treatment deferred because of pending deployment. In September 2009, the applicant deployed to Iraq, and completed a two-day program on 9 October 2009. On 29 October 2009, the applicant returned to Fort Hood because of a pending shoulder injury and shortly after returning the applicant enrolled in ADAPC as a self-referral. The applicant was scheduled to begin treatment on 10 December 2009, but on 6 December 2009, the applicant was drunk on duty.

Military Police Report, 19 March 2010, reflects the applicant was apprehended for: fleeing the scene; driving while intoxication; failed to control speed; traffic accident (on post). Investigation revealed on 14 March 2010, the applicant was driving a vehicle and struck another vehicle. The applicant fled the scene and was observed by patrol officers traveling in a high rate of speed. The applicant lost control of the vehicle, crossing to the other side of the roadway and rolled the vehicle over. The patrol officer pulled the applicant from the vehicle and the applicant was transported to DAMC, advised of rights, and submitted a blood draw, with results pending.

Military Police Report (Blotter Report), 12 June 2010, reflects the applicant was apprehended for: assault and furnishing alcohol to a minor (on post). Investigation revealed the Military Police responded to a call for EMS assistance and met with P, who stated the applicant hit the head on the stair railing, causing lacerations. P. further stated the applicant provided P. with an alcoholic beverage knowing P. was under legal age. The applicant grabbed P. from behind and when Private (PVT) A. attempted to intervene, the applicant struck PVT A. in the face with a closed hand.

Summary of Rehabilitation memorandum, 19 July 2010, reflects the applicant self-referred for treatment on 11 December 2009, following an extensive biopsychosocial assessment. The applicant missed ASAP appointments and was sent to participate in a 30-day in patient program but missed appointments while in the program. Recently, the applicant had more accident-related incidents. The applicant continued to drink excessively, and the Army Substance Abuse Counselor indicated after seven months of rehabilitation services it would be appropriate for the command to consider and initiate appropriate administrative action.

General Officer Memorandum Of Reprimand, 29 September 2010, reflects the applicant was driving while impaired. On 14 March 2010, while driving, the applicant was involved in a hit and run accident. The applicant was observed driving in a high rate of speed and lost control of the vehicle. The vehicle rolled over and finally stopped. The applicant was administered a blood alcohol test which registered at a blood alcohol level of .20.

Six Developmental Counseling Forms, for being drunk and disorderly; driving while under the influence of alcohol and hit and run; disrespecting a noncommissioned officer (NCO); disobeying an NCO; reporting to duty under the influence of alcohol; being enrolled in ASAP for the 23 August 2009 incident; and monthly performance counseling.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 2 August 2010, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. 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 post-traumatic stress disorder (PTSD) and mild traumatic brain injury (mTBI); neither was present. The applicant was diagnosed with alcohol dependence (by history).

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: DD Form 214; DD Form 293.

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 600-85 (The Army Substance Abuse Program Headquarters Department) defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes a Soldier's self-referral to BH for SUD treatment. If the medical treatment resulted from an apprehension by military or civilian law enforcement authorities, or if the admission for treatment resulted from other than abuse of alcohol or drugs, such as for injuries resulting from a traffic accident, the limited use protection will not be available to the Soldier.

e. 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.

f. 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.

g. 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 19 July 2010, commander in consultation with the Army Substance Abuse Counselor/Army Substance Abuse Program (ASAP), declared the applicant a rehabilitation failure. The applicant continued to drink excessively, and the counselor indicated after seven months of rehabilitation services it would be appropriate for the command to consider and initiate appropriate administrative action.

The applicant contends honorable service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

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: Adjustment Disorder and Alcohol Dependence unrelated to a psychiatric condition. The applicant was an offender of IPV.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant was diagnosed in-service with an Adjustment Disorder and Alcohol Dependence

unrelated to a psychiatric condition. The applicant was an offender of IPV, and while intoxicated he assaulted his visiting girlfriend.

(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 misconduct. An Adjustment Disorder is a temporary difficulty adjusting to change that does not impair an individual's ability to make conscious choices, knowing right from wrong with related consequences. Additionally, the applicant has not asserted trauma, PTSD, or related conditions contributed to the basis for separation. Rather, it was a continuation of pre-enlistment difficulties, unrelated to a psychiatric condition, that never resolved.

(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 outweighed the applicant's medically unmitigated offenses of drunk and disorderly conduct, disobeying a lawful order from a noncommissioned officer, fleeing the scene, driving while intoxicated, speeding, assault, and furnishing alcohol to a minor.

b. Response to Contention(s): The applicant contends honorable service, including a combat tour. The Board considered the applicant's service record but determined that it does not outweigh the applicant's medically unmitigated separating offenses (drunk and disorderly conduct, disobeying a lawful order from a noncommissioned officer, fleeing the scene, driving while intoxicated, speeding, assault, and furnishing alcohol to a minor).

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 did not outweigh the medically unmitigated separating offenses (drunk and disorderly, disobeying a lawful order from a noncommissioned officer, fleeing the scene, driving while intoxicated, speeding, assault, and furnishing alcohol to a minor). The Board also considered the applicant's good service contention and 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, as the current code is consistent with the procedural and substantive requirements of the regulation.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001082

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:

9/17/2024

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