

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 changed to honorable approximately a year after the applicant was discharged but the paperwork has since been lost. The applicant requests a copy of the DD Form 214, which indicates an honorable discharge and the upgraded certificate.

b. **Board Type and Decision:** In a records review conducted on 18 June 2024, and by a 4-1 vote, the Board determined the characterization was improper. The record shows the government introduced into the discharge packet the applicant's medical referral and self-referral to ASAP. The inclusion of the medical referral and self-referral to ASAP as part of the applicant's rehabilitation program is limited use information as defined in AR 600-85 and is protected evidence. Use of this information mandates award of an Honorable characterization of service. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and the reentry code to RE-3.

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:** 31 January 2003

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 13 January 2003

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant was previously enrolled in the Army Substance Abuse Program (ASAP), on at least two separate occasions, during which no progress was made and the applicant was deemed a rehabilitation failure.

(3) **Recommended Characterization:** Honorable

(4) **Legal Consultation Date:** NIF

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 22 January 2003 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 April 2001 / 3 years

b. Age at Enlistment / Education / GT Score: 19 / HS Graduate / 90

c. Highest Grade Achieved / MOS / Total Service: E-3 / 11B10, Infantryman / 1 year, 9 months, 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (13 March 2002 – 17 August 2002)

f. Awards and Decorations: NDSM, ASR, OSB, CIB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Arrest / Suspect / F. I. Information, 1 December 2002, reflects the applicant was arrested for driving under the influence.

Memorandum, subject: Synopsis of Treatment for [Applicant], 9 December 2002, reflects the applicant was initially a medical referral to the Community Counseling Center (CCC) from Division Mental Health (DMH) because of misuse of over-the-counter cough medication. On 26 February 2002, the CCC recommended the applicant attend a two-day alcohol and drug prevention intervention course and continue treatment at the DMH for depression. The deployment to Afghanistan prevented the applicant from attending the course. After the applicant returned from Afghanistan, the applicant self-referred back to CCC and was assessed on 31 October 2002. On 6 November 2002, the first sergeant reported to the CCC the applicant had been charged with a DUI the previous weekend and the command planned to pursue a Chapter 9, Rehabilitation Failure. Based on the established conditions of the applicant's enrollment, the DUI incidents indicate lack of compliance with the treatment plan.

Developmental Counseling Form, 12 December 2002, for having two alcohol related incidents in two weeks.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical Examination, 13 December 2002, the examining medical physician noted in the summary of defects and diagnoses section: General anxiety.

Report of Medical History, 11 December 2002, the examining medical physician noted in the comments section: Amnesia and remote memory loss; counseling for ethanol abuse; history of anxiety. Patient attempted suicide as a child because of depression.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; and General Discharge Certificate.

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: Information concerning drug or alcohol abuse or possession of drugs incidental to personal use, including the results of a drug or alcohol test, collected as a result of a Soldier's emergency medical care solely for an actual or possible alcohol or other drug overdose; a Soldier's self-referral to BH for SUD treatment.

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 6 November 2002, the unit commander in consultation with the Clinical Director/Army Substance Abuse Program (ASAP), declared the applicant a rehabilitation failure. Based on the established conditions of the applicant's enrollment, the DUI incidents indicate lack of compliance with the treatment plan.

The applicant contends the discharge was upgraded to honorable approximately a year ago, and requests a copy of the DD Form 214, reflecting the honorable discharge and the Honorable Discharge Certificate. The applicant did not submit any evidence to support the contention. The applicant's AMHRR is void of any documents which reflect the applicant's discharge was upgraded to honorable.

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: PTSD, GAD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent Service Connected (SC) for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that a review of the available information reflects the applicant has BH conditions that partially mitigates the

misconduct. Applicant is 100 percent SC for PTSD and has a potentially mitigating diagnosis of GAD. The applicant reported increased alcohol use after deployment, and as there is a nexus between PTSD and substance use to self-medicate, applicant's misconduct characterized by alcohol consumption resulting in DUI is mitigated. However, PTSD does not mitigate the applicant's pre-deployment substance abuse. Although the applicant has an in-service diagnosis of GAD, it is unclear when the diagnosis was rendered. If it was rendered during service and prior to the medical referral to ASAP, the misconduct would be mitigated, however, in absence of further detail, an informed opinion can't be rendered. Included in the casefiles is an opinion from ARBA legal, who opines that there was a limited use violation by the applicant's command in their use of applicant's medical referral and self-referral to ASAP in the separation decision, and that by regulation the violation warrants an upgrade to Honorable.

(4) Does the condition or experience outweigh the discharge? No.

b. Response to Contention(s): The applicant contends the discharge was upgraded to Honorable approximately a year ago, and requests a copy of the DD Form 214, reflecting the honorable discharge, and the Honorable Discharge Certificate. The Board considered this contention and determined the applicants discharge prior to this Board was General, Under Honorable Conditions. The Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the narrative reason for separation to Secretarial Authority based-on the limited use violation.

c. The Board determined the characterization was improper. The record shows the government introduced into the discharge packet the applicant's medical referral and self-referral to ASAP. The inclusion of the medical referral and self-referral to ASAP as part of the applicant's rehabilitation program is limited use information as defined in AR 600-85 and is protected evidence. Use of this information mandates award of an Honorable characterization of service. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF, and the reentry code to RE-3. 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 to change the applicant's characterization of service to Honorable because the applicant's command violated the limited use policy and included the applicant's medical referral and self-referral to ASAP in the discharge packet. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Secretarial Authority under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

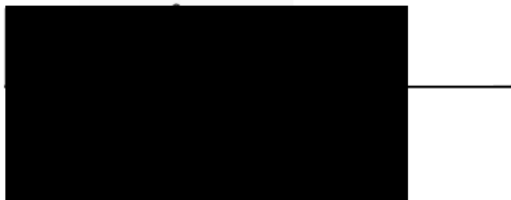
(3) The Board voted to change the RE code to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200, Chapter 15

Authenticating Official:

9/18/2024



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