

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, being involved in an accident resulting in separation for rehabilitation failure. The applicant was charged with DUI and later found not guilty of the offense. An upgrade could potentially allow the applicant to reenlist in the Army. The applicant further details the contentions in an allied self-authored statement provided with the application.

b. **Board Type and Decision:** In a records review conducted on 14 March 2021, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's PTSD mitigated applicant's Army Substance Abuse Program failure and DUI basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them, however the Board voted to change the RE code to 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:** 23 March 2012

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 7 March 2012

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant has been declared a rehabilitative Army Substance Abuse Program failure and was apprehended for driving while intoxicated.

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

(4) **Legal Consultation Date:** 12 March 2012

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

(6) Separation Decision Date / Characterization: 15 March 2012 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 9 July 2010 / 4 years (NIF)
- b. **Age at Enlistment / Education / GT Score:** 26 / High School Graduate / 89
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 11B10, Infantryman / 4 years, 1 month, 10 days
- d. **Prior Service / Characterizations:** RA, 14 February 2008 – 8 July 2010 / HD
- e. **Overseas Service / Combat Service:** SWA / Iraq (21 November 2009 – 4 August 2010)
- f. **Awards and Decorations:** ARCOM, MUC, NDSM, GWOTSM, ICM-CS, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** Developmental Counseling Form for being recommended for separation under Chapter 9.

Two Personnel Action forms reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Confined by Civil Authorities (CCA), effective 26 September 2011; and

From CCA to PDY, effective 27 September 2011.

Summary of Army Substance Abuse Program Rehabilitation Failure (memo), 5 October 2011, reflects the applicant's rehabilitation team met on 5 October 2011, and determined the applicant had not made satisfactory progress toward achieving the criteria for successful rehabilitation as outlined in AR 600-85, paragraph 3-2 and 3-3. Further rehabilitation efforts in a military environment were not justified considering the applicant's lack of progress. Discharge from military service should be effected.

Report of Return of Absentee, 7 March 2012, reflects the applicant surrendered to military authorities on 7 March 2012 at 0545 hours, after being AWOL on 15 November 2011 and declared a deserter on 15 December 2012 (sic).

i. Lost Time / Mode of Return: 114 days / The following period of absences are not annotated on the DD Form 214 at block 29:

CCA, 26 September 2011 – 27 September 2011 for 1 day / Released from Confinement AWOL, 15 November 2011 – 6 March 2012 for 113 days / Surrendered to Military Authorities

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Chronological Record of Medical Care, 27 October 2011, reflects the applicant was diagnosed with a medical condition.

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored statement; and 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 evidence of Army Military Human Resource Record (AMHRR) indicates on 5 October 2011, the unit commander in consultation with the Clinical Director/Army Substance Abuse Program (ASAP), declared the applicant a rehabilitation failure. The applicant did not have the potential for continued military service because the level of need for medication management and length of treatment exceeded what was available in the Active Duty Army.

The applicant contends being discharged for rehabilitation failure after being involved in an accident and charged with DUI; the applicant was found not guilty. The applicant did not submit any evidence, other than the applicant's statement, to support the contention. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant desires to rejoin the Military Service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." There is no basis upon which to grant a change to the reason or the RE code.

The applicant's AMHRR contains documentation which supports an in-service diagnosis. There are no records of a mental status or behavioral health evaluation.

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, PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and is diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder and is diagnosed and service connected by the VA for PTSD. Given the nexus between PTSD and self-medicating with substances, the applicant's PTSD likely contributed to the Alcohol Rehabilitation Failure and Driving While

Intoxicated that led to the separation. Therefore, the applicant's Alcohol Rehabilitation Failure and Driving While Intoxicated are mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD outweighed the Alcohol Rehabilitation Failure and Driving While Intoxicated basis for separation.

b. Response to Contention(s):

(1) The applicant contends being discharged for rehabilitation failure after being involved in an accident and charged with DUI; the applicant was found not guilty. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD fully outweighing the applicant's Alcohol Rehabilitation Failure and Driving While Intoxicated basis for separation.

(2) The applicant desires to rejoin the Military Service. The Board considered this contention and voted to change the RE-code to a RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate.

c. The Board determined that the characterization of service was inequitable based on the applicant's PTSD mitigated applicant's Army Substance Abuse Program failure and DUI basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason/SPD code were proper and equitable and voted not to change them, however the Board voted to change the RE code to 3. However, the applicant may request a personal appearance hearing to address further issues before the 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 to change the applicant's characterization of service to Honorable because the applicant's PTSD mitigated the applicant's misconduct of Alcohol Rehabilitation Failure and Driving While Intoxicated. 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.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

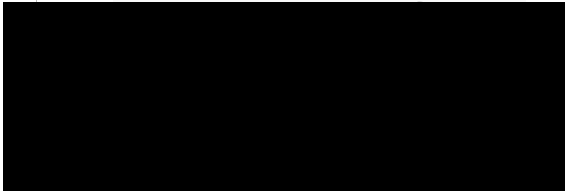
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10. BOARD ACTION DIRECTED:

- 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: No Change**

Authenticating Official:

5/2/2024



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