

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 honorable. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, because the applicant was with a child when erroneously accused of failing the ASAP, the rehabilitation failure language on the DD Form 214 is incorrect. The rehabilitation was, in fact, successfully completed.

b. **Board Type and Decision:** In a records review conducted on 4 January 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's MST outweighing the applicant's drug rehabilitation failure. Therefore, the Board voted to grant relief in the form of a change to the separation authority to AR 635-200, Chapter 15, with the narrative reason for separation as Secretarial Authority. The corresponding separation code changed to JFF and the reentry code changed 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:** Drug Rehabilitation Failure / AR 635-200, Chapter 9 / JPC / RE-4 / Honorable

b. **Date of Discharge:** 12 April 2011

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 18 January 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons:

On 28 July 2009, the applicant tested positive for marijuana on a unit urinalysis test. The applicant was command referred to the Army Substance Abuse Program (ASAP).

On 24 September 2010, the applicant again tested positive for marijuana on a unit urinalysis test, the second positive result for illegal drug use.

The applicant did not follow the treatment plan of ASAP, and after consulting with the ASAP counselor, the applicant had been declared a rehabilitative failure.

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

(4) **Legal Consultation Date:** 21 January 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 27 January 2011 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 February 2008 / 6 years

b. Age at Enlistment / Education / GT Score: 28 / High School Graduate / 89

c. Highest Grade Achieved / MOS / Total Service: E-4 / 42A10, Human Resources Specialist / 4 year, 7 months, 21 days

d. Prior Service / Characterizations: RA, 23 August 2006 – 1 February 2008 / HD

e. Overseas Service / Combat Service: SWA / Iraq (5 December 2007 – 12 February 2009)

f. Awards and Decorations: ARCOM-2, AAM, NDSM, GWOTSM, ICM-CS-2, ASR / The applicant's AMHRR reflects an overseas service, however, the OSR award is not reflected on the DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Fifteen Developmental Counseling Forms for being recommended for separation and changed from Chapter 14 to Chapter 9; initial counseling x 2; substandard performance; monthly performance counseling x 8; failing to go at the time prescribed to the appointed place of duty; Army Weight Control Program; leave policy; and having a positive urinalysis.

DD Form 2624, 4 August 2009, reflects the applicant tested positive for THC 100 (marijuana), during an Inspection Random (IR), conducted on 28 July 2009.

FG Article 15, 17 August 2009, for wrongfully using Marijuana (between 14 and 28 July 2009). The punishment consisted of a reduction to E-3; forfeiture of \$876 pay (suspended); and extra duty and restriction for 45 days.

Army Substance Abuse Program (ASAP) Enrollment form (page 1 or 2 pages) with an ASAP memorandum, 17 August 2009, reflects the applicant enrolled in the ASAP based on positive urinalysis results.

Memorandum (with separation packet for separation under AR 635-200, Chapter 14), 10 September 2009, reflects the separation authority directed the retention of the applicant, even though the applicant committed the misconduct of testing positive for marijuana on 28 July 2009, because of having the potential to rehabilitation and becoming a productive Soldier.

Army Substance Abuse Program (ASAP) letter, 24 September 2010, rendered by the ASAP Counselor, reflects the applicant completed all the requirements of the program and recommended closing the case as resolved and the prognosis was excellent/good rehabilitation.

Electronic Copy of DD Form 2624, 30 September 2010, reflects the applicant tested positive for THC 54 (marijuana), during a Command Directed / Competence for Duty (CO) urinalysis testing,

conducted on 24 September 2010. An additional DD Form 2624 reflects a Rehabilitation Testing (RO) conducted on 24 September 2010 but does not provide the results of the test.

Summary of Army Substance Abuse Program (ASAP) Rehabilitation Failure (memo), 18 January 2011, reflects the applicant's command requested a letter, based on testing positive for cannabis on an RO specimen taken on 24 September 2010 rehabilitation, which would confirm the applicant as a Rehabilitation Failure and qualify for a Chapter 9 discharge. The ASAP Clinical Director indicated the applicant's original diagnosis was cannabis abuse and was enrolled in ASAP, and the progress and involvement during treatment was excellent; however, the prognosis was poor with the most current positive specimen.

Report of Mental Status Evaluation, 9 December 2010, reflects the applicant was psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant had been screened for PTSD and mTBI with negative results.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs Summary of Benefits letter, 16 February 2015, reflecting the applicant was rated 80 percent service-connected disability. The letter does not provide the disability for which the applicant was rated.

(2) AMHRR Listed: Report of Medical History, 24 November 2010, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: No suicidal ideation, "off celexa," anger management issues, and CMHS (community mental health services).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; VA Summary of Benefits letter; ASAP memorandum; DD Form 214; and DD Form 215.

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: Results of command-directed drug or alcohol testing that are inadmissible under the MRE; Results of a drug or alcohol test collected solely as part of a safety mishap investigation undertaken for accident analysis and the development of countermeasures; 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; Admissions and other information concerning alcohol or other drug abuse or possession of drugs incidental to personal use occurring prior to the date of initial referral to treatment and provided by Soldiers as part of their initial entry into SUD treatment; Drug or alcohol test results, if the Soldier voluntarily submits to a DoD or Army SUD treatment before the Soldier has received an order to submit for a lawful drug or alcohol test; and, the results of a drug or alcohol test administered solely as a required part of a DoD or Army SUD treatment program.

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) 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.

(4) 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.

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 "JPC" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 9, for drug 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 18 January 2011, the unit commander in consultation with the Clinical Director/Army Substance Abuse Program (ASAP), declared the applicant a rehabilitation failure, although the progress and treatment during ASAP enrollment was excellent, the applicant prognosis was poor with the most current positive specimen on 24 September 2010.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 9, AR 635-200 with an honorable discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "drug rehabilitation failure," and the separation code is "JPC." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the language, rehabilitation failure, on the DD Form 214 is not true and was falsely accused of failing the ASAP when the rehabilitation was, in fact, successfully completed. The applicant's AMHRR contains two separate ASAP letters: first letter, 24 September 2010, reflects the applicant completed all requirements of the ASAP and the prognosis was excellent/good rehabilitation; and the second letter, 18 January 2011, reflects although the applicant's progress and involvement during treatment in ASAP was excellent, the prognosis was poor because of the positive specimen submitted on 24 September 2010. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The Veterans Administration has granted the applicant service connection for medical conditions the applicant suffered while on active duty. The applicant provided a VA letter reflecting an 80 percent service-connected disability rating, but the letter does not specify the medical condition for which the disability rating was based on. The available medical evidence in the AMHRR is void of any indication the applicant was suffering from a disabling medical or mental condition during the discharge processing, warranting separation processing through medical channels.

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, the applicant's statement, and/or civilian provider documentation and

found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Depression, MST, and 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 Depression, and the applicant is service connected by the VA for PTSD. There is also evidence in the active duty and VA medical records that the applicant experienced an MST while deployed to Iraq.

(3) Does the condition or experience 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 Depression, and the applicant is service connected by the VA for PTSD. There is also evidence in the active duty and VA medical records that the applicant experienced an MST while deployed to Iraq. Given the nexus between Depression, PTSD, MST, and self-medicating with substances, the applicant's Drug Rehabilitation Failure is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's MST outweighed the applicant's drug rehabilitation failure.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board liberally considered this contention and determined that the applicant's MST outweighed the applicant's drug rehabilitation failure. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the language, rehabilitation failure, on the DD Form 214 is not true and was falsely accused of failing the ASAP when the rehabilitation was, in fact, successfully completed. 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 MST outweighing the applicant's drug rehabilitation failure.

(3) The VA has granted the applicant service connection for medical conditions the applicant suffered while on active duty. The Board liberally considered this contention and determined that the applicant's MST outweighed the applicant's drug rehabilitation failure.

c. The Board determined the discharge is inequitable based on the applicant's MST outweighing the applicant's drug rehabilitation failure. Therefore, the Board voted to grant relief in the form of a change to the separation authority to AR 635-200, Chapter 15, with the narrative reason for separation as Secretarial Authority. The corresponding separation code changed to JFF and the reentry code changed to RE-3.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because the applicant already holds an Honorable characterization and further upgrade is not available.

(2) The Board voted to change the reason for discharge to Secretarial Authority due to the applicant's MST outweighing the applicant's drug rehabilitation failure. Therefore, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

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(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

1/10/2024



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