

**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 honorable. The applicant is being considered for a reentry eligibility (RE) code change.

The applicant seeks relief contending, in effect, the discharge has caused much stress and depression for several years. The applicant was on active duty for seven years and intended to complete 20 years of service, but the goal was cut short when the applicant was in the "ville," outside of Camp Casey, Korea, drinking with members of the platoon, including the platoon sergeant and the platoon leader. The applicant decided to go back to the barracks alone. While waiting for a cab, a group of what appeared to be Soldiers were harassing a local shop owner. As a noncommissioned officer (NCO), the applicant decided to intervene, although the applicant was intoxicated. The group of approximately nine individuals surrounded the applicant and tried to start a fight. The applicant refused to fight and tried to call the applicant's platoon sergeant, but the applicant's phone was dead. A few minutes later, the Military Police (MPs) ran up, and the group of nine agitators ran away. The applicant believed the applicant did nothing wrong and stayed to give an account of events. The applicant was immediately tackled and sustained a large gash to the applicant's forehead. The applicant, intoxicated, bleeding, and unjustly arrested, made the career-ending decision to become uncontrollably angry and verbally lashed out at the MPs.

The applicant admits to being drunk and disorderly, but only after being arrested for trying to stop a perceived crime by other service members. In the months leading up to the night, the applicant had been under enormous stress. The applicant completed a one-year deployment to Afghanistan, followed by one station unit training (OSUT) to reclass immediately upon returning from a combat zone. After four months at OSUT, the applicant was immediately sent to Korea. The time in OSUT was counted as the applicant's mandatory stateside downtime. All were factors in the way the applicant reacted when unjustly arrested. The applicant's punishment by Article 15, UCMJ, fit the crime, but the applicant appealed the punishment to retain the rank of sergeant (SGT). The applicant was under the impression the appeal could garner no additional punishment but was wrong because the brigade commander recommended a discharge. The applicant received unfavorable treatment while waiting several months for the Chapter 9, Army Substance Abuse Program (ASAP) failure to be processed. The battalion commander returned the packet to be changed to an under other than honorable discharge for misconduct. The applicant was restricted to the barracks and performed extra duty while a new chapter was being processed, although the initial punishment of extra duty and restriction was long over. The applicant desires to continue to serve the country.

The applicant did well as an NCO for several years without incident, up until the fateful night in Korea. After seven years of honorable service, the applicant was kicked to the curb like a bag of trash rather than allowed to learn from the mistakes and continue to become better. Post-military has been very hard. The applicant cannot find meaningful employment, earning only \$250 a week. The U.S. invested much money in training the applicant, and the applicant

invested much time, sweat, blood, and tears. The applicant desires the opportunity to continue the service. The applicant further details the contentions in the application.

**b. Board Type and Decision:** In a records review conducted on 28 November 2023, 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:** Secretarial Authority / AR 635-200, Paragraph 5-3 / JFF / RE-3 / Honorable

**b. Date of Discharge:** 31 December 2011

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** On 2 November 2011, the applicant acknowledged receipt of the separation action under AR 635-200, Chapter 9, Alcohol or Drug Abuse Rehabilitation Failure. The applicant's AMHRR is void of the Acknowledgment for the Notification under AR 635-200, paragraph 14-12b.

**(2) Basis for Separation:** The brigade commander initiated separation under AR 635-200, Chapter 14-12b, Patterns of Misconduct, for the following reasons:

On 9 April 2011, the applicant was disrespectful towards a superior noncommissioned officer (NCO) by saying "you're lucky I have these handcuffs on, or I'd kick your ass, and take these cuffs off and I'll fuck you up!" or words to that effect.

On 9 April 2011, the applicant made threats towards three Servicemembers by saying "I'm going to kill you, I'm going to kick all of your asses!" or words to that effect.

On 9 April 2011, the applicant was drunk and disorderly, which conduct was of a nature to bring discredit upon the armed forces.

The applicant had been enrolled in the Army Substance Abuse Program (ASAP) on three occasions in the applicant's career. The applicant had two prior ASAP failures with the enrollment dates of 23 February 2006 and 5 March 2008. The applicant was provided the opportunity to receive services from ASAP, but because of the applicant's hostile and inappropriate behavior the applicant was released from ASAP again on 2 August 2011.

**(3) Recommended Characterization:** Under Other Than Honorable Conditions

**(4) Legal Consultation Date:** On 2 November 2011, the applicant consulted with counsel regarding the applicant's rights for separation proceedings under AR 635-200, Chapter 9.

**(5) Administrative Separation Board:** On 2 November 2011, the applicant conditionally waived consideration of the case before an administrative separation board for AR 635-200, Chapter 9, contingent upon receiving a characterization of service no less favorable than honorable. The applicant's AMHRR is void of an election of rights under AR 635-

200, paragraph 14-12b, but the defense counsel and applicant requested the brigade commander proceed with the Chapter 9.

**(6) Separation Decision Date / Characterization:** 12 December 2011 / General (Under Honorable Conditions) / The brigade commander, approved the applicant's separation under the provisions of AR 635-200, paragraph 14-12b, Pattern of Misconduct.

#### 4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 14 October 2009 / 3 years
- b. **Age at Enlistment / Education / GT Score:** 26 / GED / 116
- c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 11B2P, Infantryman / 7 years, 1 month, 27 days
- d. **Prior Service / Characterizations:** RA, 4 November 2004 – 30 January 2008 / HD  
RA, 31 January 2008 – 13 October 2009 / HD
- e. **Overseas Service / Combat Service:** Korea, SWA / Afghanistan (24 April 2009 – 5 April 2010); Iraq (24 July 2006 – 22 July 2007)
- f. **Awards and Decorations:** ACM-CS, ICM-2CS, ARCOM, AAM-2, JMUA, VUA, NDSM, GWOTSM, KDSM, HSM, NCOPDR, ASR, OSR-3, NATOMDL
- g. **Performance Ratings:** 1 November 2008 – 31 October 2009 / Fully Capable  
1 November 2009 – 31 October 2010 / Fully Capable
- h. **Disciplinary Action(s) / Evidentiary Record:** Military Police Report, 18 April 2011, reflects the applicant was apprehended for: disorderly conduct (drunkenness), provoking speech, resisting apprehension, disrespect to an NCO, and communicating a threat (off post). Investigation revealed on 9 April 2011, the applicant was belligerent and resisting apprehension. The applicant was transported to the military police station and administered a preliminary breath test (PBT) with a result of 0.116 percent blood alcohol content.

Field Grade Article 15, 6 June 2011, for:

Being disrespectful and language toward Sergeant First Class A. G., a superior NCO by saying, "You are lucky I have these handcuffs on or I will kick your ass," and "Take these handcuffs off and I will fuck you up," (9 April 2011);

Wrongfully using provoking words, to wit: "I am going to kill you, I am going to kick all of your asses," (9 April 2011); and

Being drunk and disorderly (9 April 2011).

The punishment consisted of a reduction to E-4; forfeiture of \$1,162 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Memorandum, subject: Request for Separation Under Chapter 9, Alcohol or Drug Abuse Rehabilitation Failure on behalf of [Applicant], 1 December 2011, reflecting the applicant's defense counsel recommended the brigade commander separate the applicant under AR 635-200, Chapter 9 instead of paragraph 14-12b, because of the applicant's alcohol dependency

and PTSD symptoms, which related to the applicant's misconduct. Defense counsel further requested, if the brigade commander determined the applicant was undeserving of a Chapter 9, to meet with the applicant to properly advise the applicant of the rights under Chapter 14.

The applicant's rebuttal statement, undated, made at the time of separation, describing the applicant's life before and during military service, including two combat tours and the applicant's in-service misconduct as a result of mental health issues. The applicant requested separation under Chapter 9, with at least a general, under honorable conditions discharge. The applicant indicated the applicant did not want to wait around for the paperwork to be changed or an administrative separation board, if possible.

Three Developmental Counseling Forms, for being arrested for drunk and disorder conduct, being enrolled command referred to ASAP, indicating it is the third enrollment.

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

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

**(1) Applicant provided:** Memorandum, subject: Summary of Army Substance Abuse Program (ASAP) Rehabilitation Failure [Applicant], 2 August 2011, reflects the applicant's rehabilitation team met on 1 July 2011, and determined the applicant had been enrolled in ASAP on three occasions in the applicant's career: two command-referrals and one self-referral. The applicant had problems significant enough to require outpatient treatment for a substance use disorder. The applicant was given the opportunity to receive services from ASAP despite being a rehabilitation failure on last ASAP enrollment, but because of hostile and inappropriate behavior the applicant was released as a rehabilitation failure.

**(2) AMHRR Listed:** Memorandum, subject: Summary of ASAP Rehabilitation Failure as described in previous paragraph 4j(1).

Memorandum, subject: [Applicant], 28 November 2011, reflecting the applicant had been treated since June 2011 by psychiatry and found to have alcohol dependence with physiologic dependence in early full remission; remote history of polysubstance dependence (THC, cocaine ecstasy) from age 14 to 21, in full sustained remission since prior to military service; and anxiety disorder, not otherwise specified (PTSD symptoms). The psychiatrist recommended the applicant be separated under AR 635-200, Chapter 9.

Report of Medical History, 1 September 2011, the examining medical physician noted in the comments section: Mental health evaluations and treatment for PTSD, anxiety, depression, and anger.

**5. APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 214; DD Form 293; self-authored statement; Enlisted Record Brief; NCO Evaluation Report; three Developmental Counseling forms; Record of Proceedings Under Article 15, UCMJ; MP Report; AR 635-200, Chapter 9 Notification; two ASAP failure memorandums; and Administrative Separation Checklist.

**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), paragraph 10-12a, 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.

**e.** Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

**(1)** Paragraph 1-20 provides commanders who are special court-martial convening authorities (SPCMCAs) are authorized to approve or disapprove separation under Chapter 14 when discharge under other than honorable conditions is not warranted and the notification procedure is used.

**(2)** Chapter 3, Section II, provides the authorized types of characterization of service or description of separation.

**(3)** 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.

**(4)** Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government.

**(5)** Paragraph 5-1 states that a Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status.

**(6)** Chapter 5-3 (Chapter 15 current regulation) 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 memorandums. Secretarial separation authority is normally exercised on a case-by-case basis.

**f.** Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) in effect at the time, provided 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 identified the SPD code of “JFF” as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5, paragraph 5-3, Secretarial Authority.

**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-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met. Delete if NA.

RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

**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 is being considered for a change in reentry eligibility (RE) code.

The applicant's separation packet includes information, which was introduced by the government, regarding the applicant being enrolled in ASAP on three occasions, one being a self-referral. Revealing the applicant was self-referred to the Army Substance Abuse Program (ASAP) is limited use information as defined in AR 600-85. Use of this information mandates award of an honorable discharge. The current characterization of service for the period under review is honorable.

The applicant requests relief for purposes of reenlistment. 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 "3." There is no basis upon which to grant a change to the reason or the RE 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.

The applicant contends depression caused by a friend's suicide and the deaths of friends while deployed affected behavior which led to the applicant's discharge. The applicant provided ASAP summary of rehabilitation reflecting the applicant's problems were significant enough to require outpatient treatment for a substance use disorder. The applicant's AMHRR contains documentation which supports a diagnosis of in-service PTSD; depression; anxiety disorder, NOS; and alcohol dependence. The record is void of a mental status evaluation. The documents were considered by the separation authority.

The applicant contends the arrest for being drunk and disorderly was unjust and the applicant was deprived of various liberties while waiting to be separated. The applicant did not provide any evidence, other than the applicant's statement, to support this contention.

The applicant contends good service, including two combat tours.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

#### **9. BOARD DISCUSSION AND DETERMINATION:**

a. As directed by the 2017 memo signed by [REDACTED] 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 determined that, the applicant received an Honorable characterization of service and narrative reason change to "Secretarial Authority based, in part, on the applicant's behavioral health condition, the applicant's RE Code warrants reconsideration. 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, Anxiety NOS, and Depressive Disorder NOS.

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

(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's behavioral health conditions do not provide mitigation for a change in the applicant's RE-code.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD does not provide mitigation for a change in the applicant RE-code.

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

(1) The applicant requests a reentry eligibility (RE) code change. The Board considered this contention and voted to maintain the RE-code at RE-3, which is a waivable code, based on the need to have the applicant's BH conditions reviewed prior to military service reentry. 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

(2) The applicant contends depression caused by a friend's suicide and the deaths of friends while deployed affected behavior which led to the applicant's discharge. The Board considered this contention during proceedings but ultimately did not address it due to the applicant's PTSD not providing mitigation for a change in RE-code.

(3) The applicant contends the arrest for being drunk and disorderly was unjust and the applicant was deprived of various liberties while waiting to be separated. The Board considered this contention during proceedings but ultimately did not address it due to the applicant's PTSD not providing mitigation for a change in RE-code.

(4) The applicant contends good service, including two combat tours. The Board considered this contention during proceedings but ultimately did not address it due to the applicant already holding an Honorable characterization of service and a Secretarial Authority narrative reason for separation. Further upgrade is not available from the Army Discharge Review Board.

(5) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

**c.** The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the



**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001464**

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 determined the characterization of service is proper and equitable as a prior ADRB has upgraded to a Character of Honorable. No further relief is available from this Board.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the applicant's previously-upgrade reason for discharge is both proper and equitable.

(3) The RE code will not change, as the applicant's PTSD warrants evaluation prior to any reentry into military service.

**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:**

X

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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