

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, honorably conducting themselves and performing tasks above the expectations of their unit. The civil cases were dismissed and they did not occur during the applicant's ASAP enrollment. The applicant states they behaved with honor and there is nothing derogatory in their military record.

b. Board Type and Decision: In a records review conducted on 16 November 2023, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's Depression outweighing the applicant's Alcohol Rehabilitation Failure. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and the reentry code to RE-3. The Board determined the narrative reason and SPD code were proper and equitable and voted not to change them.

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: 8 September 2008**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 6 August 2008

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant has been classified as a Rehabilitation Failure for alcohol abuse in the Army Substance Abuse Program (ASAP). Additionally, the applicant has been charged in Civil Court for Domestic Violence and is pending charges for another charge for another civil incident. In both cases alcohol was the contributing factor and occurred while the applicant was enrolled in the ASAP.

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

(4) Legal Consultation Date: 15 August 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 18 August 2008 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 29 March 2006 / 3 years, 24 weeks

b. Age at Enlistment / Education / GT Score: 21 / High School Graduate / 90

c. Highest Grade Achieved / MOS / Total Service: E-3 / 14S1P, Avenger Crewmember / 2 years, 5 months, 10 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, GWOTSM, ASR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Patient Progress Report, 23 June 2008, reflects the applicant was terminated from the ASAP for unsatisfactory performance by the Company Commander.

Summary of ASAP Rehabilitation Failure (memo), 28 July 2008, reflects the applicant was enrolled in the ASAP. The applicant was previously enrolled in the ASAP from November 2007 to January 2008 for an alcohol related incident. The applicant attended group and individual counseling sessions. However, the applicant appeared unwilling to acknowledge the effects of alcohol in their life and was not committing to changing their lifestyle, putting them at risk for further substance related incidents. Therefore, the applicant was cleared for any administrative action necessary, IAW AR 600-85.

The applicant provided a State of North Carolina Dismissal Notice of Reinstatement, 17 February 2015, reflecting the assault charges were dropped because the prosecuting witness was unable to be located.

Two Developmental Counseling Forms (rehabilitation failure and failure to certify crew drills).

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical History, 25 June 2008, the examining medical physician noted in the comments section: Insomnia.

An extract of the applicant's medical health record, 25 June 2008, reflects depression, nicotine dependence and insomnia.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; self-authored-letter; DA Form 4856; Extract of the separation file; Criminal witness inquiry; State of North Carolina Dismissal Notice.

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 (Army Substance Abuse Program), Paragraph 8-15, indicates if a relapse occurs during rehabilitation, the counselor will promptly notify the unit commander. The rehabilitation team will then determine an appropriate course of action.

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 in the AMHRR includes an ASAP Rehabilitation Failure memo, 28 July 2008, reflecting the applicant was enrolled in the ASAP. The applicant was previously enrolled in the ASAP from November 2007 to January 2008 for an alcohol related incident. The applicant attended group and individual counseling sessions. However, the applicant appeared unwilling to acknowledge the effects of alcohol in their life and was not committing to changing their lifestyle, putting them at risk for further substance related incidents. Therefore, the applicant was cleared for any administrative action necessary, IAW AR 600-85.

The applicant contends the civil cases were dismissed and did not occur during the applicant's ASAP enrollment. The evidence the applicant provided only reflects one of the cases being dismissed. In this case, the charges were dismissed because the civilian court was unable to locate the prosecuting witness. The evidence in the AMHRR shows the applicant was enrolled in ASAP for the second time between 27 March and 23 June 2008 and the alcohol-related assault charge was served on 3 April 2008. The use of alcohol while enrolled is a violation of the ASAP. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service. The Board considered the totality of the evidentiary record, including service accomplishments and quality of service according to DODI 1332.28.

The AMHRR includes a Report of Medical History, 25 June 2008, reflecting the examining medical physician noted in the comments section: Insomnia. Also, an extract of the applicant's medical health record, 25 June 2008, reflects depression, nicotine dependence and insomnia.

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: Depression.

(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 Depression.

(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's Depression mitigates the applicant's discharge for alcohol rehabilitation failure given the nexus between Depression and self-medicating with substances.

(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 Depression outweighed the applicant's Alcohol Rehabilitation Failure.

b. Response to Contention(s):

(1) The applicant contends the civilian criminal cases were dismissed and did not occur during the applicant's ASAP enrollment. The Board considered this contention and found that the applicant's domestic violence case was not considered by the Separation Authority at the time of separation per AR 635-200, para. 3-8(f)(8). Thus, the applicant was not afforded full due process for the charges, which appear to have been dismissed per the evidentiary record. The Board liberally considered the applicant's behavioral health condition at the time of separation and determined that the applicant's Depression outweighed the applicant's Alcohol Rehabilitation Failure. Therefore, a discharge upgrade is warranted.

(2) The applicant contends good service. The Board considered this contention, but ultimately did not address it due to an upgrade being granted based on the applicant's Depression outweighing the Alcohol Rehabilitation Failure.

c. The Board determined the discharge is inequitable based on the applicant's Depression outweighing the applicant's Alcohol Rehabilitation Failure. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and the reentry code to RE-3. The Board determined the narrative reason and SPD code were proper and equitable and voted not to change them.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Depression outweighed the applicant's Alcohol Rehabilitation Failure. Therefore, a discharge upgrade is warranted.

(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.

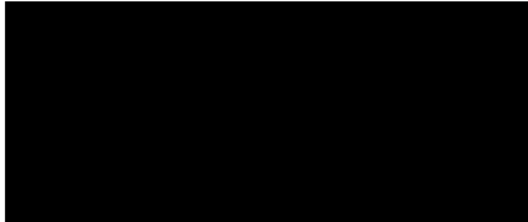
(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

2/12/2024



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