

1. Applicant's Name:

- a. **Application Date:** 22 September 2020
- b. **Date Received:** 26 October 2020
- 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.

b. The applicant seeks relief contending, their discharge was inequitable because their misconduct that was seen as means for their separation, stemmed from coping mechanisms related to a series of traumatic events, which occurred within the first 24 months of military service. This later would result in prolonged patterns of alcohol abuse and other high-risk behavior. Aside from the instances of misconduct related to said trauma, their time in service was filled with positive review from superiors on their performance in the workplace, as well as their character as a Soldier.

c. **Board Type and Decision:** In a records review conducted on 18 December 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:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12C / JKQ / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 4 February 2016

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 November 2015

(2) **Basis for Separation:** wrongfully distributed Percocet, a scheduled II controlled substance to two Soldiers

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

(4) **Legal Consultation Date:** 12 November 2015

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

(6) **Separation Decision Date / Characterization:** 2 December 2015 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 16 April 2013 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 19 / High School Diploma / 101
- c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 92A10 Automated Logistical / 2 years, 9 months, 19 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Japan / None (25 October 2013 – 16 October 2014)
- f. **Awards and Decorations:** NDSM, GWOTSM, ASR, OSR
- g. **Performance Ratings:** None
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 16 April 2013, the applicant enlisted in the Regular Army for 4 years as a PVT. The Enlisted Record Brief provides the applicant promoted to PV2 (16 October 2013) and to PFC (28 May 2014). On 29 November 2014 and 12 January 2015, they were flagged, Suspend Favorable Personnel Actions (FLAG), for alcohol abuse adverse action and for field initiated involuntary separation.

(2) On 11 February 2015, although missing from the record, the applicant accepted nonjudicial punishment and as a result, was demoted to PVT.

(3) On 3 March 2015, the applicant completed a mental status evaluation, with Kadena Mental Health Clinic, Okinawa, in which the provider indicated the applicant had a formal Alcohol Substance Abuse Program (ASAP) evaluation scheduled for the next day (4 March) but the applicant at least met criteria for Alcohol Use Disorder, mild. ASAP may utilize either this diagnosis or a more severe diagnosis following a formal assessment; advised to discuss any treatment recommendations with ASAP following the evaluation. The provider indicated the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements.

(4) On 3 and 5 August 2015, the applicant completed their medical assessment and history at Kadena Medical Clinic, Okinawa, which provides the following:

(a) Their assessment indicated the applicant has been seen since their last physical examination in order to get an inhaler and made an appointment to evaluate their breathing, as well as one with pulmonary. For the past couple of months, they have been dealing with insomnia.

(b) On their history, block 29 lists the following explanations of “yes” answers:

- 10d, g, h, i: when they were a child, they was diagnosed with Bronchitis; they have issues currently with asthma, breathing when they exert themselves during moderate to extreme cardio becomes difficult
- 11f: they currently wear glasses

- 12: they have recurring pain in their wrists and right thumb
- 17: the past couple of months, they have slept only 3 – 4 hours some nights

(c) On their history, block 30a provides the examiner's notes:

- 10d-i: childhood asthma. Recurrent during exercise. Managed with albuterol. childhood Bronchitis.
- 11f: wear glasses-vision corrected to 20/20
- 12a: bilateral wrist pain/right thumb pain; status post

(5) On 11 September 2015, an Army Criminal Investigation Division (CID) final report, provides the investigation was initiated after PFC [redacted] admitted, during an unrelated investigation, they had consumed one Percocet pill, which was given to them by the applicant. The applicant was interviewed and admitted to giving PFC one of their prescribed Percocet pills. Additionally, it was revealed PVT [redacted] received one and a half Percocet pills from the applicant, however, the applicant denies giving anyone a pill besides PFC. Military Police obtained consent to search the barracks rooms of the applicant, PFC and PVT and found nothing of evidentiary value. The staff judge advocate concurred probable cause existed to believe the applicant committed the offense of wrongful distribution of a controlled substance.

(6) On 10 November 2015, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense), for having wrongfully distributed Percocet, a schedule II controlled substance, to two Service Members between on or about 27 – 28 July; they recommended a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of their separation notice.

(a) On 12 November 2015, the applicant elected to consult with legal and did not submit a statement on their behalf. Defense counsel acknowledged their consultation with the applicant on their separation, their rights available to them, and the effects of a General (Under Honorable Conditions) characterization of service.

(b) The commander's report noted the command had exhausted all rehabilitative measures for this Soldier. The seriousness of distributing controlled substances throughout their formation was not tolerated. This conduct was prejudicial to the good order and discipline of the unit and the U.S. Army.

(c) On 16 November 2015, the battalion commander concurred with the recommendation to separate the applicant, with a General (Under Honorable Conditions) characterization of service.

(d) On 2 December 2015, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(7) On 7 December 2015, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 4 February 2016, with 3 years and 6 days of active service. The applicant has not completed their first full term of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: The applicant provided medical records which indicates between 19 August and 28 October 2015, the applicant was enrolled in the Army Substance Abuse Program (ASAP) at Sam Houston, TX (Torii IMCOM ASAP Clinic), providing their primary diagnosis as Alcohol Dependence (Alcoholism) and Alcohol Dependence, uncomplicated.

(2) AMHRR Listed: On 3 March 2015, a mental status evaluation for separation, at the Kadena Mental Health Clinic, Okinawa, Japan, provides the forensic psychiatrist diagnosed the applicant with Alcohol Use Disorder, mild and possible asthma, with the medical retention requirements met; the psychiatrist recommended follow-up appointments with Army Substance Abuse Program (ASAP) for formal evaluation and treatment.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); Medical Records

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this 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), dated 25 September 2019, 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 provides the basic authority for the separation of enlisted personnel.

(1) 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.

(2) 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.

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial

based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(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.

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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12c, Misconduct (Serious Offense).

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:

(1) 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.

(2) 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.

(3) 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.

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(1) Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army Regulation 635-200.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. 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.

b. A review of the available evidence provides the applicant enlisted in the RA as a PVT, promoted up to PFC, and served for 1 year, 7 months, and 14 days prior to their misconduct, including one year in Okinawa, Japan. They were flagged, for alcohol abuse, received nonjudicial punishment and was consequently demoted to PVT. A CID investigation revealed the applicant wrongfully distributed Percocet pills to two Servicemembers, in which the staff judge advocate concurred probable cause existed. The applicant was processed for separation under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense) and discharged, with a General (Under Honorable Conditions) characterization of service. They elected and consulted defense counsel and did not submit a statement on their behalf.

(1) The applicant completed their medical examination for their separation and was qualified for service and diagnosed with Alcohol Use Disorder, mild and possible asthma; They were assessed and enrolled in ASAP and further diagnosed with Alcohol

Dependence (Alcoholism) and Alcohol Dependence, uncomplicated.

(2) They completed 2 years, 9 months, and 19 days of their 4 year contractual obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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: Major Depressive Disorder (MDD).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection of 70% for MDD establishes it began and/or occurred during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that there are no mitigating BH conditions. While the applicant was diagnosed with service-connected MDD, this condition does not mitigate the offense of wrongfully distributed controlled substances to other soldiers given that this diagnosis does not affect one's ability to distinguish right from wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, it was determined that the applicant's VA service connected MDD did not outweigh the basis of separation – wrongfully distributed Percocet, a scheduled II controlled substance to two Soldiers – given this diagnosis does not affect one's ability to distinguish right from wrong and act in accordance with the right.

b. Prior Decisions Cited: None

c. Response to Contention(s): The applicant contends, their discharge was inequitable because their misconduct that was seen as means for their separation, stemmed from coping mechanisms related to a series of traumatic events, which occurred within the first 24 months of military service. This later would result in prolonged patterns of alcohol abuse and other high-risk behavior. Aside from the instances of misconduct related to said trauma, their time in service was filled with positive review from superiors on their performance in the workplace, as well as their character as a Soldier. The Board considered the applicant's 2 years 9 months in service and MDD but determined that it did not outweigh the distribution of a controlled substance.

d. The Board determined: Based on liberally considering all the evidence before the Board, the applicant's VA service connected MDD did not outweigh the basis of separation – wrongfully distributed Percocet, a scheduled II controlled substance to two Soldiers – given this diagnosis does not affect one's ability to distinguish right from wrong and act in accordance with the right. Without medical mitigation, and in consideration of the applicant's length of service, the Board voted 5-0 that the current discharge is Proper and Equitable.

e. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's BH diagnoses did not excuse or mitigate the offenses of wrongfully distributed Percocet, a scheduled II controlled substance to two Soldiers. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

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

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

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:

1/16/2025

X

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