

1. Applicant's Name:

- a. **Application Date:** 12 November 2020
- b. **Date Received:** 17 November 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. The applicant seeks relief contending, they would like an upgrade in order to use their G.I. Bill to further their education.

b. **Board Type and Decision:** In a records review conducted on 5 June 2024, 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:** Alcohol Rehabilitation Failure / AR 635-200, Chapter 9 / JPD / RE-4 / General (Under Honorable Conditions)

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

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 9 August 2010

(2) **Basis for Separation:** Alcohol Rehabilitation Failure

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

(4) **Legal Consultation Date:** 11 August 2010

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

(6) **Separation Decision Date / Characterization:** 26 August 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 21 August 2007 / 4 years

b. **Age at Enlistment / Education / GT Score:** 24 / GED / 106

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 25Q10 Multichannel Transmission Systems Operator/Maintainer / 3 years, 4 months, 22 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** Korea / None (11 months, 25 days)

f. **Awards and Decorations:** AAM, NDSM, GWOTSM, KDSM, ASR, OSR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 21 August 2007, the applicant enlisted in the Regular Army for 4 years as a PVT. Although missing from the record, the applicant served in Korea for one year and promoted up to SPC (1 May 2009). On 17 March 2010, they were flagged, Suspend Favorable Personnel Actions (FLAG), for field-initiated involuntary separation.

(2) The applicant received multiple counselings for failing to report twice, failure to report due to incapacitation from drunkenness, and domestic abuse, although, the applicant indicated they did not hit their spouse, instead their spouse hit them.

(3) On 16 December 2009, the applicant accepted nonjudicial punishment for wrongful previous overindulgence in intoxicating liquor or drugs, incapacitated for the proper performance of their duties on 19 November, in violation of Article 134, UCMJ. The punishment imposed consisted of reduction to PFC; forfeiture of \$409.00, suspended, to be automatically remitted if not vacated before 14 February 2010; extra duty for 14 days. They did not appeal.

(4) On 17 May 2010, the applicant completed their medical history for separation at Lapointe Health Clinic (Bastogne Clinic), Fort Campbell, KY, which indicates the following:

(a) Their history, block 29 lists the following explanations of “yes” answers, for 21, notes, “TMC South Korea for knee trouble; September 2009, injured knee during PT TMC took x-rays gave [them] Ibuprofen.”

(b) Their history, block 30a provides the examiner’s comments:

- 12i: Patient states [they] had left knee pain in Korea in 2008. Patient received x-rays on knee. Patient denies any current issues.
- 21: Patient reports being observed in hospital after falling from the top bunk while sleeping at AIT in 2017. Patient reports suffering a fracture to [their] nose. Patient denied any problems at this time.
- 25: Patient being chaptered for failing ASAP.
- 26: Same as #25.

(c) The applicant completed their medical examination, which provides they were qualified for service; the applicant was diagnosed with hypercholesterolemia and the provider noted under recommendations, “Patient started on simvastatin 10mg Qb. Patient instructed to have labs drawn today and again in 3 months, (Lipid and hepatic).”

(5) On 9 August 2010, the company commander notified the applicant of their intent to initiate separation proceedings under provisions of AR 635-200, Chapter 9, Alcohol Rehabilitation Failure, as further rehabilitative efforts were not practical and the applicant’s potential for fully effective service was substantially reduced by their alcohol

abuse. The recommended a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt.

(a) The applicant elected to waive their right to defense counsel and requested to submit a statement on their behalf; however, there is no evidence of a statement in the record. Further, on 11 August 2010, the defense counsel requested on the behalf of the applicant, to have an audience with COL, to discuss their strong desire to continue serving in the Army and join 1st Brigade on its current deployment to Afghanistan. The applicant has previously dealt with alcohol-related issues; however, they are committed overcoming any issues related to alcohol and desires to remain enrolled in the ASAP until resolution. Their commitment is demonstrated by the fact that they applicant self-enrolled themselves in ASAP in October 2009. While they had an alcohol-related incident in March 2010, the applicant has had no such incidents since then. Moreover, they have never been arrested for driving under the influence (DUI). If allowed, the applicant could successfully rehabilitate and resume becoming a productive member of the Army team.

(b) On 13 August 2010, their brigade commander concurred with the company commander's recommendation. On 26 August 2010, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(6) On 6 January 2011, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant electronically signed and was discharged accordingly on 12 January 2011, with 3 years, 5 months, and 19 days of service. The applicant did not complete their first full term of service.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** On 16 March 2010, the Army Substance Abuse Program (ASAP) Director, Fort Campbell, provided the commander with a summary of the applicant's rehabilitation treatment, indicating on 29 September 2009, the applicant was referred to the ASAP for alcohol related issues, evaluated by SGT [redacted], and gave the impression for Alcohol Dependence.

(a) On 2 October 2009, A Rehabilitation Team Meeting (RTM) was held by SGT, the Soldier, and 1SG, to enroll them in ASAP. The applicant was to attend the ASAP Group Sessions, abstain from using alcohol, or other mood altering chemicals, and attend weekly self-help meetings. They were informed of the possible consequences on noncompliance with this rehabilitation agreement. The applicant was scheduled to begin group sessions on 6 October, in which they did not attend. Since then, they have not attended their medical evaluation on 14 October and missed every group appointment. They attended one individual session on 10 December 2009 and was informed of the importance of following through with their rehabilitation agreement. They have not attended an appointment since.

(b) On 15 Mar 2010, 1SG informed ASAP that the applicant had another alcohol related incident over the weekend. 1SG requested a treatment synopsis letter

and indicated that the command plans to separate the applicant from the military. To remain in the Army, all Soldiers who are identified as alcohol abusers must successfully complete an ASAP education and/or rehabilitation program. Soldiers who fail to be rehabilitated will be processed for separation under the provisions of AR 635-200, Chapter 9. "Soldiers diagnosed with alcohol abuse or dependencies are permitted one period of rehabilitation for an alcohol incident per career. A company commander may recommend a second period of rehabilitation for a Soldier if the commander evaluates that Soldier as possessing exceptional potential for further useful Army service."

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 9 provides the authority and outlines the procedures for discharging Soldiers for alcohol or other drug abuse rehabilitation failure. Discharge is based upon alcohol or other drug abuse such as illegal, wrongful, or improper use of any controlled substance, alcohol, or other drugs when the soldier is enrolled in Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) or when the commander determines

that further rehabilitation efforts are not practical, rendering the soldier a rehabilitation failure. This determination will be made in consultation with the rehabilitation team. When the commander determines that a soldier who has never been enrolled in ADAPCP lacks the potential for further useful service, the soldier will be screened per AR 600–85. If found non-dependent, the soldier will not be rehabilitated but will be considered for separation under other appropriate provisions of this regulation. Separations for alcohol abuse rehabilitation failure will be reported separately from separations for drug abuse rehabilitation failure. If separation is based on both, the primary basis will be used for reporting purposes.

(5) A Soldier who is enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADADPCP) for alcohol/drug abuse may be separated because of their inability or refusal to participate in, cooperate in, or successfully complete such a program in one of the following circumstances:

- There is a lack of potential for continued Army service and rehabilitation efforts are no longer practical
- Long term rehabilitation is necessary, and the Soldier is transferred to a civilian medical facility for rehabilitation

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of “JPD” as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 9, Alcohol Rehabilitation Failure.

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers’ Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(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.

h. Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered, medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

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 Regular Army, promoted up to SPC, completed one year of service in Korea, and served for 2 years, 6 months, and 26 days prior to having been flagged for involuntary separation. They were separated under the provisions of AR635-200, Chapter 9, Alcohol Rehabilitation Failure, with a General (Under Honorable Conditions) characterization of service.

(1) The applicant was self-referred to the ASAP for alcohol related issues and enrolled, diagnosed with Alcohol Dependence. They were released from the alcohol rehabilitation program due to the incompleteness of their treatment plan, as they did not attend any group sessions, failed to attend their medical evaluation, and only attended one individual session. Further rehabilitation efforts were not practical and their potential for fully effective service was substantially reduced by their alcohol abuse.

(2) They served 3 years, 4 months, and 22 days of their 4-year contractual obligation.

c. Chapter 9 establishes policy and prescribes procedures for members being separated for alcohol or other drug abuse rehabilitation failure. 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. The separation authority will approve separation in cases processed without an administrative board if the documentation in the file indicates required rehabilitative efforts have been made, further rehabilitative efforts are not practical, rendering the soldier a rehabilitation failure, and the soldier's potential for fully effective service is substantially reduced by alcohol/drug abuse.

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? **No.** The applicant has been diagnosed with Alcohol Abuse. Alcohol Abuse is a substance use disorder and does not provide mitigation in the absence of another mitigating Behavioral Health condition.

(2) Did the condition exist or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge?
N/A

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant contends, an upgrade will give them access to their G.I. Bill and enable them to further their education. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact

a local office of the Department of Veterans Affairs for further assistance.

(2) The defense counsel contends, the applicant has previously dealt with alcohol-related issues; however, they are committed to overcoming any issues related to alcohol and desires to remain enrolled in the ASAP until resolution. Their commitment is demonstrated by the applicant having self-enrolled themselves in ASAP in October 2009. While they had an alcohol-related incident in March 2010, the applicant has had no such incidents since then. Moreover, they have never been arrested for driving under the influence (DUI). If allowed, the applicant could successfully rehabilitate and resume becoming a productive member of the Army team. The Board considered this contention but determined that the applicant received the appropriate characterization and narrative reason for discharge as specified by AR 635-200.

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 burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service, despite applying liberal consideration of all the evidence before the Board, the applicant's non-attendance at Substance Use Disorder Clinical Care (SUDCC) group and no attempt to rehabilitate did not excuse or mitigate the offenses of Alcohol Rehabilitation Failure. The Board also considered the applicant's contention that an upgrade will provide access to their G.I. Bill and enable them to further their education. The Board found the totality of the applicant's record does not warrant a discharge upgrade. 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. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(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:

7/13/2024

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