

1. **Applicant's Name:** [REDACTED]
 - a. **Application Date:** 9 September 2020
 - b. **Date Received:** 11 September 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, in effect, that the months prior to driving under the influence (DUI) in January 2005, the applicant was an above average infantryman.

(1) The applicant was DUI on 4 January 2005 which resulted in being command-referred to the Army Substance Abuse Program (ASAP). This was not the applicant's first time in the program, as the applicant was enrolled for a remote incident after returning from Iraq in February 2004. Due to an almost immediate deployment to Camp Natural Bridge at West Point for 3 months, the applicant was unable to complete the program. The applicant was pulled from their rehabilitation plan, thus left the applicant at a strong disadvantage for recovery.

(2) Three Developmental Counseling Forms (see Documents B-D), dated 29 October, 29 November, and 17 December 2004, shows the applicant was a qualified marksman, a leader in the field during company a field training exercise, outstanding with the shoot house exercises, and was beginning to prepare for the E-5 board. As the months went on, the applicant showed dedication by completing a Combat Life Saver's course and began to understand the process for being nominated for the Soldier of the Month board.

(3) After the DUI, Developmental Counseling Form (see Document F), dated 30 January 2005, shows the applicant continued to perform exceptionally during multiple weeks in the field during team and squad live fire ranges. This documented performance and career trajectory clearly doesn't show an individual that was utilizing hard drugs.

(4) Memorandum issued by the Community Counseling Center for (Applicant) (see Document E), dated 23 March 2005, states a medical screening produced a positive drug test result for cocaine and the applicant denied it. The applicant was never given the opportunity to prove this was a false positive.

(5) Memorandum issued by the Community Counseling Center, Synopsis of Treatment for (Applicant) (see Document E), dated 23 March 2005, states:

(a) The applicant had only attended two of six group therapies, and homework and self-help meetings were sporadic. This was a direct result of the applicant's commitment to their unit and to improving skillsets as an infantryman as they began to prepare for a potential rotational deployment back to Iraq by being in the field (see Document G).

(b) There were two separate occasions of alcohol use, although only naming one specifically. On 22 March 2005, "command reported that [Applicant] showed up for work and smelled of intoxicating liquors." A copy of the breathalyzer test (see Documents H and I) clearly refutes that. In the last sentence of item 4 (Document E), it solidifies that regardless of the

evidence at hand, the senior command had an unfair opinion of the applicant, and were planning on separation from the military due to rehabilitation failure.

(c) It took several months for the DUI court case to be resolved. When it was resolved, the applicant had lost their license for a short period of time and lost their driving privileges (see Document J). There was some ambiguity in the applicant's understanding, as mid-way through April 2005 the applicant had been taken to the military police (MP) station where the applicant asked to have their license checked, which resulted in it being valid for the state of KY and on post. Unfortunately, the applicant thought that this meant their privileges were restored and began to drive on post. However, this was not the case and when the applicant was caught speeding on post, this resulted in disobeying a direct order (see Document K) and DA Form 2627 (Record of Proceedings (ROP) under Article 15, Uniform Code of Military Justice (UCMJ)) (see Document L). The applicant notes a point of clarification, as there is an inaccuracy of the statement in the separation packet (see Document A) that the ROP under Article 15, UCMJ as given on 8 June 2005, when in fact it was 27 April 2005. The applicant feels that the new date illustrates more of an isolated situation stemmed from misunderstanding, as opposed to a blatant pattern. Regardless, the applicant was wrong and took their punishment, paid the price, and moved on. To further illustrate the point that the applicant served honorably by continuing to perform, even while the above situation was evolving. In the May developmental counseling form (see Document M) it clearly states that, "[Applicant] in spite of a couple infractions your performance in garrison has been good. You show up on time ready for whatever task may arise..." Even performance in the field at Joint Readiness Training Center was classified as "outstanding."

(d) Several days after that Developmental Counseling Form (Document M), dated 3 May 2005, was given, the applicant was involved in a car accident where a vehicle was totaled, and injuries were sustained. Thankfully, neither car nor the injuries were the applicant's own. However, this did lead to the action of failure to report, documented in Developmental Counseling Form, dated 12 May 2005 (see Document N). The consequences of the failure to report was the revocation of pass privileges (see Document O). While the applicant has no documentation that was found that the applicant was counseled on breaking the order of pass privileges, the applicant would like to proactively overcome the statements found in Part IV (Assessment of the Plan of Action). While it does not directly state that the applicant disobeyed the order, it did allude to the applicant traveling off post. The applicant would like to say that they was not in fact off post and went to the gate to sign in a female guest and had failed to bring their identification which was an unfortunate set of circumstances.

(e) After the Army, the applicant completed a court mandated treatment program at the Canandaigua Addiction's Recovery Program in 2007. The applicant has had zero infractions since that program, over 13 years ago. The point of this narrative is that the applicant's in service was honorable (see Document P-U). The applicant is a combat veteran that did a tour in Iraq, earning a valorous unit award, a meritorious unit award, and an Army Commendation Medal (see Document R).

c. Board Type and Decision: In a records review conducted on 22 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's service record, completion of a rehabilitation program in 2007 and elapsed time since the misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Alcohol Rehabilitation Failure / AR 635-200, Chapter 9 / JPD / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 13 September 2005

c. Separation Facts: The applicant's AMHRR has the case separation file. However, the applicant provided documents which are described below in 3c(1) through (6).

(1) Date of Notification of Intent to Separate: 30 August 2005

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

- failed to complete the ASAP after being referred
- sporadic in completing homework assignments and attendance at self-help meetings
- on two separate occasions, used alcohol after being enrolled in the ASAP
- 12 May 2005 - failed to be at the appointed place of duty
- 22 March 2005 - the chain of command reported that the applicant showed up for work and smelled of alcohol
- 8 June 2005 - found guilty during Article 15 proceedings for driving on post while on post driving privileges were suspended
- 4 January 2005 - was arrested for DUI of alcohol

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

(4) Legal Consultation Date: On 1 September 2005, the applicant waived legal counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 6 September 2005 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 11 September 2004 / 4 years

b. Age at Enlistment / Education / GT Score: 21 / NIF / NIF

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years and 4 days

d. Prior Service / Characterizations: RA, 10 September 2002 - 10 September 2004 / HD

e. Overseas Service / Combat Service: SWA / Kuwait/Iraq (28 February 2003 - 2 February 2004)

f. Awards and Decorations: GWTSM, NDSM, ASR, ARCOM, CIB, GWTEM, MUC, VUA

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) KY Uniform Citation, filed 6 January 2005, shows on 4 January 2005, the applicant was charged with:

- Charge 1 - operated a motor vehicle under the influence of alcohol and drugs
- Charge 2 - speeding 32 miles per hour (MPR) over the posted speed limit (97 MPR in 65 MPR zone)
- Charge 3 - refused to submit to a breath test

(2) Developmental Counseling Form, dated 8 March 2005, shows the applicant was counseled for failure to follow instructions.

(3) The applicant provided:

(a) Document E - Memorandum issued by the Community Counseling Center, Synopsis of Treatment for (Applicant), dated 23 March 2005, states the applicant was re-enrolled in ASAP on 1 February 2005. The medical screening produced a positive drug test result for cocaine and the applicant denied it. The applicant was informed of the possible consequences on noncompliance with their rehabilitation agreement. The applicant has been sporadic with completing homework assignments and attendance at self-help meetings. There have been two separate occurrences of alcohol use. On 22 March 2005, the command reported that the applicant showed up for work and smelled of intoxicating liquors. Command indicated they plan to separate the applicant from the military as a rehabilitation failure.

(b) Document I - Intox EC/IR-11 Quick Test, dated 22 March 2005, shows the applicant passed a breathalyzer test.

(c) Document J - Developmental Counseling Form, dated 30 March 2005, shows the applicant lost their driver's license and driving privileges on post and in the state of KY.

(d) Memorandum, Notification of Suspension/Revocation of Installation Vehicle Registration and Privately Owned Vehicle (POV) Driving Privileges, dated 27 April 2005, shows the applicant was informed that their installation/registration (POV) driving privileges were suspended/revoked for a period of 12 months effective 27 April 2005 because the applicant drove while their license was suspended/revoked (on post). The applicant acknowledged receipt of this notification.

(e) Document K - Developmental Counseling Form, dated 28 April 2005, reiterates to the applicant that they are not allowed to drive on post.

(f) Document L - ROP under Article 15, UCMJ, shows CG Article 15, dated 8 June 2005, for failing to obey a lawful order by wrongfully driving on post on or about 27 April 2005 while post driving privileges were suspended. The punishment consisted of reduction from E-3 to E-1; forfeiture of \$323.00 pay per month for one month (suspended); and extra duty and restriction for 14 days.

(g) Document N - Developmental Counseling Form, dated 12 May 2005, shows the applicant was counseled for failure to call the chain of command to inform them of an accident and failure to report.

(h) Document O - Developmental Counseling Form, dated 12 May 2005, shows the applicant was counseled on their past privileges being revoked because of the applicant's recent misconduct.

(4) Developmental Counseling Form, dated 12 May 2005, shows the applicant was counseled for disrespecting a noncommissioned officer.

(5) Report of Medical History, dated 12 May 2005, the examining medical physician noted in the comments section: The applicant had a recent DUI and was referred to ASAP. The applicant tested positive for cocaine.

(6) Report of Mental Status Evaluation (MSE), dated 24 May 2005, shows the applicant was psychologically cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

(7) Commonwealth of KY Court of Justice document, shows on 22 July 2005, the applicant was ordered to pay fines for charges one (DUI) and two (speeding), and charge 3 (breath test refusal) was dismissed.

(8) The applicant provided the commander's report, dated 30 August 2005, that shows the applicant was previously reduced from E-4 to E-3 on 5 January 2005.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** MSE as described in previous paragraph 4h.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; self-authored statement with all listed documents A through U (includes separation packet, DD Form 214, and DD Form 215); and Notification of Suspension/Revocation of Installation Vehicle Registration and POV Driving Privileges.

6. POST SERVICE ACCOMPLISHMENTS: Completed a court mandated treatment program at the Canandaigua Addiction's Recovery Program in 2007. The applicant has had zero infractions since that program, over 13 years ago.

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 27-10 (Military Justice), prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial, United States, 2000 (MCM), and the rules for courts-martial contained in the MCM. It states, the date of imposition of nonjudicial punishment is the date items 4 through 6, DA Form 2627, or items 1 through 3, DA Form 2627-1 (Summarized ROP Under Article 15, UCMJ), as

appropriate, are signed by the imposing commander. This action normally will be accomplished on the day punishment is imposed.

e. Army Regulation 600-85 (Alcohol and Drug Prevention and Control Program), prescribes policies and procedures to implement, administer, and evaluate the ASAP. Paragraph 1-31e, states 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.

f. 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) Chapter 9 outlines the procedures for discharging individuals because of alcohol or other drug abuse. A member who has been referred to the ASAP for alcohol or drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

(4) Paragraph 9-4, stipulates the service of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600-85.

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

g. Army Regulation 635-5-1 (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.

h. 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 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.

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 AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 3 years and 4 days which the applicant served 11 months and 6 days in Iraq (see DD Form 215). The applicant was charged with DUI and speeding by the state of KY. The applicant received seven developmental counseling forms, for various acts of misconduct. The applicant received ROP under Article 15, UCMJ for wrongfully driving on post while post driving privileges were suspended. The applicant was discharged under the provisions of AR 635-200, chapter 9, by reason of alcohol rehabilitation failure, with a characterization of service of general (under honorable conditions).

c. The applicant contends, in effect, honorable service (see Documents B-D, F, G, and P-U), including a combat tour. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

d. The applicant contends, in effect, they were enrolled in ASAP for a remote incident after returning from Iraq in February 2004. Due to an almost immediate deployment to Camp Natural Bridge at West Point for 3 months, the applicant was unable to complete the program. The applicant was pulled from their rehabilitation plan, thus left them at a strong disadvantage for recovery. Consequently, the applicant was DUI on 4 January 2005 which resulted in being command-referred to the ASAP again. The applicant provided Document E - Memorandum issued by the Community Counseling Center, Synopsis of Treatment for (Applicant), dated 23 March 2005, that states the applicant was re-enrolled in ASAP on 1 February 2005.

e. The applicant contends, in effect, memorandum issued by the Community Counseling Center (Document E), dated 23 March 2005, states a medical screening produced a positive drug test result for cocaine and the applicant denied it. The applicant was never given the opportunity to prove this was a false positive. The AMHRR contains a Report of Medical History, dated 12 May 2005, that shows the examining medical physician noted in the comments section: The applicant had a recent DUI and was referred to ASAP. The applicant tested positive for cocaine. This form shows the applicant selected yes for, used illegal drugs or abused prescription drugs.

f. The applicant contends, in effect, memorandum issued by the Community Counseling Center, Synopsis of Treatment for (Applicant) (Document E), dated 23 March 2005, states the applicant only attended two of six group therapies, and homework and self-help meetings were sporadic. The applicant claims this was a direct result of the applicant's commitment to the unit and to improving skillsets as an infantryman as they began to prepare for a potential rotational deployment back to Iraq by being in the field. The applicant provided Document G - Developmental Counseling Form, dated 8 March 2005, which states this was a performance end of the month counseling. The applicant participated in a live fire exercise and the brigade field training exercise.

g. The applicant contends, in effect, memorandum issued by the Community Counseling Center, Synopsis of Treatment for (Applicant) (Document E), dated 23 March 2005, states there were two separate occasions of alcohol use, although only naming one specifically. On 22 March 2005, "command reported that [Applicant] showed up for work and smelled of intoxicating liquors." The applicant provides and states a copy of the breathalyzer test (see Document I) clearly refutes the claim of alcohol use. Document I - Intox EC/IR-11 Quick Test, dated 22 March 2005, shows the applicant passed a breathalyzer test. In the last sentence of paragraph 4 (Document E), it solidifies that regardless of the evidence at hand, the senior command had an unfair opinion of the applicant, and were planning on separation from the military due to rehabilitation failure. AR 600-85 (Alcohol and Drug Prevention and Control Program), paragraph 1-31e, states 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.

h. The applicant contends, in effect, memorandum issued by the Community Counseling Center, Synopsis of Treatment for (Applicant) (Document E), dated 23 March 2005, states it took several months for the DUI court case to be resolved. When it was resolved, the applicant had lost their license for a short period of time and lost their driving privileges (see Document J). There was some ambiguity in the applicant's understanding, as mid-way through April 2005 the applicant had been taken to the MP station where the applicant asked to have their license checked, which resulted in it being valid for the state of KY and on post. Unfortunately, the applicant thought that this meant their privileges were restored and began to drive on post. However, this was not the case and when the applicant was caught speeding on post, this resulted in disobeying a direct order (see Document K) and ROP under Article 15, UCMJ (see Document L). The applicant notes a point of clarification, as there is an inaccuracy of the statement in the separation packet (see Document A) that the ROP under Article 15, UCMJ as given on 8 June 2005, when in fact it was 27 April 2005. The applicant feels that the new date illustrates more of an isolated situation stemmed from misunderstanding, as opposed to a blatant pattern.

- Document J - Developmental Counseling Form, dated 30 March 2005, shows the applicant lost their driver's license and driving privileges on post and in the state of KY
- Memorandum, Notification of Suspension/Revocation of Installation Vehicle Registration and POV Driving Privileges, dated 27 April 2005, shows the applicant was informed that their installation/registration (POV) driving privileges were suspended/revoked for a period of 12 months effective 27 April 2005 because the applicant drove while their license was suspended/ revoked (on post)
- Document K - Developmental Counseling Form, dated 28 April 2005, states the applicant was verbally counseled numerous times in reference to not being allowed to drive on post
- Document L - ROP under Article 15, UCMJ, for wrongfully driving on post on or about 27 April 2005 while post driving privileges were suspended, the commander initially signed

the form on 1 June 2005 and then on 8 June 2005, the date the applicant signed is illegible

- AR 27-10, states, the date of imposition of nonjudicial punishment is the date items 4 through 6, DA Form 2627, or items 1 through 3, DA Form 2627-1, as appropriate, are signed by the imposing commander
- AR 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

i. The applicant contends, in effect, after service in the Army, they completed a court mandated treatment program at the Canandaigua Addiction's Recovery Program in 2007. The applicant has had zero infractions since that program, over 13 years ago. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. However, there is no law or regulation which provides an unfavorable discharge may be upgraded based solely on the passage of time or good conduct in civilian life subsequent to leaving the service. Outstanding post-service conduct, to the extent such matters provide a basis for a more thorough understanding of the applicant's performance and conduct during the period of service under review, is considered during Board proceedings. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

j. The third party statements provided with the application speak highly of the applicant separate from the applicant's misconduct while the applicant served in the Army.

k. 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 Board's Medical Advisor, reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused or mitigated a discharge.

(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, in effect, honorable service (see Documents B-D, F, G, and P-U), including a combat tour. The Board considered this contention, the applicant's request, supporting documents and evidence in the records and determined the applicant's contention is

valid and voted to grant relief in the form of an upgrade based on service record, completion of a rehabilitation program and elapsed time since the misconduct.

(2) The applicant contends, in effect, they were enrolled in ASAP for a remote incident after returning from Iraq in February 2004. Due to an almost immediate deployment to Camp Natural Bridge at West Point for 3 months, the applicant was unable to complete the program. The applicant was pulled from their rehabilitation plan, thus left them at a strong disadvantage for recovery. Consequently, the applicant was DUI on 4 January 2005 which resulted in being command-referred to the ASAP again. The Board considered this contention, the applicant's request, supporting documents and evidence in the records and determined the applicant's contention is valid and voted to grant relief in the form of an upgrade based on service record, completion of a rehabilitation program and elapsed time since the misconduct.

(3) The applicant contends, in effect, memorandum issued by the Community Counseling Center (Document E), dated 23 March 2005, states a medical screening produced a positive drug test result for cocaine and the applicant denied it. The applicant was never given the opportunity to prove this was a false positive. The Board considered this contention, the applicant's request, supporting documents and evidence in the records and voted to grant relief in the form of an upgrade based on service record, completion of a rehabilitation program and elapsed time since the misconduct.

(4) The applicant contends, in effect, memorandum issued by the Community Counseling Center, Synopsis of Treatment for (Applicant) (Document E), dated 23 March 2005, states the applicant only attended two of six group therapies, and that homework and self-help meetings were sporadic. The applicant claims this was a direct result of the applicant's commitment to the unit and to improving skillsets as an infantryman as they began to prepare for a potential rotational deployment back to Iraq by being in the field. The Board considered this contention, the applicant's request, supporting documents and evidence in the records and determined the applicant's contention is valid and voted to grant relief in the form of an upgrade based on service record, completion of a rehabilitation program and elapsed time since the misconduct.

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(6) The applicant contends, in effect, memorandum issued by the Community Counseling Center, Synopsis of Treatment for (Applicant) (Document E), dated 23 March 2005, states it took several months for the DUI court case to be resolved. When it was resolved, the applicant had lost their license for a short period of time and lost their driving privileges (see Document J). There was some ambiguity in the applicant's understanding, as mid-way through April 2005 the applicant had been taken to the MP station where the applicant asked to have their license checked, which resulted in it being valid for the state of KY and on post. Unfortunately, the applicant thought that this meant their privileges were restored and began to drive on post. However, this was not the case and when the applicant was caught speeding on post, this resulted in disobeying a direct order (see Document K) and ROP under Article 15, UCMJ (see Document L). The applicant notes a point of clarification, as there is an inaccuracy of the statement in the separation packet (see Document A) that the ROP under Article 15,

UCMJ as given on 8 June 2005, when in fact it was 27 April 2005. The applicant feels that the new date illustrates more of an isolated situation stemmed from misunderstanding, as opposed to a blatant pattern. The Board considered this contention, the applicant's request, supporting documents and evidence in the records and determined the applicant's contention is valid and voted to grant relief in the form of an upgrade based on service record, completion of a rehabilitation program and elapsed time since the misconduct.

(7) The applicant contends, in effect, after service in the Army, they completed a court mandated treatment program at the Canandaigua Addiction's Recovery Program in 2007. The applicant has had zero infractions since that program, over 13 years ago. The Board considered this contention, the applicant's request, supporting documents and evidence in the records and determined the applicant's contention is valid and voted to grant relief in the form of an upgrade based on service record, completion of a rehabilitation program and elapsed time since the misconduct.

c. The Board determined the discharge is inequitable based on the applicant's service record, completion of a rehabilitation program in 2007 and elapsed time since the misconduct. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable inequitable based on the applicant's service record, completion of a rehabilitation program in 2007 and elapsed time since the misconduct. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

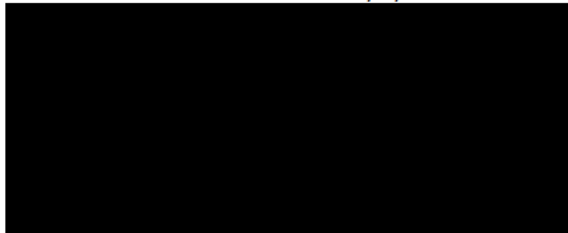
(3) The Board voted to change the RE code to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:

4/18/2024



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