

1. Applicant's Name: [REDACTED]**a. Application Date:** 29 June 2021**b. Date Received:** 22 March 2023**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 and a narrative reason change.

The applicant seeks relief contending, in effect, the applicant self-enrolled into the Army Substance Abuse Program (ASAP) program seeking help for depression, mental health, and drug involvement following a deployment overseas. The chain of command violated the Limited Use Policy by using protected information which resulted in a premature discharge.

b. Board Type and Decision: In a records review conducted on 16 October 2024, and by a 5-0 vote, the Board, based on the applicant's length and quality of service, determined that the characterization of service for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason for separation, corresponding separation code, and RE Code were proper and equitable and voted not to change them.

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

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Alcohol Rehabilitation Failure / AR 635-200 / Chapter 9 / JPD / RE-4 / Honorable

b. Date of Discharge: 25 May 2018**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 2 May 2018

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant was unable to successfully rehabilitate in the ASAP program. The applicant continued to consume marijuana while enrolled in ASAP.

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

(4) Legal Consultation Date: On 8 May 2018, the applicant waived the right to consult with counsel.

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 11 May 2018 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 28 June 2016 / 3 years
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 105
- c. **Highest Grade Achieved / MOS / Total Service:** E-3/ 91H10, Track Vehicle Repairer / 1 year, 10 months, 28 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Romania (24 March 2017 – 6 October 2017)
- f. **Awards and Decorations:** AAM, NDSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) Developmental Counseling Form, 21 March 2018, reflects the applicant was counseled by the commander which reflects, in part, the applicant was enrolled in Substance Use Disorder Clinical Care (SUDCC) for marijuana use. The applicant had reported using marijuana twice per week. On 6 February 2018, the applicant had a positive UA with SUDCC for THC. The applicant's SUDCC counselor recommended separation under Chapter 9, AR 635-200, since the applicant did not appear wanting to work on not using marijuana. After careful consideration and consultation with the SUDCC counselor, the applicant's commander determined the applicant was a rehabilitation failure and would initiate separation proceedings under Chapter 9, AR 635-200.

(2) Mental Status Evaluation (MSE), 26 March 2018, reflects the applicant could understand and participate in administrative proceedings and appreciate the difference between right and wrong. The MSE further reflects the applicant was a self-referred for SUDCC and the applicant's SUDCC treatment provider recommended administrative separation under Chapter 9 or AR 600-8-24, Chapter 4. The MSE goes on to reflect the applicant began treatment with SUDCC on 14 February 2018 and reported using marijuana weekly since October 2017 and did not want to stop. The applicant had a positive UA for THC with SUDCC labs on 6 February 2018. The applicant was diagnosed with cannabis use disorder, moderate.

- i. **Lost Time / Mode of Return:** None
- j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293, personal statements, separation packet, excerpts of AR 600-85, medical records, Certificate of Completion, Offer of Employment, letters of support-3, emails, DD Form 214

6. POST SERVICE ACCOMPLISHMENTS: The applicant obtained employment and went to school to get an EMT certification. The applicant participated in toy drives, community service, and company fundraisers.

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 600-85, paragraph 10-12a defines the Limited Use Policy and states unless waived under the circumstances listed in paragraph 10-13d, Limited Use Policy prohibits the use by the government of protected evidence against a Soldier in actions under the UCMJ or on the issue of characterization of service in administrative proceedings. Additionally, the policy limits the characterization of discharge to "Honorable" if protected evidence is used. Protected evidence under this policy includes results of command-directed drug or alcohol testing that are inadmissible under the Military Rule of Evidence

(1) Paragraph 10-12(7)b states The Limited Use Policy does not prevent a counselor from revealing, to the commander or appropriate authority or others, having a need to knowledge of certain illegal acts which may compromise or have an adverse impact on mission, national security, or the health and welfare of others. The unit commander will report the information to appropriate authority.

(2) Paragraph 10-12(7)d(2) states the Limited Use Policy does not preclude the initiation of disciplinary or other action based independently derived evidence, including evidence of continued drug abuse after initial entry into the ASAP. If the command is made aware of a Soldier's illegal drug use through Soldier's self-referral and admissions, the requirement to initiate separation proceedings pursuant to the appropriate enlisted or officer separation regulation will not apply. The unit commander may initiate a separation action; however, the information is protected by the Limited Use Policy.

e. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

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

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 9 outlines the procedures for discharging individuals because of alcohol or other drug abuse. A member who has been referred to 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. Army policy states that an honorable or general, under honorable conditions discharge is authorized depending on the applicant's overall record of service. However, an honorable discharge is required if limited use information is used in the discharge process. Paragraph 9-4 stipulates the service of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600-85.

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

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

The applicant requests an upgrade to honorable and a narrative reason change. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant requests the narrative reason for the discharge be changed. The applicant was separated under the provisions of Chapter 9, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Alcohol Rehabilitation Failure." The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant states the applicant self-enrolled in the ASAP program seeking help for depression, mental health, and drug involvement following a deployment overseas.

The applicant contends the chain of command violated the Limited Use Policy by using protected information which resulted in a premature discharge. Developmental Counseling Form, 21 March 2018, reflects the applicant was counseled by the commander which reflects, in part, the applicant was enrolled in Substance Use Disorder Clinical Care (SUDCC) for marijuana use. The applicant had reported using marijuana twice per week. On 6 February 2018, the applicant had a positive UA with SUDCC for THC. The applicant's SUDCC counselor recommended separation under Chapter 9, AR 635-200, since the applicant did not appear wanting to work on not using marijuana. After careful consideration and consultation with the SUDCC counselor, the applicant's commander determined the applicant was a rehabilitation failure and would initiate separation proceedings under Chapter 9, AR 635-200.

Army Regulation 600-85 states The Limited Use Policy does not prevent a counselor from revealing, to the commander or appropriate authority or others, having a need to knowledge of certain illegal acts which may compromise or have an adverse impact on mission, national security, or the health and welfare of others. The unit commander will report the information to appropriate authority. The regulation further states the Limited Use Policy does not preclude the initiation of disciplinary or other action based independently derived evidence, including evidence of continued drug abuse after initial entry into the ASAP. If the command is made aware of a Soldier's illegal drug use through Soldier's self-referral and admissions, the requirement to initiate separation proceedings pursuant to the appropriate enlisted or officer

separation regulation will not apply. The unit commander may initiate a separation action; however, the information is protected by the Limited Use Policy.

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 the applicant had no mitigating behavioral health diagnoses. The applicant provided no documents or testimony of an in-service 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: The applicant contends the chain of command violated the Limited Use Policy by using protected information which resulted in a premature discharge. The Board acknowledged this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention

c. . The Board determined that the characterization of service for the applicant's separation is now inequitable. Therefore, the Board voted to grant relief in the form of an upgrade to the characterization of service to Honorable. The Board determined the narrative reason for separation, corresponding separation code, and RE Code were proper and equitable and voted not to change them. However, the applicant may request a personal appearance hearing to address further 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 to grant relief by upgrading the applicant's characterization of service to Honorable. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation. The Board found sufficient evidence of in-service mitigating factors (Length, Quality) and concurred that it does mitigate the applicant's ASAP failure. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230003538

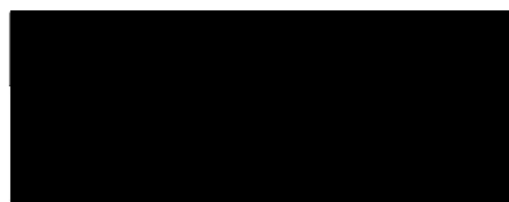
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

3/27/2025



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