

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20240001364

APPLICANT REQUESTS: his DD Form 214 (Certificate of Release or Discharge from Active Duty) to be corrected to reflect:

- Item 24 (Character of Service): Honorable vice under honorable conditions (General)
- Item 25 (Separation Authority): Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) vice AR 635-200, paragraph 14-12c (2)
- Item 26 (Separation Code): JFF vice JKK
- Item 27 (Reentry Code): RE-1 or another code to allow reentry vice 4
- Item 28 (Narrative Reason for Separation): Secretarial Authority vice Misconduct (Drug Abuse)

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Counsel brief (10 pages)
- DD Form 214
- Self-authored letter
- Lab results
- Commander's Request for Mental Health Evaluation
- DD Form 2807-1, 20 September 2006
- Intent to chapter memo
- Re-testing memo
- Separation packet
- Support statement, [REDACTED]
- Support statement [REDACTED]
- Kurta memo

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records

(ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states his character of service should be corrected to reflect his honorable service and that his reentry code be corrected to RE-1 (or another code permitting reentry). The applicant further requests that his narrative reason for separation, separation authority, and separation code be changed to reflect "Secretarial Authority." His request is made based on material error and comply with the Kurta memo's guidance.

a. In his self-authored letter, he described his first duty station and initial excitement about being a Soldier. On 26 July he made a terrible mistake and used drugs. On 10 August 2006, he was informed that he failed a urinalysis and that standard operating procedures was to start chapter paperwork while waiting to be given a field grade article 15.

b. Being new to a unit starts the same, with a great deal of time in the field getting ready to deploy. In November 2003, his mother died in a car accident. He had a very hard time coping with that loss due to the untimely nature of her death and where their relationship was when she passed. He had a tremendous sense of guilt for their relationship at the end and was not able to properly mourn her loss. His way of coping was trying not to think about it and moving forward, which was certainly not a healthy way to process loss. Being new to the Army and the unit, he did not want to ask for help, like counseling, out of worrying that all his progress would be tainted by what would be viewed as weakness.

c. After received his Article 15 he was directed to attend Army Substance Abuse Program (ASAP). He was escorted to the ASAP program 5 times, and after the 5th meeting, he was told he would no longer be permitted to attend ASAP due to a lack of Non-Commissioned Officer (NCO) escort available to take him. He embraced his punishment fully and did everything he was ordered to do with no complaint. Unlike most Soldiers in his situation, he was never late for formations, and he still participated in physical training and all aspects of training.

d. After his discharge he went back home [REDACTED] and tried to figure out what to do with his life. In July 2007, he went to a rehabilitation facility with a strong emphasis on counseling and faith, and that experience changed his life. It allowed him to let go of the burden of guilt and allow him to heal from the loss of his mother. He is proud to say that he has had no relapse in his sobriety since and lives an active, healthy life. There is not a doubt in his mind had he been allowed to attend the ASAP meetings and get the counseling he needed so badly to make peace with what was the most traumatic event he had faced in his young life that he could have had a promising career in the Army. He would have attacked treatment in the Army the same way he did

the other aspects of military life, with the strongest desire to be the best version of himself. That is the same way he approached the treatment he sought for himself after his discharge. He was a 20-year-old young man dealing with a massive problem, and though he made a mistake, he was not a lost cause. He does not know why he was not afforded the opportunity to receive treatment from the program that the Army as specifically for Soldiers in the circumstances that he was in.

e. Today, he is currently 7 years into his career as a detention subcontractor. He has grown from an installer to a leadman, and now he is in his 3rd year as a superintendent. He specializes in jails and prisons from the city and county levels all the way up to state and federal levels, requiring GSA security clearance. His greatest desire is to receive an elevation of his discharge and reentry code and character of discharge so he may attempt to enlist in the [REDACTED] National Guard and fulfill a debt he owes to his country. A debt that is born from the purest of places, a sense of duty to his country, and a desire to give back to a country that has given him so much. If given this opportunity, he will not let the Army, or himself down again; you have his solemn word.

3. His counsel states:

a. The applicant requests that his character of service be corrected to reflect his "Honorable" service and that his reentry code be corrected to "RE-1" (or another code permitting reentry). The applicant further requests that his narrative reason for separation, separation authority, and separation code be changed to reflect "Secretarial Authority." These requests are made to correct material errors from the discharge and comply with the Kurta memo's guidance.

b. Counsel restates and reemphasizes the applicant's self-authored letter. The applicant's use of cocaine was isolated to a single instance in July; however, his failed urinalysis test was sufficient to initiate separation proceedings on 10 August 2006.

c. During his extra duty, on 23 August 2006, a mental health evaluation was ordered. This evaluation was not conducted until almost a month later, on 20 September 2006. However, before this evaluation was completed or any adverse mental health condition could be discovered, the applicant's command proceeded with their intent to separate on 15 September 2006. This procedure is not in accordance with the requirements given by Alcohol and Drug Control Officer [REDACTED] proceeding with separation before the completion of the required mental health examination significantly reduces the possibility of rehab being deemed appropriate and almost entirely removes the possibility of retention with ongoing rehab. See Exhibit 7.

d. After the applicant completed his extra duty, his Battalion commander recommended that the applicant be retained in the Army and described his character of service as "honorable." See Exhibit 8. When the Brigade Commander made his

decision, he initially adopted the recommendation for the applicant to be retained; however, this selection was crossed out, and the applicant was separated under the service characterization "General, Under Honorable Consideration." See Exhibit 9. The applicant received his separation orders in early December and officially separated from the Army on 13 December 2006. See Exhibit 10.

e. Counsel argues the Secretary of the Army may correct military records when it is "necessary to correct error or remove an injustice." See 10 U.S.C. § 1552. For relief to be granted, an applicant must demonstrate the existence of an error or injustice that can be remedied effectively by correcting applicant's military record. See Army Regulation 15-185. Here, the applicant seeks to correct the discretionary error in separating the applicant for "misconduct (drug abuse)" rather than offering him treatment and the opportunity to continue serving his country. This request falls squarely within the jurisdiction of this honorable board.

f. It is respectfully submitted that the United States Army made a procedural error when it discharged the applicant without considering "the likelihood that the event ... will continue or recur," "the soldier's rehabilitative potential," or "the soldier's entire military record." Each of these factors, among others, should have been considered "when deciding retention or separation." See AR 635-200; Chapter 1, paragraph 1-16. It is respectfully submitted that the separation authority's failure to make these considerations was improper, and without this instance of impropriety, the applicant would not have been separated.

g. The events leading to the applicant's discharge contained his first instance of misconduct, an isolated incident that does not reflect his overall service. See Exhibit 4. As with most events that have happened only once, as an isolated instance, there was a low likelihood that the event "would continue or recur." Additionally, since this was the applicant's first-time self-medicating his underlying mental health problems, if he were given proper treatment, there was a high potential for successful rehabilitation. The applicant wrote about rehab's positive impact on his life and his ability to rebuild his reputation and career; his successful rehabilitation using his own resources further supports the claim that he had high rehabilitation potential if offered effective ASAP resources. See Exhibit 2. Lastly, if the applicant's military record was considered during separation, it appears to have been blatantly ignored. The applicant had no prior misconduct, accepted his punishments (demotion, extra duty, and mandated ASAP sessions) gracefully, and continued to put his best foot forward. After completing his extra duty, the applicant's battalion commander recommended retention or discharge with an "honorable" characterization of service. See Exhibit 8. However, this recommendation did not appear to influence the brigade commander's decision to proceed with a general discharge. See Exhibit 9. These errors of procedure and discretion need correction by this honorable board.

h. While the above factors should have been considered to provide context and rehabilitation potential, the 2017 Kurta memo expands on these considerations and how they should be construed. On 25 August 2017, Undersecretary of Defense Kurta issued a memorandum (Kurta Memo) that clarified and expanded guidance on whether a veteran's mental health condition(s) might mitigate the circumstances that led to the veteran's discharge; this memo serves to address the "invisible wounds" suffered by veterans. To this end, the Kurta Memo established the following four (4) questions that are to be considered in discharge relief:

- Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- 2) Did the condition exist/experience occur during the military service?
- 3) Does that condition or experience excuse or mitigate the discharge?
- 4) Does that condition or experience outweigh the discharge?

i. In the instant case, the applicant was coping (or attempting to avoid coping) with his mother's fatal car accident; his mental health should have been considered during his separation evaluation. The Kurta Memo's guidance provides that "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 ..."

j. Regarding whether there was a condition or experience, the Kurta memo states, "A veteran asserting a mental health condition without a corresponding diagnosis of such condition from a licensed psychiatrist or psychologist will receive liberal consideration of evidence that may support the existence of such a condition." In this case, the applicant attempting to cope with his mother's death through inaction significantly worsened his mental health (guilt and depression). The fact that the applicant was successfully counseled and rehabilitated further supports that this was a mental health condition; when considered in context, this was a mitigating condition or experience.

k. The applicant describes his mental health improving only after he received mental health treatment in 2007. Although his mother's death predated his military service, the applicant never felt the need to self-medicate until his mental health had been further aggravated by military service. The applicant admits that the rigorous schedule of a recruit was excellent at taking his mind off his grief but was detrimental to his processing or working through it. The applicant's mitigating condition existed during his military service.

l. "Conditions or experiences that may reasonably have existed at the time of discharge will be liberally considered as excusing or mitigating the discharge." The applicant's grief existed during service and at the time he was discharged. He was

attending ASAP meetings to work through these problems, but his treatment was cut short, and he was discharged instead. His reason for discharge, misconduct of drug use, resulted from his attempts to mitigate his grief and depression with self-treatment before attending ASAP. His condition and experience in treating that condition should excuse or mitigate the applicant's discharge.

m. The Kurta memo clarifies,

"Premeditated misconduct is not generally excused by mental health conditions, including PTSD; TBI; or by asexual assault or sexual harassment experience. However, substance-seeking behavior and efforts to self-medicate symptoms of a mental health condition may warrant consideration. Review Boards will exercise caution in assessing the causal relationship between asserted conditions or experiences and premeditated misconduct."

n. In this case, the applicant's drug use was not for recreation or a result of premeditated misconduct; rather, it resulted from the applicant's attempt to self-medicate for his mental health symptoms. The applicant had never sought out drugs before and had no other disciplinary problems. The applicant had effectively ignored his grief for years without issue, but the added stresses of transitioning into the Army prevented him from facing his grief and moving past it; this eventually led to his belief that self-treatment was his only option.

o. The applicant was initially required to attend ASAP meetings, which he found beneficial; having found a better option to manage his mental health, the applicant desired to continue attending ASAP meetings for treatment. However, he was eventually restricted from attending because no NCO was available to escort him. The applicant should have been allowed to receive full treatment rather than being removed from treatment and discharged for his attempts to self-treat. The fact that the applicant returned to a happy, healthy, and sober life after completing treatment (in 2007) suggests that if ASAP meetings were continued, the applicant could have been rehabilitated without a discharge. The applicant's behavior falls squarely within the guidance of the Kurta memo and should be considered a condition that outweighs his discharge.

p. Counsel states in conclusion given the facts and arguments presented herein, the applicant respectfully requests that his character of service be corrected to "Honorable," that his reentry code be corrected to "RE-1" and that his narrative reason for separation, separation authority, and separation code be changed to reflect "Secretarial Authority."

(1). The applicant tried to treat his mental health issues, first by ignoring them, then with self-medication. The applicant admits that this was not the right thing to do but thought it was his only option at the time that would also preserve his career in the

Army. Once the applicant learned of other available treatment options, he used them to the fullest of his ability (before he was restricted from attending due to NCO availability). This was brushed aside by the separation authority when they failed to consider his lack of prior discipline, the unlikelihood that such misconduct would occur again, or the possibility of psychological treatment before separation; the applicant's cry for help became the basis of his discharge. The applicant was able to get his mental health under control after separation; however, he now finds himself unable to service his country through [REDACTED] National Guard because of this erroneous discharge.

(2). The applicant respectfully requests that this Honorable Board corrects his military records to reflect the circumstances of his discharge more accurately, to better comply with the direction of the Kurta memo, and to reflect the "honorable" characterization of service he has earned.

4. The applicant enlisted Regular Army on 1 November 2005.

5. Laboratory confirmed biochemical test results shows the applicant tested positive for cocaine on 28 July 2006.

6. DA Form 3822-R (Report of Mental Status Evaluation) shows on 24 August 2006, the applicant underwent a mental evaluation in which he was found mentally responsible for his behavior, can distinguish right from wrong, and possesses sufficient mental capacity to participate in administrative and judicial proceedings. He was cleared for any administrative actions deemed appropriate by command.

7. On 20 September 2006, he underwent a separation physical and was found cleared for chapter.

8. He received non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for between on or about 25 July and 28 July 2006, wrongfully using cocaine. He was reduced to private (E-1).

9. On 6 November 2006, his commander notified him of his intent to separate him for commission of a serious offense. The specific reason for his proposed action was the applicant tested positive for cocaine on 28 July 2006. The applicant acknowledged receipt of notification of the same day.

10. On 6 November 2006, he was advised by his commander of the basis for the contemplated action to separate him for commission of a serious offense under chapter 14, of AR 635-200, and its effect; of the rights available to him; and the effect of any action taken by him in waiving his rights. He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him. He further understood that, as the result of issuance of a discharge under

other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

11. His chain of command recommended that he be separated prior to the expiration of his current term of service for commission of a serious offense. His immediate commander recommended his character of service be general, under honorable conditions. His intermediate commander recommended that he be retained and if separated his character of service be honorable.

12. On 22 November 2006, the separation authority directed he be separated prior to the expiration of his current term of service, under the provisions of AR 635-200, Chapter 14, Paragraph 14-12c (2), commission of a serious offense. He further directed his service be characterized as general, under honorable conditions.

13. Accordingly, he was discharged under honorable conditions on 13 December 2006. His DD Form 214 shows he completed 1 year, 1 month, and 13 days net active service this period. His DD Form 214 also shows:

- Item 25 (Separation Authority): AR 635-200, paragraph 14-12c (2)
- Item 26 (Separation Code): JKK
- Item 27 (Reentry Code): 4
- Item 28 (Narrative Reason for Separation): Misconduct (Drug Abuse)

14. On 22 April 2010, the Army Discharge Review Board, after careful review of his application, military records and all other available evidence, determined he was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of his discharge was denied.

15. The applicant provides:

a. Commander's Request for Mental Health Evaluation requesting evaluation for the purpose of separation under chapter 14 of AR 635-200, due to a positive urinalysis test results.

b. Requirements re-testing result involving drug(s) other than marijuana memo which counsel stated this procedure is not in accordance with the requirements given by Alcohol and Drug Control Officer [REDACTED] proceeding with separation before the completion of the required mental health examination significantly reduces the possibility of rehab being deemed appropriate and almost entirely removes the possibility of retention with ongoing rehab.

c. Support statement, [REDACTED] stating the applicant was one of his company's Site Supervisors for a U.S. Army Corps of Engineers Construction Project in Riyadh, KSA from 2011 to 2014. His performance throughout that period was absolutely magnificent. This was his assessment based on personal observations. He had the privilege to witness the applicant's in-depth level of experience and knowledge in full display as he consistently demonstrated the skills, aptitude, and attention to detail to rapidly convert the most daunting and complex situations into completed actions.

(1) The applicant possesses a unique blend of sage knowledge and talent which allows him to succeed in any endeavor. Most importantly, he impresses him with his moral and ethical integrity and integrates those qualities into all that he does.

(2) A.R.T. is completely aware that the applicant received a Less Than Honorable Discharge. He followed his case closely. [REDACTED] unequivocally supports the applicant and wants the Board to know his evaluation and opinion of him character and worth as a mature individual and productive citizen to our Nation. From his perspective this singular incident is not representative of the behavior and manner of performance typical of the applicant he has known for 30 years.

(3) Having led Soldiers as an NCO and Commissioned Officer from Rifle Squad, Platoon and Battalion level, both in garrison operations and in the extremely demanding combat environment, he knows the importance of professionalism, maturity, judgement and integrity. In this regard, the applicant's embodiment of these qualities is unmatched.

(4) He understands the intent of placing derogatory information in a Soldier's file. He is thoroughly convinced that the intended purpose of a less than honorable discharge file is to ensure that the individual learns and grows personally and professionally and to leave the door open in the future.

(5) Soldiers and leaders unfortunately make mistakes but, it's what the person does as a result that truly shapes his character as an individual going forward. He also knows that we do not live in a zero-defect society (to include the U.S. Army), nor should we ruin the future career of an individual by a single incident.

d. Support statement A.Q. recommends that the Board find the applicant deserving of the opportunity of correcting his record. Since he has known the applicant, he has never doubted his sincerity and integrity. He has always acted in good faith, and he has no reason to question his record or character.

(1) He has known the applicant for approximately two and one-half years. He met the applicant in early 2021 while working on a project at the [REDACTED]. He served as the Project Superintendent for the General Contractor that built new holding cells, new administrative offices and

command center, and a new prisoner elevator for United States Marshal Services. The applicant was serving as a superintendent for Sustainable Security Solutions (S3). S3 supplied and installed all facility security infrastructure for the project. The applicant and [REDACTED] worked closely together and were colleagues from early 2021 until the project was completed in July of 2023. During their time working together [REDACTED] coordinated and scheduled work activities, crews, and logistical items so that the team could provide a satisfactory project to the owner. He observed how the applicant managed his teammates to meet the schedule without sacrificing quality or budget. When issues came up the applicant was always upfront and honest as to what the facts were. He and his employees always conducted themselves professionally and with the utmost integrity.

(2) [REDACTED] had the pleasure of working with and being a colleague of the applicant for enough time that he is comfortable with writing this recommendation letter. His level of confidence is mostly due to his experience in coordinating and communicating with him over an extended period. During their working relationship he was always professional and conducted himself with integrity and honesty. There were several times that his team came across challenges and issues. During those challenging times he never tried to "pass the buck" to someone else or try to pass the responsibility to others. He took responsibility for his and his team's performance. He always addressed the team and the situation with respect. All others involved with their project respected the applicant as an honest and direct person who could be counted on to get the job done. Working inside an active US courthouse inside the secured portions of the project demanded that all parties involved conducted themselves honestly, respectfully, and that is exactly what he did each day. He is not privy to the details of the correction that is sought. He does trust the applicant, however, because every time he spoke or collaborated with him, he was genuine, forthcoming, and portrayed a sense of honesty and trustworthiness. He does not have any reason to doubt that he would approach all others with the same characteristics.

e. Kurta memo in support of his claim.

16. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under honorable conditions (general) to honorable and other changes to his DD214. He contends he experienced mental health conditions that mitigate his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the

following: 1) The applicant enlisted in the Regular Army on 1 November 2005; 2) The applicant tested positive for cocaine on 28 July 2006; 3) The applicant was discharged on 13 December 2006, Chapter 14-12c, Misconduct (Drug Abuse). His service was characterized as general, under honorable conditions. He completed 1 year, 1 month, and 13 days net active service.

b. The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and additional medical documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder, while on active service. He reported attending five substance abuse treatment sessions after testing positive for cocaine use. The applicant underwent a Mental Health Evaluation as a part of his separation proceedings on 24 August 2006. He was not diagnosed with a mental health condition, and he was cleared for any administrative action deemed appropriate by command from a psychological perspective.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The applicant did use illegal drugs, which could be avoidant or self-medicating behavior and a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he

was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor.
2. A majority of the Board found the argument that the applicant should have been allowed to continue in ASAP compelling. A majority of the Board found this young Soldier with no other history of misconduct would have had high potential for rehabilitation. A majority of the Board found that processing him for discharge without a test of time to see if efforts at rehabilitation worked was not prohibited by regulation but may have been premature. Based on a preponderance of the evidence, a majority of the Board determined the applicant's record should be corrected to show he was honorably discharged by reason of Secretarial authority and was fully eligible to reenlist.
3. The member in the minority found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the member in the minority determined the character of service the applicant received upon separation and the reason for separation were not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show the following entries:

- Item 24 – Honorable
- Item 25 – AR 635-200
- Item 26 – JFF
- Item 27 – 1
- Item 28 – Secretarial authority

3/29/2025

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a states that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. AR 635-5-1 (Separation Program Designator Codes) prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the separation program designators to be used for these stated reasons:

- Separation Code JKK applies to enlisted Soldiers who were separated due to misconduct (Drug Abuse) under the provisions of AR 635-200, chapter 14-12c(2)
- Separation Code JFF applies to enlisted Soldiers who were separated due to personality disorder

4. AR 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 waivable and non-waivable separations. Table 3-1, defines reentry eligibility (RE) codes:

a. 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.

b. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

c. RE-4 Applies to: Person separated from last period of service with a non-waiverable 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 of active Federal service. Eligibility: Ineligible for enlistment.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//