

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 8 June 2020
- b. **Date Received:** 23 June 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, a job offer is contingent upon the applicant receiving an honorable discharge. The applicant was informed at the time of the discharge that the applicant would be able to upgrade their discharge without much trouble.

c. **Board Type and Decision:** In a records review conducted on 15 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Depressive Disorder). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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. The Board determined the reentry code is proper and equitable and voted not to change it. *Please see Section 9 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-3 / General (Under Honorable Conditions)

b. **Date of Discharge:** 4 October 2006

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 14 September 2006

(2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant used D-Amphetamine (D-AMP), D-Methamphetamine (D-METH), Methylenedioxyamphetamine (MDA), and Methylenedioxymethamphetamine (MDMA).

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

(4) **Legal Consultation Date:** On 14 September 2006, the applicant waived legal counsel.

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

(6) **Separation Decision Date / Characterization:** 18 September 2006 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 15 June 2005 / 6 years
- b. **Age at Enlistment / Education / GT Score:** 18 / High School Graduate / 110

c. **Highest Grade Achieved / MOS / Total Service:** E-3 / 68A10, Biomedical Equipment Specialist (Analyst notes - 68A10 is annotated with 00 years and 00 months; the AMHRR shows the applicant enlisted for military occupational specialty, 91A, Medical Equipment Repairer and the applicant was still in a trainee/student status when discharged) / 1 year, 3 months, 20 days

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

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** NDSM

g. **Performance Ratings:** NA

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

(1) Memorandum, Mental Health Evaluation in the case of (Applicant), dated 11 July 2006, shows the applicant was evaluated to determine the applicant's fitness for continued military duty as a result of being an inpatient at Red River for depression and self-mutilation tendencies; numerous profiles for injuries; reckless behavior; and openly crying in the commander's office. The applicant was fully suited for further military service from a psychological standpoint. The evaluation did not indicate a diagnosis.

(2) Memorandum, Notification of Positive Drug Urine Test, dated 21 July 2006, shows the applicant tested positive for D-AMP, D-METH, MDA, and MDMA from a urinalysis test conducted on 7 July 2006. The memorandum does not specify the reason for testing (i.e., Probable Cause (PO), Probable Cause (PO), Inspection Random (IR), etc.).

(3) FG Article 15, dated 23 August 2006, for wrongfully using D-AMP, D-METH, MDA, and MDMA on or about 4 and 7 July 2006) and going from the appointed place of duty on or about 11 August 2006). The punishment consisted of a reduction to E-1; forfeiture of \$636 pay per month for 2 months; and extra duty and restriction for 45 days.

(4) Developmental Counseling Form, dated 30 August 2006, for being recommended for separation because of illegal use of Meth. The applicant has attended Drug and Alcohol treatment and received counseling concerning their addiction, however, since the counseling and treatment the applicant has continued to use this illegal drug.

(5) The applicant's Enlisted Record Brief, dated 24 January 2014, shows the applicant was flagged for adverse action (AA), effective 7 July 2006 and for involuntary separation/field initiated (BA), effective 30 August 2006. The Assignment Eligibility Availability (AEA) code shows AEA code "L" which has no assignment restrictions.

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

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

(1) **Applicant provided:** None

**(2) AMHRR Listed:**

(a) Chronological Record of Medical Care, dated 9 August 2006, shows in part, the applicant's problems were listed as: Depression, adjustment disorder with depressed mood, methamphetamine abuse, therapy for alcohol abuse/dependence, and occupational problem.

(b) Commander's Action Summary, dated 31 August 2006, states on 29 August 2005, the applicant arrived at the Sheppard Air Force Base for the biomedical repair course. While there, the applicant was hospitalized for depression and self-mutilation tendencies at Red River Psychiatric Hospital on 2 February 2006. On 24 June 2006, the company commander referred the applicant for a mental evaluation because of reckless and disturbing behavior, resulting in several self-inflicted injuries. On 7 July 2006, the applicant tested positive for Methamphetamine. The company commander placed the applicant in an Air Force Holding Company due to their behavior and uncontrollability in the company. The company commander believed it would be in the best interest of the Army to discharge the applicant.

(c) Report of Medical Examination, undated, the examining medical physician noted in the significant or disqualifying defects section: Adjustment disorder with depressed mood and depression.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo]).

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in

whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), 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 uniform code of military justice (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 rules of evidence (MRE).

e. 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) Paragraph 3-8a states a Soldier is entitled to an honorable characterization of service if limited-use evidence (see AR 600-85) is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

(7) 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.

f. 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 "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (drug abuse).

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

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

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

**(3)** RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**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 AMHRR contains possible limited use information. The separation packet contains a memorandum, Commander's Action Summary, dated 31 August 2006, that shows the applicant was hospitalized for depression and self-mutilation tendencies on 2 February 2006 at Red River Psychiatric Hospital. After this incident the commander noted reckless and disturbing behavior from the applicant resulting in several self-inflicted injuries. On 24 June 2006, the commander referred the applicant for a mental evaluation. On 7 July 2006, the applicant tested positive for D-AMP, D-METH, MDA and MDMA, however the memorandum does not specify the type of testing that was conducted (i.e., Probable Cause (PO), Probable Cause (PO), Inspection Random (IR), etc.). The applicant received a FG Article 15 on 17 August 2006 for the use of illegal drugs. The record is void of a DD Form 2624 (Specimen Custody Document - Drug Testing). The applicant's DD Form 214 shows the applicant served 1 year, 3 months, 20 days. On 4 October 2006, the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a general (under honorable conditions) characterization of service.

**(c)** AR 600-85 states protected evidence under the limited use policy includes results of command-directed drug or alcohol testing that are inadmissible under the MRE. Commanders are encouraged to use drug or alcohol testing when there is a reasonable suspicion that a Soldier is using a controlled substance or has a blood alcohol concentration of .05 percent or above while on duty. This information will assist a commander in their determination of the need for counseling, rehabilitation, or medical treatment. Competency for duty tests may be directed if, for example, a Soldier exhibits aberrant, bizarre, or uncharacteristic behavior, but probable cause to believe the Soldier has violated the UCMJ through the abuse of alcohol or drugs is absent. Competency for duty test results may be used as a basis for administrative action to include separation, but normally may not be used as a basis for an action under the UCMJ or be used to characterize a Soldier's service.

**(d)** The applicant contends, in effect, being informed that they would be able to upgrade their discharge without much trouble. The U.S. Army does not have, nor has it ever had, a policy to automatically upgrade discharges. Each case is decided on its own merits when an applicant submits a DD Form 293 requesting a change in discharge. Changes may be warranted if the Board determines the characterization of service or the reasons for discharge, or both were improper or inequitable.

**(e)** The applicant contends, in effect, a job offer is contingent on an upgrade of their discharge. The Board does not grant relief to gain employment or enhance employment opportunities.

**(f)** 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.

(g) On 5 February 2024, the Army Review Boards Agency legal advisor rendered an advisory opinion in the processing of this case. It was opined:

(1) This case was referred to the ARBA Legal Office for input as to whether the positive urinalysis result for ecstasy violated the Limited Use policy.

(2) Results from a command-directed drug test and results from a test administered as part of a substance abuse treatment program are considered protected evidence under the Limited Use policy. See generally, AR 600-85, dated 23 July 2020, subparagraphs 10-12a (1) and (7).

(3) Based upon the information available in the case file, legal advisor is not prepared to say that the positive urinalysis for ecstasy violated the Limited Use policy. The legal advisor understands that the timing of the positive result, which seems to coincide with the applicant having been seen for behavioral health issues, might seem suspicious. But the coincidence in timing is not enough, in the legal advisor's opinion, to conclude that the Limited Use policy was violated. Additionally, the ecstasy-based misconduct was handled with an Article 15. This means that the local Military Justice office and the local Trial Defense Service office each reviewed the case and apparently raised no Limited Use concerns. Consequently, legal advisor does not find that the greater weight of the evidence demonstrates that a Limited Use violation occurred.

(4) Despite the legal advisor's opinion regarding the absence of a Limited Use violation, the legal advisor nevertheless believes the applicant is a good candidate for clemency consideration IAW the Wilkie memorandum. The applicant's General discharge was issued 16-17 years ago; the misconduct probably was a youthful indiscretion; the misconduct is a non-violent offense, and no other individual was injured or detrimentally affected. The applicant presumably has remained relatively misconduct-free since they was discharge from the Army. These factors tend to support a favorable disposition according to the Wilkie memorandum. Consequently, the legal advisor recommends that the ADRB consider upgrading the applicant's discharge to an Honorable discharge despite the absence of a Limited Use violation.

## 9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Depressive DO (note, diagnoses of Adjustment DO, unspecified and Adjustment DO with depressed mood are subsumed under diagnosis of Depressive DO.)

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the diagnosis of Depressive DO was made during military service.

**(3)** Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, Depressive Disorder. As there is a nexus between Depressive DO and self-medication with illicit drugs, there is a nexus between his diagnosis of Depressive DO and his 21 July 2006 positive UA for D-amphetamine, D-methamphetamine, MDA and MDMA.

**(4)** Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the Depressive Disorder condition outweighed the basis of separation.

**b.** Prior Decisions Cited:

**c.** Response to Contention(s):

**(1)** The applicant contends, in effect, being informed that they would be able to upgrade their discharge without much trouble. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Depressive Disorder fully outweighing the applicant's drug abuse basis for separation.

**(2)** The applicant contends, in effect, a job offer is contingent on an upgrade of their discharge. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

**d.** The Board determined the discharge is inequitable based on the circumstances surrounding the discharge (Depressive Disorder). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed 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. The Board determined the reentry code is proper and equitable and voted not to change it.

**e.** Rationale for Decision:

**(1)** The Board voted to change the applicant's characterization of service based on the following reasons. The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, Depressive Disorder. As there is a nexus between Depressive DO and self-medication with illicit drugs, there is a nexus between his diagnosis of Depressive DO and his 21 JUL 2006 positive UA for D-amphetamine, D-methamphetamine, MDA and MDMA. The Board discussed the applicant's contentions, carefully considered the applicant's request, evidence in the records, and medical review recommendation. Based on the BH mitigation, one time drug use and elapsed time since the misconduct (18 years), the Board concurred the current discharge is inequitable and warranted an upgrade.

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

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

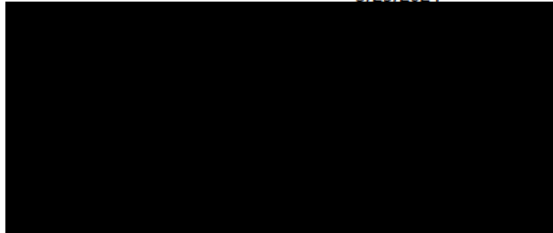


**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No change
- e. Change Authority to: AR 635-200

**Authenticating Official:**

3/25/2024



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