

**1. Applicant's Name:**

a. **Application Date:** 12 October 2020

b. **Date Received:** 15 October 2020

c. **Counsel:** Yes

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is general (under

honorable conditions). The applicant requests an upgrade to honorable and that they not be subjected to recoupment of their advanced educational expenses in the amount of \$181,284.00.

(2) The applicant, through counsel, seeks relief contending, as a matter of both fact and law, the evidence used against them is insufficient to support their separation from the United States Military Academy (USMA), discharge from the U.S. Army, and recoupment of advanced education expenses.

(3) The USMA improperly delayed the processing of their academic separation without any evidence whatsoever that they would later be alleged to have wrongfully possess or use cocaine. Their misconduct investigation violated due process requirements. The evidence in their case is factually insufficient, no evidence has ever established that the substance used was in fact cocaine. The witness' testimony at their misconduct does nothing to credibly support an allegation they ever used cocaine.

**b. Board Type and Decision:** In a records review conducted on 19 February 2025, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct / Army Regulations 210-26, Paragraph 6-15 / 309-0002 / NA / General (Under Honorable Conditions)

**b. Date of Discharge:** 29 October 2018

**c. Separation Facts:** The applicant's case separation file is void from the Army Military Human Resource Record (AMHRR); however, the applicant provided regarding their separation. The information in 3c(1) through (6) were derived from those documents.

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** NIF

(3) **Investigation Officer Recommended Characterization:** NIF

(4) **Superintendent USMA Recommendation:** NIF

**(5) Separation Decision Date / Characterization:** 29 October 2018

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 23 July 2012 / 8 years
- b. **Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 105
- c. **Highest Grade Achieved / MOS / Total Service:** Cadet / NA / 5 years, 3 months, 29 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** NA
- f. **Awards and Decorations:** NDSM
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A memorandum, USMA, subject: Amended Findings and Recommendations, Misconduct Investigation, [Applicant], dated 17 January 2018, reflects the investigating officer, after consultation with their legal advisor, submitted amended findings and recommendations to resolve ambiguity regarding the evidence they considered in reaching their findings. Having carefully considered all the evidence presented, they find that the allegations are supported by a preponderance of the evidence. The investigating officer finds the applicant, between on or about 1 March 2015 and on or about 7 March 2015, wrongfully possessed cocaine and wrongfully used cocaine, in violation of Army Regulation 210-26, paragraph 6-6, Drugs and Narcotics. The investigating officer recommends the applicant be separated from the Academy.

(2) A memorandum, Office of the Assistant Secretary of the Army Manpower and Reserve Affairs, subject: Misconduct Separation [Applicant], dated 29 October 2018, reflects the Deputy Assistant Secretary of the Army (Military Personnel and Quality of Life) approved the recommendation to separate the applicant from the USMA for misconduct and directed they be discharged from the U.S. Army with a General (Under Honorable Conditions) discharge certificate and they find the applicant unsuited for military service. The Deputy Assistant Secretary of the Army (Military Personnel and Quality of Life) directed that the applicant be ordered to repay the educational expenses to the United States Government for the cost of the advanced education assistance not to exceed \$181,284.00.

(3) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 29 October 2018, with 5 years, 3 months, and 29 days of net active service this period. The DD Form 214 shows in –

- item 18 (Remarks) – item 12c (Net Active Service This Period) includes service as a USMA Cadet from 20130701 to 20181029, Service not creditable for any purpose in commissioned officer status
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 25 (Separation Authority) – Army Regulation 210-26, Paragraph 6-15
- item 26 (Separation Code) – JKK [Misconduct (Drug Abuse)]
- item 28 (Narrative Reason for Separation) – Misconduct

**(4)** A memorandum, U.S. Army Criminal Investigation Command, subject: Law Enforcement Report – 2nd Corrected Final, dated 17 July 2019, reflects the applicant as the named subject in violation of Wrongful Possession of Cocaine, Wrongful Use of Cocaine, and Failure to Obey General Order. The Report Summary reflects the applicant was advised of their legal rights, which they waived, and denied any use or knowledge of drugs. They subsequently invoked their rights and terminated the interview. On 5 April 2016, the urinalysis test result revealed no positive results for drugs tested. Witness interviews determined the applicant had consumed controlled substances with a fellow Cadet. On 3 April 2017, the Chief of Military Justice, Office of the Staff Judge Advocate, West Point, NY, opined that probable cause exists to believe that the applicant committed the offenses of Wrongful Possession and Use of Cocaine, but no probable cause to believe they committed the offense of Failure to Obey a General Order.

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

**j. Behavioral Health Condition(s):** None

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 149 (Application for Correction of Military Records under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Memorandum, with enclosures
  - Enclosure 1 – Office of the Assistant Secretary of the Army Manpower and Reserve Affairs, Memorandum, subject: Misconduct Separation [Applicant]
  - Enclosure 2 – DD Form 214 and Discharge Order
  - Enclosure 3 – USMA Memorandum, subject: Amended Findings and Recommendations, Misconduct Investigation, [Applicant], with excerpt of Proceedings of the Misconduct Investigation Hearing
  - Enclosure 4 – Counsel's Memorandum, subject: Recoupment [Applicant]
  - Enclosure 5 – 2013 – 2015 Cost of Education Reports

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

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

**a.** Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

**d.** Army Regulation 210-26 (United States Military Academy) dated 13 November 2009, provided policy and procedures for the general governance and operations of the United States Military Academy.

**(1)** Chapter 6 (Misconduct, Honor, Disciplinary, and Other Grounds for Separations) governed misconduct, honor, disciplinary and other grounds for separation and states cadets at the United States Military Academy are members of the Regular Army and subject to military law and the UCMJ.

(2) Chapter 6-4 (Punishments that may be Awarded Cadets) stated following a hearing for conduct deficiency, misconduct, or honor resulting in a finding of a violation of paragraphs 6-6 through 6-13, 6-15, and 6-16, respectively, the Superintendent, USMA may impose the following sanctions in such amounts or in such combinations as the Superintendent, USMA deems appropriate: Admonition; Reprimand; Restriction to limits; Deprivation of privileges; Reduction in or withdrawal of cadet officer or noncommissioned officer rank; Demerits; Punishment tours; Fatigue tours; Loss of leave; Turn-back to the next lower class; and Suspension from USMA.

(3) Chapter 6-6 (Drugs and Narcotics) stated a cadet who violates UCMJ, Article 112a may be awarded sanctions per paragraph 6-4.

(4) Chapter 6-15 (Procedures for Processing Major Misconduct Offenses) stated a cadet subject to separation or other adverse action under the provisions of this section of this regulation may, at the discretion of the Superintendent, be tried by court-martial if the conduct constitutes a violation of the UCMJ, be referred to a hearing before an investigating officer under the provisions of this paragraph or be considered under procedures set forth in paragraph 6-4c. Should the Superintendent elect to proceed under the provisions of this paragraph, cadets concerned will be directed to appear as respondents before an investigating officer appointed by the Superintendent. The investigating officer will conduct an investigation of the matter in accordance with procedures approved by the Superintendent. Upon completion of the investigation, the investigating officer will submit the record of the proceedings, including his or her findings and recommendations, to the Superintendent for action pursuant to paragraph 7-3.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c(2), misconduct (drug abuse).

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

h. Manual for Courts-Martial, United States (2016 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

**8. SUMMARY OF FACT(S):**

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides an administrative irregularity in the proper retention of records, specifically the AMHRR is void of the specific facts and circumstances concerning the events which led to the discharge from the USMA and the discharge from the Army. The applicant's counsel provided numerous separation documents and a properly constituted DD Form 214 which indicates their discharge under the provisions of Army Regulation 210-26, paragraph 6-15, by reason of Misconduct, with a characterization of service of general (under honorable conditions). The applicant completed 5 years, 3 months, and 29 days of net active service this period.

c. 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 as a matter of both fact and law, the evidence used against them is insufficient to support their separation from the United States Military Academy (USMA), discharge from the U.S. Army, and recoupment of advanced education expenses.

The Board considered this contention and determined the evidence used to separate the applicant was proper and equitable. This contention does not support an upgrade as it does not excuse or mitigate the applicant's possession and use of cocaine, the basis for separation.

(2) The applicant contends the USMA improperly delayed the processing of their academic separation without any evidence whatsoever that they would later be alleged to have wrongfully possess or use cocaine.

The Board considered this contention and determined the evidence used to separate the applicant was proper and equitable. This contention does not support an upgrade as it does not excuse or mitigate the applicant's possession and use of cocaine, the basis for separation. The Chief of Military Justice, Office of the Staff Judge Advocate, West Point, NY determined

probable cause existed to believe the applicant committed the offenses of wrongful possession and use of cocaine.

(3) The applicant contends their misconduct investigation violated due process requirements. The evidence in their case is factually insufficient, no evidence has ever established that the substance used was in fact cocaine. The witness' testimony at their misconduct investigation hearing does nothing to credibly support an allegation they used cocaine.

The Board considered this contention and determined there is insufficient evidence to support this contention as probable cause existed that the applicant possessed and used cocaine. 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. In light of the current evidence of record, the Board determined the applicant's discharge was appropriate.

(4) The applicant requests to not be subjected to recoupment of their advanced education expenses in the amount of \$181,284.00.

This contention and request is not within the purview of the ADRB. This issue should be addressed by the Army Board of Correction of Military Records (ABCMR). A DD Form 149 is enclosed for the applicant's use.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant does not have a BH that could excuse or mitigate the offenses of wrongful possession and use of cocaine. The Board also considered the applicant's contention regarding violation of due process requirements and found that totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General (Under Honorable Conditions) discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

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

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

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210006541

## 10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: No
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

## Authenticating Official:

4/18/2025

X

Presiding Officer, COL, U.S. ARMY  
Army Discharge Review Board

### Legend:

AWOL – Absent Without Leave  
AMHRR – Army Military Human  
Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation  
Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral  
Health (Issues)  
OMPF – Official Military  
Personnel File  
PTSD – Post-Traumatic Stress  
Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program  
Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized  
Discharge  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs