

1. Applicant's Name: [REDACTED]
  - a. Application Date: 2 March 2021
  - b. Date Received: 17 March 2021
  - c. Counsel: [REDACTED]  
[REDACTED]

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 through counsel, requests an upgrade to honorable, and changes to the SPD and RE codes, and narrative reason to "Minor Infractions."
- b. The applicant through counsel seeks relief contending, in effect, after one mistake involving drug use in 2 years, 5 months, and 27 days, of otherwise "Honorable Service," the applicant received a FG ROP under Article 15, UCMJ and then, a "General Discharge - Under Honorable Conditions," a reenlistment code of "4," and permanently labeled a "drug abuser." Receiving a less than honorable discharge and being labeled a "drug abuser" will forever impact the applicant's ability to seek gainful and meaningful employment. The applicant would like to serve in the military again to feel the same sense of purpose and fulfillment as the applicant did during the applicant's prior service in the United States Army.
  - (1) Counsel contends, the applicant had a promising military career ahead, however, as a result of one isolated mistake, the applicant's command summarily separated the applicant from the Army, without full and meaningful consideration to the applicant's prior outstanding service and any opportunity for rehabilitation.
  - (2) Counsel contends, the "Narrative Reason" is not only an incorrect description of the applicant's misconduct, but also forever stigmatizing and will irreparably affect short and long-term employment opportunities. The applicant's misconduct, which involved only a one-time "drug use," was an aberration and not an indication of the applicant's overall good character and ability to serve in the United States Army. The applicant distinguished themself by making it through phase I of Dive School, earning honor graduate and qualifying for the Commandant's List while in the Field Artillery Fire Finder Radar Operator Course (see exhibits 4 and 5). Later, the applicant was selected for early promotion to the rank of specialist, obtained the position of squad leader, and achieved the highest physical training score in the unit (see exhibits 6 and 8).
  - (3) Argument Issue I - The applicant's involuntary separation for a single infraction was improper and inequitable considering the applicant's exceptional years of service and that the misconduct constituted an absolute aberration of the applicant's behavior and was not indicative of the applicant's overall character and ability to serve the applicant's country. A one-time drug use is a less serious event. It is unquestionable that "drug abuse" is serious. However, a one-time "drug use" with no evidence of a "pattern of use" or addiction should not carry with it the same degree of "seriousness." The applicant's misconduct was more accurately characterized as "experimental" in nature and the product of immaturity and poor judgement. The applicant had no "bad paper" and specifically no other positive urine tests in the applicant's file. Because the applicant did not and does not have a drug problem, this "event" has a lesser degree of "seriousness." There was no reason to believe that the conditions that led to separation would have continued or recurred. The applicant's successful completion of the Alcohol Substance

Abuse Program (ASAP) clearly demonstrated the applicant did not have an addiction problem and, therefore, would not have been a "disruptive" presence in the unit.

**(4)** Counsel contends there is no evidence in the applicant's military record that the chain of command ever forwarded recommendations to the brigade commander.

**(5)** Argument Issue II - The battalion commander's decision to discharge the applicant with a less than honorable discharge for a single infraction was inequitable as it constituted excessive punishment considering the direct and collateral punitive consequences of a general discharge. The applicant's discharge was "punishment enough." Had the applicant received an "Honorable Discharge," the applicant would still have suffered through receipt of counseling, flagged from attending school and promotion, receipt of a FG ROP under Article 15, UCMJ with punishment, ordered to attend ASAP, labelled as a "drug abuse[r]," and loss of job and military career. The applicant's service was meritorious, deserving of no less than an honorable discharge. AR 635-200, paragraph 3-5c states, "As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident." (See Appendix D, AR 635-200, Active Duty Enlisted Administrative Separations) "The goal should be a disposition that is warranted, appropriate and fair." (See Appendix E, Manual for Courts-Martial (MCM), Rule for Courts-Martial 306(b)(2012)) In contrast, Military Justice should not be "cruel and unusual." Based on the five basic tenets society recognizes to punish (see Appendix G, DA PAM 27-9, Military Judges Bench Book), the applicant received excessive punishment for one isolated offense. AR 635-200, paragraph 3-7a(c), states an honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service of a greater period of time during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service (emphasis added). (See Appendix E (D), AR 635-200).

**(6)** Argument Issue III - Based on the governance of the Army Discharge Review Board the applicant meets the requirements necessary for an upgrade to an honorable discharge, a change to the "narrative reason for separation," and change in separation and reenlistment codes as these decisions were inequitable considering the applicant's good conduct during years in-service and post-service accomplishments. It is axiomatic that "[a]n Honorable discharge characterization does not require flawless [M]ilitary service. Many Veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct." (See Appendix J - Kurta Memo)

**(7)** It is noteworthy that Soldiers, who have used drugs to the degree that they "need" to seek help from ASAP, are automatically entitled to an "Honorable Discharge" pursuant to the "Limited Use" Doctrine. It is certainly understandable that encouraging Soldiers to seek help for an addiction without retribution is a priority in the military. However, this invariably sends mixed messages to the military community that a Soldier will be punished harsher for a one-time drug use than a pattern of "drug use" that has led to an addiction.

**c. Board Type and Decision:** In a records review conducted on 22 November 2023, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, the circumstances surrounding the discharge, and post-service accomplishments. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

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

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

- a. **Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)
- b. **Date of Discharge:** 14 February 2017
- c. **Separation Facts:** The applicant's AMHRR is void of the case separation file. However, the applicant provided documents which are described below in 3c (1) through (6).
  - (1) **Date of Notification of Intent to Separate:** 20 January 2017
  - (2) **Basis for Separation:** The applicant was informed of the following reasons: The applicant did, between on or about 8 October 2016 and on or about 11 October 2016, wrongfully used D-amphetamine a schedule II controlled substance.
  - (3) **Recommended Characterization:** General (Under Honorable Conditions)
  - (4) **Legal Consultation Date:** On 20 January 2017, the applicant waived legal counsel.
  - (5) **Administrative Separation Board:** NA
  - (6) **Separation Decision Date / Characterization:** 27 January 2017 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 18 August 2014 / 4 years
- b. **Age at Enlistment / Education / GT Score:** 17 / High School Graduate / 116
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 13R10, Field Artillery Fire Finder Radar Operator / 2 years, 5 months, and 27 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** NDSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:** The applicant provided:
  - (1) Electronic Copy of DD Form 2624, 19 October 2016, shows the applicant tested positive for D-amphetamine 294 and D-methamphetamine 645, during an Inspection Unit (IU) urinalysis testing, conducted on 11 October 2016.
  - (2) A urinalysis evaluation, 27 October 2016, shows a medical review officer reviewed medical records in both the Electronic Health Record and Composite Health Care System which failed to show any valid prescriptions explaining the positive urinalysis result for amphetamines.

The applicant stated to have not received any off post prescriptions from any licensed doctors, nurse practitioners, physician assistants, or dentists prior to the date of the urinalysis.

(3) Developmental Counseling Form, 3 November 2016, shows the applicant was counseled for positive urinalysis results.

(4) Report of Mental Status Evaluation, 22 November 2016, shows the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements prescribed in Chapter 3, AR 40-501, and there was no psychiatric disease or defect that warranted disposition through medical channels at the time. The applicant had been screened for PTSD and mild TBI with negative results. A records review and interview suggested that the applicant was currently experiencing a substance use disorder for which the applicant required and was receiving treatment. The applicant was mentally responsible and had the mental capacity to understand and participate in administrative proceedings.

(5) FG ROP under Article 15, UCMJ, 12 December 2016, for wrongfully using D-amphetamine a schedule and D-methamphetamine between on or about 8 October 2016 and on or about 11 October 2016. The punishment consisted of a reduction from E-4 to E-3 (analyst notes the Enlisted Record Brief, 9 January 2017, and the DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects reduction to E-1 effective 12 December 2016); forfeiture of \$981.00 pay per month for 2 months (suspended); extra duty and restriction for 45 days; and an oral reprimand.

(6) DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 6 January 2017, shows the applicant was flagged for involuntary separation/field initiated (BA), effective 3 November 2016.

(7) The applicant's Enlisted Record Brief, 9 January 2017, shows the applicant was flagged for drug abuse adverse action (UA), effective 11 October 2016; and was ineligible for reenlistment due to pending separation (9V). The Assignment Eligibility Availability code "L" has no assignment restrictions. The applicant was reduced from E-4 to E-1 effective 12 December 2016.

(8) Headquarters and Headquarters Battery, Field Artillery Squadron, 3D Calvary Regiment, Fort Hood, TX, memorandum (Separation Notification to Applicant), subject: Separation Under AR 635-200, Chapter 14-12c (2), Misconduct-Abuse of Illegal Drugs, (Applicant), 20 January 2017, shows the company commander initiated action to separate the applicant for using D-amphetamine and D-methamphetamine. On this same date the applicant acknowledged receipt of the notification and waived counsel.

(9) Headquarters, Field Artillery Squadron, 3D Calvary Regiment, Fort Hood, TX, memorandum (Separation Recommendation to the Separation Authority), subject: Separation Under AR 635-200, Chapter 14-12c (2), Misconduct-Abuse of Illegal Drugs, (Applicant), 23 January 2017, shows the squadron commander recommended to the separation authority that the applicant be discharged with a General (Under Honorable Conditions) characterization.

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

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

(1) **Applicant provided:** None

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

*The ARBA's medical advisor reviewed DoD and VA medical records.*

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; applicant affidavit in support of petition; Legal Brief with all listed appendices and exhibits 1a through 14 (includes self-authored statement; enlisted record brief; six third-party letters); and case separation packet.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has volunteered with local clergy to teach Sunday school. At the same time, the applicant enrolled in college to pursue a degree in Engineering. In the applicant's second year in college the applicant achieved a 3.95 grade point average.

**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, (The Army Substance Abuse Program), 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.

e. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 1-15 states unless separation is mandatory, the potential for rehabilitation and further useful military service will be considered by the separation authority. When deciding retention or separation in a case, consider the following factors:

- The seriousness of the events or conditions that form the basis for initiation of separation proceedings
- The effect of the Soldier's continued retention on military discipline, good order, and morale
- The likelihood that the events or conditions that led to separation proceedings will continue or recur
- The likelihood that the Soldier will be a disruptive or undesirable influence in present or future duty assignments
- The Soldier's ability to perform duties effectively now and in the future, including potential for advancement or leadership
- The Soldier's rehabilitative potential
- The Soldier's entire military record

(2) Paragraph 1-18 states a highly deserving Soldier may be given a probation period to show successful rehabilitation before the Soldier's enlistment or obligated service expires. The separation authority or higher authority may suspend (except fraudulent entry) execution of an approved separation for a period of full-time military duty not to exceed 12 months. Upon

satisfactory completion of the probation period, or earlier if rehabilitation has been achieved, the authority that suspended the separation will cancel execution of the approved separation.

**(3)** Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

**(4)** Paragraph 3-7a, 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.

**(5)** Paragraph 3-7a(2), when a Soldier is discharged before expiration term of service for a reason for which an honorable discharge is discretionary, the following considerations apply:

**(a)** Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

**(b)** A Soldier will not necessarily be denied an honorable discharge solely by reason of the number of convictions by court-martial or actions under the UCMJ Article 15.

**(c)** An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service.

**(6)** Paragraph 3-7b, 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.

**(7)** 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:

**(a)** Rehabilitation is impractical or unlikely to succeed.

**(b)** Rehabilitation is impracticable or the Soldier is not amenable to rehabilitation (as indicated by the medical or personal history record).

**(8)** 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.

**(9)** Paragraph 14-12a addresses minor disciplinary infractions, defined as a pattern of misconduct, consisting solely of minor military disciplinary infractions.

**(10)** 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.

(11) 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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 through counsel, requests an upgrade to honorable, changes to the SPD and RE codes, and narrative reason to "Minor Infractions." The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 2 years, 5 months, and 27 days. The applicant received a FG ROP under Article 15, UCMJ for wrongfully using D-amphetamine a schedule and D-methamphetamine. The applicant's DD Form 214 shows 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 characterization of service of general (under honorable conditions).

**c.** The applicant through counsel contends the narrative reason for the discharge should be changed to "Minor Infractions." The "Narrative Reason" is not only an incorrect description of the applicant's misconduct, but also forever stigmatizing and will irreparably affect short and long-term employment opportunities. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (SPD Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

**d.** The applicant through counsel requests the SPD code to be changed to rejoin the Army with a waiver. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (SPD Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c(2), is "JKK."

**e.** The applicant through counsel requests the RE code to be changed to rejoin the Army with a waiver. The applicant and an Army Reserve Recruiter believe the RE-4 code is unjust since the applicant had a minor offense and the punishment did not fit the offense. Soldiers processed for separation are assigned reentry codes based on the applicant's service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

**f.** Counsel contends, in effect, there is no evidence in the applicant's military record that the chain of command ever forwarded recommendations to the brigade commander. The applicant provided Headquarters, Field Artillery Squadron, 3D Calvary Regiment, Fort Hood, TX, memorandum (Separation Recommendation to the Separation Authority), subject: Separation Under AR 635-200, Chapter 14-12c (2), Misconduct-Abuse of Illegal Drugs, (Applicant), 23 January 2017, showing the squadron commander recommended to the separation authority that the applicant be discharged with a General (Under Honorable Conditions) characterization.

**g.** Counsel contends, in effect, the applicant had a promising military career ahead, however, as a result of one isolated mistake, the applicant's command summarily separated the applicant from the Army, without full and meaningful consideration to the applicant's prior outstanding service and any opportunity for rehabilitation. AR 635-200, paragraph 1-17d(2), entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality Soldier.

**h.** Issue I - Counsel contends, in effect, the applicant's involuntary separation for a single infraction was improper and inequitable considering the applicant's exceptional years of service and that the misconduct constituted an absolute aberration of the applicant's behavior and was not indicative of the applicant's overall character and ability to serve the applicant's country. A one-time drug use is a less serious event. It is unquestionable that "drug abuse" is serious. However, a one-time "drug use" with no evidence of a "pattern of use" or addiction should not

carry with it the same degree of "seriousness." The applicant's misconduct was more accurately characterized as "experimental" in nature and the product of immaturity and poor judgement. The applicant had no "bad paper" and specifically no other positive urine tests in the applicant's file. Because the applicant did not and does not have a drug problem, this "event" has a lesser degree of "seriousness." There was no reason to believe that the conditions that led to separation would have continued or recurred. The applicant's successful completion of the ASAP clearly demonstrated the applicant did not have an addiction problem and, therefore, would not have been a "disruptive" presence in the unit.

**(a)** AR 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

**(b)** AR 635-200, 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.

**(c)** Evidence of completion of the ASAP was not provided and not located in the applicant's AMHRR.

**i.** Issue II - Counsel contends, in effect, the battalion commander's decision to discharge the applicant with a less than honorable discharge for a single infraction was inequitable as it constituted excessive punishment considering the direct and collateral punitive consequences of a general discharge. The applicant's discharge was "punishment enough." Had the applicant received an "Honorable Discharge," the applicant would still have suffered through receipt of counseling, flagged from attending school and promotion, receipt of a FG ROP under Article 15, UCMJ with punishment, ordered to attend ASAP, labelled as a "drug abuse[r]," and loss of job and military career. The applicant's service was meritorious, deserving of no less than an honorable discharge. Counsel provided:

**(a)** AR 635-200, paragraph 3-5c states, "As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident." (See Appendix D, AR 635-200)

**(b)** "The goal should be a disposition that is warranted, appropriate and fair." (See Appendix E, MCM, Rule for Courts-Martial 306(b)(2012))

**(c)** In contrast, Military Justice should not be "cruel and unusual." Based on the five basic tenets society recognizes to punish (see Appendix G, DA PAM 27-9, Military Judges Bench Book), the applicant received excessive punishment for one isolated offense.

**(d)** AR 635-200, paragraph 3-7a(2)(c), states an honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service of a greater period of time during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service (emphasis added). (See Appendix E (D), AR 635-200).

**j.** Issue III - Counsel contends that based on the governance of the Army Discharge Review Board the applicant meets the requirements necessary for an upgrade to an honorable discharge, a change to the "narrative reason for separation," and change in separation and reenlistment codes as these decisions were inequitable considering the applicant's good

conduct during years in-service and post-service accomplishments. It is axiomatic that “[a]n Honorable discharge characterization does not require flawless [M]ilitary service. Many Veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.” (See Appendix J - Kurta Memo) Analyst notes the Kurta Memo is used to clarify guidance to Military Discharge Review Boards and Boards for Correction of Military Foreign Naval Records Considering Requests by Veterans for Modification of Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment.

**k.** The applicant through counsel contends, the applicant's misconduct, which involved only a one-time “drug use,” was an aberration and not an indication of the applicant's overall good character and ability to serve in the United States Army. The applicant distinguished themselves by making it through phase I of Dive School, earning honor graduate and qualifying for the Commandant's List while in the Field Artillery Fire Finder Radar Operator Course (see exhibits 4 and 5). Later, the applicant was selected for early promotion to the rank of specialist, obtained the position of squad leader, and achieved the highest physical training score in the unit (see exhibits 6 and 8). The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

**I.** The applicant through counsel contends, to have volunteered with local clergy to teach Sunday school. At the same time, the applicant enrolled in college to pursue a degree in Engineering. In the applicant's second year in college the applicant achieved a 3.95 grade point average (see exhibit 14). The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

**m.** Counsel contends that Soldiers, who have used drugs to the degree that they “need” to seek help from ASAP, are automatically entitled to an “Honorable Discharge” pursuant to the “Limited Use” Doctrine. It is certainly understandable that encouraging Soldiers to seek help for an addiction without retribution is a priority in the military. However, this invariably sends mixed messages to the military community that a Soldier will be punished harsher for a one-time drug use than a pattern of “drug use” that has led to an addiction. The DODI 1332.28 provides each case must be decided on the individual merits, and a case-by-case basis, considering the unique facts and circumstances of the case.

**n.** The third party statements provided with the application states the applicant's accomplishments while in the military and exemplary character should be at the forefront of any decision regarding the applicant's discharge status. The applicant is kind, thoughtful, dedicated, ambitious, compassionate, and responsive to the needs of others, including strangers. It is recommended that the applicant's discharge status be changed to “Honorable” so that the applicant may once again be a dedicated member of the military.

**o.** 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.** Prior Decisions Cited:

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

**(1)** The applicant through counsel contends the narrative reason for the discharge should be changed to "Minor Infractions." The "Narrative Reason" is not only an incorrect description of the applicant's misconduct, but also forever stigmatizing and will irreparably affect short and long-term employment opportunities. The Board considered this contention, and though the narrative reason upon separation was correct, decided that the applicant's post service, time since discharge, and that the narrative reason has served its purpose and is no longer just.

**(2)** Counsel contends, in effect, there is no evidence in the applicant's military record that the chain of command ever forwarded recommendations to the brigade commander. The Board found no evidence, nor did the applicant provide evidence, to support this contention.

**(3)** Counsel contends, in effect, the applicant had a promising military career ahead, however, as a result of one isolated mistake, the applicant's command summarily separated the applicant from the Army, without full and meaningful consideration to the applicant's prior outstanding service and any opportunity for rehabilitation. The Board appreciates the applicant's service and did consider this during deliberations.

**(4)** Issue I - Counsel contends, in effect, the applicant's involuntary separation for a single infraction was improper and inequitable considering the applicant's exceptional years of service and that the misconduct constituted an absolute aberration of the applicant's behavior and was not indicative of the applicant's overall character and ability to serve the applicant's country. A one-time drug use is a less serious event. It is unquestionable that "drug abuse" is serious. However, a one-time "drug use" with no evidence of a "pattern of use" or addiction should not carry with it the same degree of "seriousness." The applicant's misconduct was more accurately characterized as "experimental" in nature and the product of immaturity and poor judgement. The applicant had no "bad paper" and specifically no other positive urine tests in the applicant's file. Because the applicant did not and does not have a drug problem, this "event" has a lesser degree of "seriousness." There was no reason to believe that the conditions that led to separation would have continued or recurred. The applicant's successful completion of the ASAP clearly demonstrated the applicant did not have an addiction problem and, therefore, would not have been a "disruptive" presence in the unit. 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 length and post service accomplishments outweigh and mitigate the applicant's drug abuse basis for separation.

**(5)** Issue III - Counsel contends that based on the governance of the Army Discharge Review Board the applicant meets the requirements necessary for an upgrade to an honorable discharge, a change to the "narrative reason for separation," and change in separation and reenlistment codes as these decisions were inequitable considering the applicant's good conduct during years in-service and post-service accomplishments. It is axiomatic that "[a]n Honorable discharge characterization does not require flawless [M]ilitary service. Many Veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct." (See Appendix J - Kurta Memo) The Board considered this contention persuasive and voted to upgrade the applicant's characterization, narrative reason, and re-entry code.

**(6)** The applicant through counsel contends, the applicant's misconduct, which involved only a one-time "drug use," was an aberration and not an indication of the applicant's overall good character and ability to serve in the United States Army. The applicant distinguished themselves by making it through phase I of Dive School, earning honor graduate and qualifying for the Commandant's List while in the Field Artillery Fire Finder Radar Operator Course (see exhibits 4 and 5). Later, the applicant was selected for early promotion to the rank of specialist, obtained the position of squad leader, and achieved the highest physical training score in the unit (see exhibits 6 and 8). 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 length and post service accomplishments outweigh and mitigate the applicant's drug abuse basis for separation.

**(7)** The applicant through counsel contends, to have volunteered with local clergy to teach Sunday school. At the same time, the applicant enrolled in college to pursue a degree in Engineering. In the applicant's second year in college the applicant achieved a 3.95 grade point average (see exhibit 14). 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 length and post service accomplishments outweigh and mitigate the applicant's drug abuse basis for separation.

**(8)** Counsel contends that Soldiers, who have used drugs to the degree that they "need" to seek help from ASAP, are automatically entitled to an "Honorable Discharge" pursuant to the "Limited Use" Doctrine. It is certainly understandable that encouraging Soldiers to seek help for an addiction without retribution is a priority in the military. However, this invariably sends mixed messages to the military community that a Soldier will be punished harsher for a one-time drug use than a pattern of "drug use" that has led to an addiction. 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 length and post service accomplishments outweigh and mitigate the applicant's drug abuse basis for separation.

**d.** The Board determined: 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. The applicant's (length, post service accomplishments) does mitigate the applicant's misconduct drug abuse. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was inequitable.

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**e. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length and post service accomplishments outweighed the applicant's misconduct of drug abuse. Thus, the prior characterization is no longer appropriate.

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

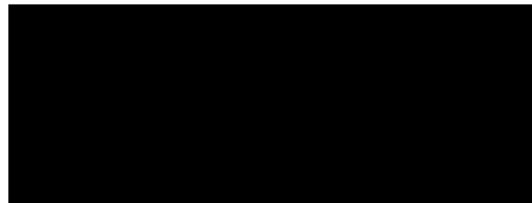
(3) The RE code will change to 3, as the current code no longer applies.

**10. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

7/29/2025



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 ROP – Field Grade Record of Proceedings under 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  
UCMU – Uniform Code of Military Justice  
UNC – Uncharacterized Discharge  
UOTHC – Under Other Than Honorable Conditions  
VA – Department of Veterans Affairs