

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 1 February 2022
- b. **Date Received:** 14 February 2022
- c. **Counsel:** None

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 Uncharacterized. The applicant requests a change of their reentry code and the narrative reason for separation.

(2) The applicant seeks relief stating they are requesting this change to be eligible to reenlist in the U.S. Army. The reentry code they received is an unjust decision, this was a onetime occurrence of recreational use of Adderall, an impeachable immature decision during their youth.

(3) Since their discharge they have maintained good character and moral standards. There has been no other occurrences in a decade. They have gained maturity and still wish to serve in the U.S. Army. It is their understanding that policies have changed since this occurrence and there is a possibility of a waiver for enlistment providing an upgrade.

b. Board Type and Decision: In a records review conducted on 17 July 2024, and by a 3-2 vote, the Board determined the narrative reason for the applicant's separation is now inequitable based on the applicant's immaturity at the time of enlistment and the one-time incidence of drug use outweighing the applicant's basis for separation (positive urinalysis test for D-Amphetamine). Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 11, and the narrative reason for separation to Entry Level Performance and Conduct. Accordingly, the separation code changed to JGA and the Re-entry Code to 3. The Board determined the characterization of service was proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / Army Regulations 635-200, Paragraph 14-12c(2) / JKK / RE-4 / Uncharacterized

b. Date of Discharge: 7 March 2008

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 1 February 2008

(2) **Basis for Separation:** on 3 January 2008, tested positive for D-Amphetamine, a schedule II controlled substance.

(3) **Recommended Characterization:** entry-level separation (Uncharacterized)

(4) **Legal Consultation Date:** 1 February 2008

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 26 February 2008 / Entry-Level Separation (Uncharacterized)

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 24 September 2007 / 3 years, 22 weeks
- b. **Age at Enlistment / Education / GT Score:** 18 / Test-Based Equivalent Diploma / 98
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / NA / 5 months, 14 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** None
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) A DA Form 4856 (Developmental Counseling Form), dated 16 January 2008, reflects the applicant received performance oriented counseling, from their Senior Drill Sergeant, for urinating in another Soldier's canteen, failing to adhere to the Army Values, violating the commander's Do's and Don'ts policy and recommendation for a Field Grade Article 15. The Key Points of Discussion reflects the applicant's misconduct and the Senior Drill Sergeant states "It is obvious that you no regard for anyone else but yourself. You have no RESPECT for anybody and prove that by doing what you did. You also lack INTEGRITY because the 1SG [first sergeant] asked all the restarts who had done it and you failed to fess up to it. Due to your actions and your lack of Army Values, I am recommending to the company commander that you receive a Field Grade Article 15." The applicant agreed with the information and signed the form.

(2) A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 17 January 2008, reflects the applicant received nonjudicial punishment for, on or about 16 January 2008, disorderly which conduct was of a nature to bring discredit upon the Armed Forces, in violation of Article 134 (Disorderly Conduct), UCMJ. Their punishment consisted of a reduction in rank/grade from private two/E-2 to private/E-1 and forfeiture of \$290.00 pay. The applicant elected not to appeal.

(3) A DA Form 2627 dated 28 January 2008, reflects the applicant nonjudicial punishment for, between on or about 15 December 2007 and 3 January 2008, wrongfully used D-Amphetamine a schedule II controlled substance, in violation of Article 112a (Wrongful Use of Controlled Substance), UCMJ. Their punishment consisted of forfeiture of \$673.00 pay for 2 months and extra duty and restriction for 15 days. The applicant elected not to appeal.

(4) A Standard Form 600 (Chronological Record of Medical Care), dated 1 February 2008, reflects the applicant was seen for mental health screening for administrative separation at the request of their unit. There were no overt psychological conditions noted on review of

records and evaluation requiring disposition through medical channels. The applicant is psychologically cleared for any administrative actions deemed appropriate by command.

(5) A memorandum, Charlie Company, 3rd Battalion, 330th Infantry, subject: Separation under Army Regulation 635-200, Chapter 14, Section III, Paragraph 14-12c, dated 1 February 2008, the applicant's company commander notified the applicant of their intent to separate them under the provisions of Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, for, on 3 January 2008, testing positive for D-Amphetamine, a schedule II controlled substance; with a recommendation to receive an entry-level separation (uncharacterized). On the same day, the applicant acknowledged the notification and of their right to consult with counsel prior to making any election of rights.

(6) On 1 February 2008, the applicant completed their election of rights signing they had been afforded the opportunity to consult with appointed counsel, they declined that opportunity. They continued to decline the opportunity to be advised by their consulting counsel of the basis for the contemplated action to separate them for a commission of a serious offense and its effects; of the rights available to them; and of the effect of any act taken by them in waiving their rights. They elected not to submit statements in their behalf.

(7) A memorandum, Charlie Company, 3rd Battalion, 330th Infantry, subject: Separation under Army Regulation 635-200, Chapter 14, Section III, Paragraph 14-12c, dated 1 February 2008 the applicant's company commander submitted a request to separate them prior to their expiration of their current term of service. The company commander states they do not consider it feasible or appropriate to accomplish other disposition as the applicant's lack of discipline will continue to produce conduct of a nature that brings discredit upon the Armed Forces.

(8) A memorandum, Headquarters, 198th Infantry Brigade, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 26 February 2008, the separation authority approved the recommendation to separate the applicant from the Army prior to the expiration of their current term of service. The separation authority directed the applicant will be discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2), with issuance of an entry-level separation (uncharacterized).

(9) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 7 March 2008, with 5 months and 14 days of net active service this period. They have not completed the first full term of service of their contractual obligation of 3 years and 22 weeks. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12h (Effective Date of Pay Grade) – 17 January 2008
- item 24 (Character of Service) – Uncharacterized
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12c(2)
- item 26 (Separation Code) – JKK
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

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

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

5. **APPLICANT-PROVIDED EVIDENCE:** None submitted with application.

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), with letter
- Discharge Orders
- DD Form 214
- Congressional Letter of Recommendation
- seven 3rd Party Letters of Recommendation
- College Transcripts and Program Certificate
- Emergency Medical Technician License and Certificate
- Resume

6. POST SERVICE ACCOMPLISHMENTS: Community College Graduate with Emergency Medical Technician Course Certificate and License.

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 635-200 (Active Duty Enlisted Administrative Separations), 6 July 2005, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Paragraph 3-9 (Uncharacterized Separations) stated a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status. The Glossary, Section II (Terms) states for Regular Army Soldiers, entry-level status is the first 180 days of continuous active duty.

(5) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, abuse of illegal drugs is serious misconduct; however, 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. 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.

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).

f. 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 DoD Instructions 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.

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 (2008 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 the following 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. The applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received nonjudicial punishment under the UCMJ for wrongfully using D-Amphetamine, a schedule II controlled substance, which led to their involuntary separation from the service. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service as uncharacterized. The applicant completed 5 months and 14 days of their 3-year, 22-week service obligation and did not complete their first full term of service.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

d. 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 stating they are requesting this change to be eligible to reenlist in the U.S. Army. The reentry code they received is an unjust decision, this was a onetime occurrence of recreational use of Adderall, an impeachable immature decision during their youth. The Board considered this contention and voted to change the Re-entry Code to 3.

(2) The applicant contends stating since their discharge they have maintained good character and moral standards. There has been no other occurrences in a decade. They have

gained maturity and still wish to serve in the U.S. Army. The Board considered this contention in their deliberations.

(3) The applicant contends stating it is their understanding that policies have changed since this occurrence and there is a possibility of a waiver for enlistment providing an upgrade. The Board considered this contention and voted to change the Re-entry Code to 3.

c. The Board determined the narrative reason for the applicant's positive urinalysis test for D-Amphetamine is now inequitable based on the applicant's immaturity at the time of enlistment and the one-time incidence of drug use. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 11, and the narrative reason for separation to Entry Level Performance and Conduct. Accordingly, the separation code changed to JGA and the Re-entry Code to 3. The Board determined the characterization of service was proper and equitable and voted not to change it. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 there were no mitigating factors for the Board to consider. Since the applicant was discharged while in an ELS, Uncharacterized is proper and equitable. 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.

(2) The Board voted to change the reason for discharge to Entry Level Performance and Conduct under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JGA.

(3) The Board voted to change the RE code to RE-3.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

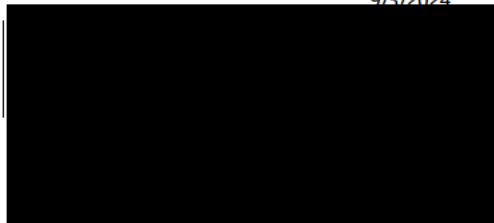
AR20220005349

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: No Change
- c. Change Reason / SPD Code to: Entry Level Performance and Conduct/JGA
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200, Chapter 11

Authenticating Official:

9/3/2024



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