

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

- a. **Application Date:** 20 January 2023
- b. **Date Received:** 25 January 2023
- 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 general (under honorable conditions). The applicant requests an upgrade to honorable and a change in their separation code.

(2) The applicant seeks relief stating though their discharge happened a long time ago, they would like to close that chapter of their life with integrity. They are a completely different person now and they would like the record to show that development. They have since become a working professional, graduated from college with a Bachelor of Arts and Master of Fine Arts degrees. Most importantly, they have come to realize their problem with alcohol and have quit completely. That was the root of their issues while in the Army, and they would like the record amended.

**b. Board Type and Decision:** In a personal appearance conducted on 11 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, time since the misconduct 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. The Board determined the reentry code was proper and equitable and voted not to change it.

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Pattern of Misconduct / Army Regulation 635-200, Paragraph 14-12B / JKA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 21 June 2008

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 16 November 2009

(2) **Basis for Separation:** received two Field Grade Articles 15 for drinking underage.

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

(4) **Legal Consultation Date:** on or about 30 April 2008

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

**(6) Separation Decision Date / Characterization:** 3 June 2009 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

- a. **Date / Period of Enlistment:** 3 January 2007 / 6 years, 32 weeks
- b. **Age at Enlistment / Education / GT Score:** 19 / HS Graduate / 123
- c. **Highest Grade Achieved / MOS / Total Service:** E-2 / 35M10, Human Intelligence Collector / 1 year, 5 months, 19 days
- d. **Prior Service / Characterizations:** None
- e. **Overseas Service / Combat Service:** Korea / None
- f. **Awards and Decorations:** NDSM, GWTSM, KDSM, ASR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

**(1)** A DA Form 2627 (Record of Proceedings under Article 15, UCMJ), dated on or about 15 November 2007, reflects the applicant received nonjudicial punishment for, on or about 5 November 2007, failed to obey a lawful general order, to wit: United States Forces Korea Command Policy Number 8, Legal Drinking Age, by drinking while under the legal drinking age. Their punishment consisted of reduction in rank/grade from private two/E-2 to private/E-1, forfeiture of \$303.00 pay for 2 months, extra duty and restriction for 45 days. The applicant elected not to appeal.

**(2)** A DA Form 2627 (Record of Proceedings under Article 15, UCMJ), dated on or about 31 January 2008, reflects the applicant received nonjudicial punishment for, on or about 19 January 2008, failed to obey a lawful general order, to wit: United States Forces Korea Command Policy Number 8, Legal Drinking Age, by drinking while under the legal drinking age. Their punishment consisted of forfeiture of \$335.00 pay, extra duty and restriction for 45 days, and an oral reprimand. The applicant elected not to appeal.

**(3)** A DA Form 3822 (Report of Mental Status Evaluation) dated 20 February 2008, (Note: the majority of the form is illegible) reflects the applicant was mentally responsible. Based on the evaluation the diagnostic impressions is an Axis I – Alcohol Abuse, rule out Alcohol Dependence. The applicant meets the retention standard and there is no psychiatric issue or defect which warrants disposition through medical channels. The applicant was referred to the Army Substance Abuse Program. The applicant is motivated for continued service and reports ASAP having been helpful in the past. As such, recommend command support their self-referral to that program again. The applicant is cleared for any administrative action deemed appropriate by command.

**(4)** A DD Form 2808 (Report of Medical Examination), 9 April 2008, reflects the applicant is qualified for service with no physical profile limitations.

**(5)** A memorandum, Headquarters and Service Company, 3rd Military Intelligence Battalion (Aerial Exploitation), subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12b, Patterns of Misconduct, dated 24 April 2008, notified the applicant of initiating

actions to separate them for a Pattern of Misconduct as described above in paragraph 3c(2). On the same day the applicant acknowledged receipt of notification for separation.

(6) On 30 April 2008, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They understood that as the result of issuance of a discharge under other than Honorable conditions, they may be ineligible for many or all benefits as a veteran under both federal and state laws and that they may expect to encounter substantial prejudice in civilian life. They elected to submit a statement on their behalf. (Note: statements in the applicant's behalf are not in evidence for review.)

(7) A memorandum, Headquarters and Service Company, 3rd Military Intelligence Battalion (Aerial Exploitation), subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12b, Patterns of Misconduct, dated 2 May 2008, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The company commander states it is not feasible or appropriate to accomplish other disposition because in their opinion the applicant has not demonstrated sufficient desire to overcome their shortcomings and be a quality member of the unit. Continued presence in the unit will reduce morale, readiness, and effectiveness.

(8) A memorandum, Headquarters, 501st Military Intelligence Brigade, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12b, dated 9 June 2008, the separation authority approved the issuance of a General (Under Honorable Conditions) discharge.

(9) On 21 June 2008, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 1 year, 5 months and 19 days of net active service this period and did not complete their first full term of service obligation of 6 years and 32 weeks. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12i (Effective Date of Pay Grade) – 25 January 2008
- item 18 (Remarks) – in part, Member has not completed first full term of service
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKA [Pattern of Misconduct]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Pattern of Misconduct

(10) On 16 July 2010, the Army Discharge Review Board denied the applicant's request to upgrade the characterization of service. The Board, after carefully examining the applicant's record of service and their misconduct; determined the applicant's discharge was both proper and equitable and voted to deny relief.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** MSE/BHE as described in previous paragraph 4h(3).

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge or Dismissal from the Armed Forces of the United States)
- DD Form 214
- Four 3rd Party Character Statements
- College Transcripts

**6. POST SERVICE ACCOMPLISHMENTS:** Bachelor of Arts and Master of Fine Arts degrees.

**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 Instruction 1332.28.

**d.** 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.

**e.** Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 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)** Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

**(a)** When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

**(b)** Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

**(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 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

**(6)** Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

**(7)** Chapter 15 (Secretarial Plenary Authority), currently in effect, 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 (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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, (Pattern of Misconduct).

**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 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 waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

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

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

h. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) dated 15 October 2001, prescribed policies, and procedures to implement, administer, and evaluate the ASAP. 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.

(1) 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.

(2) ASAP participation is mandatory for all Soldiers who are command referred. Failure to attend a mandatory counseling session may constitute a violation of Article 86 (Absence Without Leave) of the UCMJ.

(3) Alcohol and/or other drug abusers, and in some cases dependent alcohol users, may be enrolled in the ASAP when such enrollment is clinically recommended. Soldiers who fail to participate adequately in, or to respond successfully to, rehabilitation will be processed for administrative separation and not be provided another opportunity for rehabilitation except under the most extraordinary circumstances, as determined by the Clinical Director in consultation with the unit commander.

(4) When a unit commander, in consultation with the ASAP clinical staff, determines that rehabilitative measures are not practical and that separation action will be initiated, all Soldiers identified as illegally abusing drugs will be processed for administrative separation. Soldiers diagnosed as being drug dependent by a physician will be detoxified and then processed for administrative separation and be considered for disciplinary action under the UCMJ.

**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 AMHRR reflects the received nonjudicial punishment under the provisions of Article 15, UCMJ on two occasions for wrongfully consuming alcohol while being under the legal drinking age. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of a pattern of misconduct, with a characterization of service of general (under honorable conditions). They completed 1 year, 5 months and 19 days of net active service; however, they did not complete their 6-year, 32-week contractual enlistment agreement obligation.

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. The applicant's Army Military Human Resource Record provided documentation of a diagnosis of Alcohol Abuse during the applicant's military service.

e. 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. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE:** In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. **The applicant submitted the following additional document(s):** None.

b. **The applicant presented the following additional contention(s):** None

c. **Counsel / Witness(es) / Observer(s):** None.

#### **10. 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 though their discharge happened a long time ago, they would like to close that chapter of their life with integrity. They are a completely different person now and they would like the record to show that development. Most importantly, they have come to realize their problem with alcohol and have quit completely. That was the root of their issues while in the Army, and they would like the record amended. The Board considered



this contention, the applicant's record of service, heartfelt testimony, time since discharge and post service accomplishments and determined relief was warranted.

(2) The applicant contends stating they have since become a working professional, graduated from college with a Bachelor of Arts and Master of Fine Arts degrees. The Board commends and supports the applicant's post service accomplishments and voted to grant relief based on applicant's record of service, heartfelt testimony, time since discharge and post service accomplishments.

(3) The applicant contends stating they have come to realize their problem with alcohol and have quit completely. That was the root of their issues while in the Army, and they would like the record amended. The Board considered this contention, the applicant's record of service, heartfelt testimony, time since discharge and post service accomplishments and determined relief was warranted.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, time since the misconduct 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. The Board determined the reentry code was proper and equitable and voted not to change it.

**d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable based on the applicant's record of service, heartfelt testimony, time since discharge and post service accomplishments. 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.

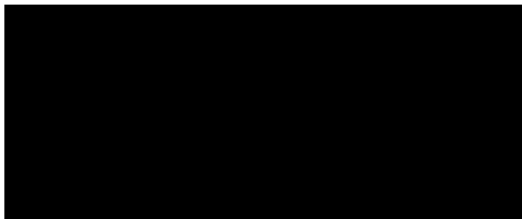
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**11. BOARD ACTION DIRECTED:**

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

**Authenticating Official:**

3/27/2024



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

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

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

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