

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

- a. **Application Date:** 16 May 2023
- b. **Date Received:** 16 May 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, in effect, an upgrade to honorable.

(2) The applicant seeks relief stating evidence was withheld until after their nonjudicial punishment under the provisions of Article 15 was processed. This evidence would have helped them during the process, which may have affected their decision to demand a trial by court-martial. They requested this information before their nonjudicial punishment, and they did not receive it until a week after their administrative separation board.

(3) The new evidence showed a broken chain of custody on the urinalysis, the correct procedures of the test by the toxicology lab, and how close D-amphetamine and phenylephrine are when tested. During their separation board, witnesses gave false testimony and the evidence that they took their daughter's medication was also proven incorrect.

(4) The separation authority ignored Army Regulation 635-200, paragraph 2-12a and overruled the board's decision of suspension of separation 13 days before the legal review was completed. The separation authority did not allow new evidence to be reviewed by a commissioned officer in the rank/grade of major/O-4 or higher before recommending separation again. The rebuttal of the board was submitted 3 days before the legal review was released, due to the separation authority's decision, giving them no due process and clearly ignoring regulation.

**b. Board Type and Decision:** In a records review conducted on 15 April 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's MDD mitigating applicant's amphetamines drug use basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's BH history.

Please see Section 10 of this document for more detail regarding the Board's decision.

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / Army Regulations 635-200 / JKK / RE-4 / General (Under Honorable Conditions)

**b. Date of Discharge:** 15 June 2023

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

**(1) Date of Notification of Intent to Separate:** 24 August 2022

**(2) Basis for Separation:** between 14 December 2021 and 13 January 2022, wrongfully used amphetamine.

**(3) Recommended Characterization:** Under Other Than Honorable Conditions

**(4) Legal Consultation Date:** 30 August 2022

**(5) Administrative Separation Board:** as reported on memorandum, subject: Legal Review of Administrative Separation Board [Applicant], on 24 August 2022, the applicant was referred to an administrative separation board for misconduct. The applicant's chain of command recommended separation with characterization of service as general (under other than honorable conditions). On 24 February 2023, the Administrative Separation Board recommended a suspended separation (6 months) with characterization of service as general (under honorable conditions), with the separation suspended for 6 months.

**(6) Separation Decision Date / Characterization:** 28 April 2023 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 4 November 2020 / 6 years

**b. Age at Enlistment / Education / GT Score:** 36 / Associate Degree / 134

**c. Highest Grade Achieved / MOS / Total Service:** E-6 / 46V2O, Visual Information Specialist / 12 years, 10 months, 6 days

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

**e. Overseas Service / Combat Service:** Nigeria, Democratic Republic of the Congo Bahrain / None

**f. Awards and Decorations:** ARCOM, AAM-8, USAM, AGCM-3, NDSM, GWTEM, GWTSM, HSM, NCOPDR-2, ASR

**g. Performance Ratings:** 1 December 2014 – 30 November 2015 / Among the Best  
1 December 2015 – 5 September 2016 / Highly Qualified  
6 September 2016 – 5 September 2017 / Qualified  
6 September 2017 – 29 May 2021 / Highly Qualified

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

**(1)** A memorandum, U.S. Army Criminal Investigation Division (USACIDC), subject: Law Enforcement Report – 1st Interim, dated 6 April 2022, reflects the applicant as the named subject with the offense of wrongful use of Amphetamine/Methamphetamine detected by urinalysis, violation of Article 112a, UCMJ. The Report Summary states information in this report is based upon allegation or preliminary investigation and may change prior to completion of the

report. The office was notified by the applicant's company commander that the applicant tested positive for dextroamphetamine during a unit urinalysis inspection. On 31 March 2022, military justice advisor, Office of the Staff Judge Advocate, Fort Detrick, opined probable cause exists to believe the applicant committed the offense of Wrongful Use of Amphetamine / Methamphetamine. No additional investigative efforts are required. There is sufficient evidence to provide to command for consideration of action.

**(2)** A DA Form 2627 (Record of Proceeding under Article 15, Uniform Code of Military Justice (UCMJ)., dated 8 June 2022, reflects the applicant received nonjudicial punishment from their battalion commander, for between on or about 14 December 2021 and on or about 13 January 2022, wrongfully used D-amphetamine, in violation of Article 112a, UCMJ.

**(a)** The applicant elected to attach matters in defense and to present them in person. The applicant was found guilty of all specifications and the issuing authority directed the DA Form 2627 be filed in the applicant's Army Military Human Resource Record (AMHRR).

**(b)** The applicant elected to appeal and submit additional matters, stating, due to new evidence, they feel their results were a false positive for over the counter Alka-Seltzer Plus Cold, Dayquil, and Nyquil medicine they took the night prior and the morning of the urinalysis to help with cold symptoms. All three of these medications have been proven to provide false positives for amphetamines. The applicant submitted 3rd Party Letters of Support to attest to their character, the potential for a false positive, and that drug use is not consistent with the character of the applicant.

**(c)** Their punishment consisted of a reduction in rank/grade from staff sergeant/E-6 to sergeant/E-5 and extra duty and restriction for 21 days.

**(d)** On 16 June 2022 the reviewing judge advocate states the proceedings were conducted in accordance with law and regulation and the punishment impose was not unjust nor disproportionate to the offense committed. The brigade commander, after consideration of all matters presented in the appeal, denied the applicant's appeal.

**(3)** A memorandum, U.S. Army Human Resources Command, subject: Notification of Immediate Reenlistment Code 13 Transaction, dated 22 July 2022, notified the applicant of their DA Form 2627 being filed in their AMHRR, making them eligible for Qualitative Management Program (QMP) board consideration.

**(4)** A memorandum, Headquarters, 55th Signal Company (Combat Camera), 114th Signal Battalion, subject: Notification of Separation under Army Regulation 635-200, Paragraph 14-12c(2), dated 24 August 2022, 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(2), misconduct-abuse of illegal drugs, for between 14 December 2021 and 13 January 2022, wrongfully used amphetamine. The company commander recommended the applicant receive an under other than honorable conditions characterization of service. On the same day, the applicant acknowledged receipt of the separation notice.

**(5)** On 30 August 2022, the applicant completed their election of rights signing they had been advised by counsel of the basis for the contemplated action to separate them, and its effects; and of the rights available to them; and of the effect of any action taken by them in waiving their rights. The applicant requested consideration of their case by an administrative separation board with a personal appearance and military counsel. 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 they may expect to encounter substantial prejudice in civilian life.

(6) A memorandum, Headquarters, 114th Signal Battalion, subject: Commander's Report for Separation under Army Regulation 635-200, Chapter 14-12c(2), Misconduct, dated 8 November 2022, the applicant's company commander, having reviewed the separation packet of the applicant and careful consideration of all matters, recommended the applicant be separated from the U.S. Army prior to the expiration of their current term of service. They recommended the applicant's service be characterized as general (under honorable conditions).

(7) A memorandum, U.S. Army Human Resources Command, subject: Department of the Army Consideration for Denial of Continued Active Duty Service under the QMP, dated 5 January 2023, notified the applicant that the QMP Selection Board conducted a comprehensive review of their record for potential denial of continued service under the QMP and recommended that they be retained. As a result, the Director of Military Personnel Management approved the board's recommendation and they may remain on active duty until the established retention control point for their grade, unless separated earlier under appropriate regulation or statute.

(8) In an email exchange, subject: Regarding Drug Test Inquiry, dated 22 February 2023, the Judge Advocate, Fort Detrick, asks a question about the drug testing procedures for Dextroamphetamines and Amphetamines, specifically as it relates to the potential for false positives.

(a) The judge advocate states they understand the procedure, the test for DAMP (D-Amphetamine) is twofold. First, an initial test is conducted that may be susceptible to a false positive if the subject has taken over-the-counter medications such as Alka-Seltzer Cold Plus Flu, Dayquil, or Nyquil. Second, if the first test shows a positive result, the sample is analyzed through a different test that is not susceptible to such a false positive for the above mentioned over-the-counter cold and flu medications.

(b) The psychiatrist, addition specialist, responds to the judge advocate's question, stating, they are correct in the way the first screening test is used, and then the confirmatory test is done for any positives from the screening test. The screening test is called an immunoassay – so a chemical that attaches to a part of the molecule (drug in this case) you are looking for. But other molecules may be similar enough in some area to link the chemical and thus cause a false positive.

(c) The psychiatrist continues to state the confirmatory test is done by the forensic laboratory on machines that use a process known as gas or liquid mass-spectroscopy. Our labs have shifted to machines using a technique called tandem liquid mass spectroscopy – so the sample is basically tested twice, just run at the same time and the results compared against each other for any errors. It breaks the sample down and the end result is that a computer reads the response as "chemical fingerprint." There are a few prescriptions that will cause a DAMP positive but that is why the medial review officer reviews the prescriptions. This type of test is not prone to false positives from over the counter medications or other things that might cause a false positive in the immune-assay test. (It will tell you that its Vick's or give the components of Nyquil.)

(9) A memorandum, Headquarters, U.S. Army Medical Research and Development Command and Fort Detrick, subject: Administrative Separation under Army Regulation 635-200, Paragraph 14-12c(2), dated 28 March 2023, the separation authority having reviewed the separation packet of the applicant, directed the applicant be separated from the Army prior to

the expiration of current term of service and their service be characterized as general (under honorable conditions). After reviewing the rehabilitative transfer requirement, the commanding general determined the requirements are waived, as the transfer serves no useful purpose or will not produce a quality Soldier.

**(10)** A memorandum, Office of the Staff Judge Advocate, U.S. Army Medical Research and Development Command and Fort Detrick, subject: Legal Review of Administrative Separation Board – [Applicant], dated 10 April 2023, the attorney-advisor states –

**(a)** The administrative separation proceedings of the applicant is legally sufficient.

**(b)** On 22 June 2022, the applicant received a Company grade Article 15 for wrongful use of D-amphetamine. They were reduced to sergeant/E-5 and given extra duty for 21 days. On 24 August 2022, the applicant was referred to an administrative separation board for misconduct-abuse of illegal drugs in violation of Army Regulation 635-200, paragraph 14-12c(2). Their chain of command recommended separation with characterization of service as general (under honorable conditions). On 24 February 2023, the Administrative Separation Board recommended a suspended separation (6 months) with characterization of service as general (under honorable conditions), with the separation suspended for 6 months. The attorney-advisor recommended the commander approve the Board's findings and recommendation regarding the applicant.

**(11)** In the applicant's memorandum to the separation authority, subject: [Applicant] – Administrative Separation, the applicant requests that the Administrative Separation Board's decision to suspend separation is upheld. They would like to present new evidence found in the litigation packet and contest evidence presented against them during the Board's proceedings on 24 February 2023, and request time to have their urinalysis from 13 January 2023 retested.

**(a)** They received the litigation packet on 1 March 2023, after requesting the information on 24 August 2022. Within the packet, it shows a broken chain of custody. They would like to file a motion to have the drug test restricted from evidence based on this information and be given the opportunity to appeal to the Army Board of Correction of Military Records to remove their nonjudicial punishment from their records.

**(b)** Witness testimony gave incorrect details of how the confirmation test was conducted. Burden of proof was not established by a preponderance of evidence and evidence to prove or deny guilt has been missing from their packet since before their nonjudicial punishment proceedings.

**(c)** During their 12-year career they have never had so much as a negative counseling. There was not a pattern of misconduct, since their 13 Janu 2022 urinalysis, they have passed the next six urinalyses. It is out of their character to jeopardize the well being of their career and family by using drugs. They would like the opportunity to show they can continue honorable service to the Army.

**(12)** A memorandum, Headquarters, U.S. Army Medical Research and Development Command and Fort Detrick, subject: Administrative Separation under Army Regulation 635-200, Paragraph 14-12c(2), dated 28 April 2023, the separation authority states –

**(a)** In their previous memorandum dated 28 March 2023, they directed the applicant be separated with a general (under honorable conditions) discharge. Prior to the completion of the applicant's out-processing, they were provided post-board rebuttal matters that were erroneously omitted from the original separation packet. They have thoroughly review the

applicant's rebuttal matters, the separation packet and met with the applicant under the open door policy.

(b) After careful consideration, they affirm the 28 March 2023 memorandum and direct the applicant be separation from the U.S. Army prior to their expiration of their current term of service and that their service be characterized as general (under honorable conditions).

(13) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 15 June 2023, with 12 years, 10 months, and 6 days of net active service this period. The DD Form 214 shows in –

- item 24 (Characterization of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKK
- item 22 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation – Misconduct (Drug Abuse)

(14) A memorandum, USACIDC, subject: Report of Investigation – Final, dated 30 June 2023, reflects the applicant as the named subject with the offense of Wrongful Use of Amphetamine/Methamphetamine Detected by Urinalysis, violation of Article 112a, UCMJ. The Report Summary states on 8 June 2022, the applicant was found guilty of wrongful use of amphetamine/methamphetamine, demoted from E6 to E5 and received 21 days of extra duty. On 15 June 2023, the applicant was separated from the military.

(15) On 19 September 2023, the applicant was provided a copy of their Report of Investigation from the USACIDC and allowed them an opportunity to comment and/or submit a rebuttal. On 2 October 2023, the applicant submitted a rebuttal stating –

(a) In response to the correspondence sent by CID, it shows nothing that was addressed in their original comments. The Report of Investigation states a polygraph was attached but does not provide the document. They tried to get the polygraph report to show it was not conducted fully or properly since they found out that this was the decision maker for their Article 15.

(b) The CID office in Fort Meade conducted the Reid Technique, which has been banned in many countries because of how it tricks and lies to suspects to get a false confession. In their case, there was no confession, but they told them that they failed the polygraph, but refused to show or tell them any of the results from the test. The polygraph does not produce evidence to prove their guilt as stated in the CID letter.

(c) The only evidence against them was a false urinalysis. A week after their administrative separation board, they received the drug test results and they immediately noted there was a major gap in which their drug test was not accounted for. It changed hands twice with no solid chain of custody. Under the rules of evidence, the broken chain of custody makes the evidence useless, but CID couldn't or didn't notice the evidence against them was incorrect.

(d) They have also learned that since their separation, their command team is under multiple investigation, one of which is falsifying documents. They are just trying to clear their name and correct their DD Form 214.

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

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

(1) **Applicant provided:** DA Form 3822 (Report of Mental Status Evaluation) reflecting behavioral health diagnoses of Lack of Adequate Sleep and Adjustment Disorder with mixed anxiety and depressed mood.

(2) **AMHRR Listed:** NIF

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Records under the Provisions of Title 10, U.S. Code, Section 1552)
- AMHRR Article 15 documents
- U.S. Army Human Resources Command memorandums regarding QMP
- Case Files for Approved Separation
- Email Exchange, requesting an upgrade of their characterization of service

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

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than

honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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 2-12 (Separation Authority Action After Board Hearings) states when the board is completed, the board proceedings will be reviewed by an attorney in the Judge Advocate fully cognizant of applicable regulations and policies to determine whether the action meets the requirements of this regulation. When the board recommends a discharge under other than honorable conditions be issued, limited use evidence was introduced in the boards



proceedings, or the Soldier alleges that there were substantial errors in the board proceedings, the proceedings will be reviewed by a commissioned officer of the Judge Advocate Corps in the grade of O-4 or higher.

(5) Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. 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. Paragraph 14-12c (Commission of a Service Offense), stated a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(6) 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.

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

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

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

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

**g.** Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) dated 28 November 2016, provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers of all components. 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, the Warrior Ethos, 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)** All Soldier who test positive for illicit drugs for the first time will be evaluated for dependency, disciplined, as appropriate, and processed for separation within 30 calendar days of the company commander receiving notification of the positive result from the ASAP. Retention should be reserved for Soldiers that show clear potential for both excellent future service in the Army and for remaining free from substance abuse. Soldiers diagnosed as drug dependent will be offered rehabilitation prior to separation.

**h.** Manual for Courts-Martial, United States (2016 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating 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 AMHRR reflects the applicant received nonjudicial punishment for wrongfully using D-amphetamine and an Administrative Separation Board recommended suspended separation for 6 months with characterization of service as general (under honorable conditions). 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 of general (under honorable conditions). The applicant

completed 12 years, 10 months, and 6 days of net active service this period; however, the applicant did not complete their 6-year contractual reenlistment 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. 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):** Applicant provided oral argument and statements in support of the contentions provided in written submissions and in support of previously submitted documentary evidence.

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? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Major Depressive DO (MDD-70%Service Connected). [Note-Diagnoses of Unspecified Depressive DO and Adjustment DO with anxiety/with mixed anxiety and depressed mood/with mixed emotional features are subsumed under diagnosis of MDD.]

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for MDD establishes it began during active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, MDD (note-diagnosis of unspecified depressive disorder is subsumed under MDD diagnosis). As there is an association between MDD and use of illicit drugs to self medicate symptoms, there is a nexus between applicant's diagnosis of MDD and the positive UA for amphetamines.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's MDD outweighed the amphetamines drug use basis for separation.

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

(1) The applicant contends evidence was withheld until after their nonjudicial punishment under the provisions of Article 15 was processed. This evidence would have helped them during the process, which may have affected their decision to demand a trial by court-martial. They requested this information before the nonjudicial punishment, and they did not receive it until a week after their administrative separation board. 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 MDD fully outweighing the applicant's amphetamines drug use basis for separation.

(2) The applicant contends the new evidence showed a broken chain of custody on the urinalysis, the correct procedures of the test by the toxicology lab, and how close D-amphetamine and phenylephrine are when tested. 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 MDD fully outweighing the applicant's amphetamines drug use basis for separation.

(3) The applicant contends during their separation board; witnesses gave false testimony and the evidence that they took their daughter's medication was also proven incorrect. 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 MDD fully outweighing the applicant's amphetamines drug use basis for separation.

(4) The applicant contends the separation authority ignored Army Regulation 635-200, paragraph 2-12a and overruled the Administrative Separation Board's decision of suspension of separation, 13 days before the legal review was completed. 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 MDD fully outweighing the applicant's amphetamines drug use basis for separation.

(5) The applicant contends the separation authority did not allow new evidence to be reviewed by a commissioned officer in the rank/grade of major/O-4 or higher before recommending separation again. 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 MDD fully outweighing the applicant's amphetamines drug use basis for separation.

(6) The applicant contends their rebuttal of the Administrative Separation Board was submitted 3 days before the legal review was released due to the separation authority's decision, giving them no due process and clearly ignoring regulation. 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 MDD fully outweighing the applicant's amphetamines drug use basis for separation.

**d.** The Board determined the discharge is inequitable based on the applicant's MDD mitigating applicant's amphetamines drug use basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed

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to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board voted the reentry eligibility (RE) code was proper and equitable due to the severity of applicant's BH history. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

**e. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's MDD mitigated the applicant's misconduct of amphetamines drug use. 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.

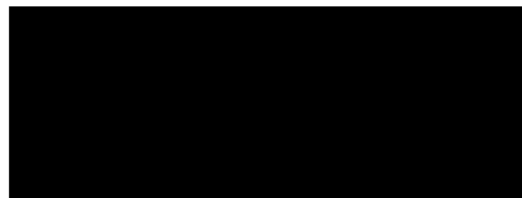
(3) The RE code will not change, based on the severity of applicant's BH history.

**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, paragraph 14-12a**

**Authenticating Official:**

7/25/2024



**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