

1. Applicant's Name: [REDACTED]**a. Application Date:** 24 April 2023**b. Date Received:** 1 May 2023**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is under honorable conditions (general). The applicant requests an upgrade to honorable, separation code change, reentry code change and a narrative reason change.

(1) The applicant through counsel states in effect, the applicant was separated from the Army due to testing positive for THC and amphetamine. The discharge was improper, and because of it the applicant received an improper discharge that has impacted their life for the past 15 years due to Army incompetence and ignorance of regulatory mandates. The Army violated its own regulations when the results biochemical test was coded CO (Competence for Duty), documentation and results of that test are considered limited use information and protected evidence as defined in AR 600-85. The use of limited use information mandates an honorable characterization of service.

(2) Additionally, the separation authority approved the applicant's separation under the provisions of AR 625-200, CH 14-12c, Misconduct (Serious Offense) which corresponds to a JKQ separation code. The applicant's narrative reason for separation was erroneously entered as Misconduct (Drug Abuse) with a JKK separation code. The error has substantially harmed the life and goals of the applicant for the last 15 years. They received a RE-Code 4 with the JKK separation code instead of RE-Code 3 with the JKQ separation code. The applicant has constantly tried to reenlist; however, they were told they were ineligible due to their reentry code. If the Army would have done its job correctly, they would have had a RE-Code 3, and they could reenlist with a waiver. The Army had no right to give the applicant a RE-Code 4, it was unauthorized, illegal, arbitrary, and capricious. The applicant's entire discharge was not consistent with the procedural and substantive requirements of the regulation, it was not within the discretion of the separation authority and the applicant was not provided full administrative due process. The applicant's DD214 is erroneous and illegal.

b. Board Type and Decision: In a records review conducted on 4 November 2024, and by a 3-2 vote, the board voted to change the narrative reason for discharge on the applicant's DD form 214, blocks 25 and 26. Therefore, the board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 14-12c (2), and narrative reason for separation to Misconduct (Serious Offense), with a corresponding separation code of JKQ. The board determined that the General (Under Honorable Conditions) discharge and RE Code are proper and equitable per regulation, and voted not to change them.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 14 November 2008

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 20 October 2008

(2) Basis for Separation: The applicant received a field grade Article 15 on 17 July 2008 for wrongfully using designer amphetamines, methamphetamines, marijuana, and ecstasy.

(3) Recommended Characterization: General, under honorable conditions.

(4) Legal Consultation Date: Waived; 22 October 2008

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 31 October 2008 / General, under honorable conditions.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 25 July 2007 / 6 years.

b. Age at Enlistment / Education / GT Score: 18 / High School Diploma / 102

c. Highest Grade Achieved / MOS / Total Service: E-2 / 89B10 Ammunition Specialist / 1 year, 3 months, 20 days.

d. Prior Service / Characterizations: None.

e. Overseas Service / Combat Service: None.

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 22 April 2008 the applicant's immediate commander requested a urinary analysis for the applicant and six other individuals after it was reported that ecstasy was present at party in a barracks room.

(2) On 22 April 2008 the applicant made a statement under oath, admitting to purchasing and taking ecstasy on 21 April 2008.

(3) A DD Form 2624 dated 22 April 2008 provides the applicant and six other individuals were command ordered (CO) for drug testing.

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(4) A Lab Results Report document provides the applicant tested positive for DAMP, DMETH, MDA, MDMA and THC from the specimen sample that was collected on 22 April 2008.

(5) A Developmental Counseling Form dated 9 May 2008 provides the applicant was counseled after they tested positive for amphetamine, methamphetamine, ecstasy, and THC during a command directed urinalysis test.

(6) A 15th Sustainment Brigade Legal Office, Legal Action Request document signed 14 May 2008 indicates options for separation under Chapter 14 for misconduct included:

- 14-12a Minor Infractions
- 14-12b Pattern of Misconduct
- 14-12c Serious Misconduct

(7) Record of Proceedings UCMJ document signed 17 July 2008 provides the applicant received a NJP for violating Article 112a of the UCMJ; they wrongfully used designer amphetamines, methamphetamine, marijuana, and ecstasy between 23 March 2008 – 22 April 2008. Punishment consisted of reduction in rank to E-1, forfeiture of \$500 for two months, extra duty and restriction for 45 days.

(8) On 20 October 2008 the applicant's immediate commander notified them of their intent to separate them for Commission of a serious offense. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they waived consulting with counsel and completed their election of rights indicating they understood the prejudices that may occur in receiving a characterization of service less than honorable.

(9) On 28 October 2008 the command endorsed and concurred with the commander's discharge recommendation and on 31 October 2008 the appropriate authority approved the separation under the provisions of AR 635-200, Chapter 14, Paragraph 14-12 (Commission of a serious offense) and directed a general, under honorable conditions characterization of service.

(10) A Certificate Of Release Or Discharge From Active Duty document provides the applicant was discharged on 14 November 2008, they completed 1 year, 3 months, and 20 days of their contractual obligation.

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

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

(1) **Applicant provided:**

(2) **AMHRR Listed:** ASAP enrollment.

5. APPLICANT-PROVIDED EVIDENCE: A DD Form 293 (Record Review) application and a five page legal brief.

6. POST SERVICE ACCOMPLISHMENTS: The applicant volunteers at their church, participates in veteran support groups and activities and they are currently employed as a manager at a restaurant.

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel provides the authorized types of characterization of service or description of separation.

(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) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- Involuntary separation due to parenthood
- Personality disorder
- Other designated physical or mental conditions
- Entry-level performance and conduct
- Unsatisfactory performance
- Minor disciplinary infractions or a pattern of misconduct
- Failure to meet body fat standards.

(5) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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.

e. Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

f. Army Regulation 635-5-1 (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, misconduct (drug abuse).

g. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers’ Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

- 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
- 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
- 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

h. 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. It provides 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 missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

(1) 6-4 Limited Use Policy limits the characterization of discharge to honorable if protected evidence is used. Protective evidence is limited to:

- Results of a command-directed biochemical testing that is inadmissible under the Military Rules of Evidence
- Results of a biochemical test collected solely as part of a limited use safety mishap investigation undertaken for accident analysis and the development of countermeasures.
- Information concerning drug or alcohol abuse or possession of drugs incidental to personal use, including the results of a biochemical test, collected because of a Soldier’s emergency medical care solely for an actual or possible alcohol or drug overdose.

- A Soldier's self-referral to the ASAP.
- Admissions and other information concerning alcohol or other drug abuse or possession of drugs incidental to personal use occurring prior to the date of initial referral to the ASAP and provided by Soldiers as part of their initial entry into the ASAP.
- Biochemical test results, if the Soldier voluntarily submits to a DOD or Army treatment program before the Soldier has received an order to submit for a lawful biochemical test.
- The results of a biochemical test administered solely as a required part of a DOD or Army rehabilitation or treatment program.

(2) Competence for duty tests may be directed if a Soldier exhibits aberrant, bizarre, or uncharacteristic behavior, but probable cause to believe the Soldier has violated the UCMJ through the abuse of alcohol or drugs is absent. Competence for duty test results may be used as a basis for administrative action to include separation but shall not be used as basis for an action under the UCMJ or be considered in the issue of characterization of service.

i. Department of Defense Instruction 1010.16 (Technical Procedures for the Military Personnel Drug Abuse Testing Program (December 9, 1994)) identifies DoD policy. It is DoD policy to use of drug testing to deter military service members, from abusing drug including illegal drugs and other illicit substances. It is policy to use drug testing to permit commanders to assess the security, military fitness, readiness, good order, and discipline of their commands.

(1) Information Requirements: DD Form 2624 must be used for the submission of specimens collected; the standard abbreviations listed shall be used.

(2) Abbreviations for basis for collections of specimens indicates abbreviation "CO" is used when the collections of specimens are **Command Directed**.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable and a reentry code, separation code and a narrative reason change. The applicant's DD Form 214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTHC) discharge, which is normally considered appropriate for a soldier discharged under CH 14 for misconduct.

b. Based on the available evidence the applicant was command ordered for drug testing after they were at party that had ecstasy. The applicant's urinalysis came back positive for ecstasy, THC, amphetamines, and methamphetamines. They received Non Judicial Punishment (NJP) and were subsequently processed for administrative separation.

c. The applicant was notified of the Intent to separate them, they waived the opportunity to consult with counsel and the appropriate authority approved the separation. A properly constituted DD Form 214, authenticated by the applicant's signature indicates they were discharged under the provisions of AR 635-200, CH 14-12c, by reason of misconduct (Drug Abuse) with a general, under honorable conditions characterization of service on 14 November 2008.

d. DODI 1010.16 (9 December 1994) identifies that abbreviation "CO" is used when the collections of specimens are Command Directed on the DD Form 2624. Pages 18-21 in the applicant's separation packet found within the AMHRR was coded "CO" due to the urinalysis being command ordered after the applicant's immediate commander requested a urinary analysis on 22 April 2008.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) identifies the SPD code of "JKQ" as the appropriate code to assign to enlisted soldiers that are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense). Evidence provides the applicant was informed they were being involuntary discharged for commission of a serious offense; wrongfully used designer amphetamines, methamphetamines, marijuana, and ecstasy.

f. Chapter 14 establishes policy and prescribes procedures for members being separated 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.

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):

b. The applicant presented the following additional contention(s):

c. Counsel / Witness(es) / Observer(s): [REDACTED]

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, through counsel, contends their discharge was improper, based on the discharge packet results of a biochemical test that was coded CO (Competence for Duty) which is limited use information as defined in AR 600-85.

The board considered this contention and determined that the applicant's characterization is proper and equitable. The applicant, through counsel, asserts that a Limited Use Policy violation occurred because a positive urinalysis result associated with the applicant was coded "CO, Command Directed / Competence for Duty." Command Directed / Competence for Duty test results are normally Limited Use violations if the government introduces them into the separation process. However, the evidence strongly suggests the urinalysis requested by the company commander was intended to be a Probable Cause test. In a memo authored by the applicant's company commander, the company commander requests a specimen draw for the applicant because a female Soldier told the company commander she saw the applicant where the drug Ecstasy was present. The applicant admits in a handwritten statement to using Ecstasy the previous evening. When considered together, the female Soldier's statement and applicant's handwritten admission, provide articulable facts that exceed the probable cause standard. Therefore, there is not sufficient evidence that a Limited Use violation occurred.

(2) The applicant, through counsel, contends the separation authority approved the separation under AR 625-200, CH 14-12c Misconduct (Serious Offense) with a separation code of JKQ. Narrative reason was erroneously entered as (Drug Abuse) with a JKK separation code. The board considered this contention and found it valid, therefore the board voted to change the reason for discharge to Misconduct (Serious Offense), with a corresponding separation code of JKQ. Therefore, the reason for discharge is no longer appropriate. The board determined the reenry code was proper and equitable and voted not to change it.

c. The board determined that the characterization of service, at this time, is proper and equitable considering the current evidence of record. 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, despite applying liberal consideration of all the evidence before the board, the board members determined that the current characterization of service was appropriate given circumstances surrounding the discharge. The applicant's characterization of General (Under honorable conditions) 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 Misconduct (Serious Offense) based on the evidence provided to the board, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKQ.

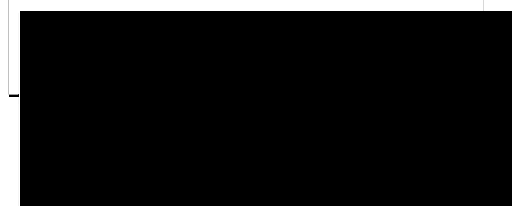
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order:** Yes
- b. Change Characterization to:** No Change
- c. Change Reason / SPD code to:** Misconduct (Serious Offense)/JKQ
- d. Change RE Code to:** No Change
- e. Change Authority to:** AR 625-200, paragraph 14-12c (2)

Authenticating Official:

3/2/2025



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