

1. Applicant's Name:

a. Application Date: 28 June 2023

b. Date Received: 3 July 2023

c. Counsel: None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues: The current characterization of service for period under review is General (Under Honorable Conditions). The applicant requests an upgrade to Honorable. The applicant seeks relief contending, they have changed their personal life for the better, as they are in school, does not do drugs, is a person of God, and they have a newborn.

b. Board Type and Decision: In a records review conducted on 20 May 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. *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, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 19 June 2015

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 10 April 2015

(2) Basis for Separation: Wrongful use of D-amphetamines

(3) Recommended Characterization: Honorable

(4) Legal Consultation Date: Waived counsel on 14 April 2015

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 28 April 2015 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 22 May 2012 / 4 years

b. Age at Enlistment / Education / GT Score: 18 / High School Diploma / 117

c. Highest Grade Achieved / MOS / Total Service: E-3 / 14T10 Patriot Launching Station Enhanced Operator/Maintainer / 3 years, 28 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: Korea / None (8 May 2013 – 25 May 2014)

f. Awards and Decorations: AGCM, NDSM, KDSM, OSR, COA

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) On 22 May 2012, the applicant enlisted in the Regular Army for 4 years as a PVT. The Enlisted Record Brief provides the applicant served in Korea for one year (8 May 2013 – 25 May 2014), promoted up to PFC (1 July 2014), and was flagged, Suspend Favorable Personnel Actions (FLAG), for drug abuse adverse action (UA) and field-initiated involuntary separation (BA).

(2) On 16 December 2014, the applicant accepted nonjudicial punishment (NJP) for wrongful use of d-amphetamine on or about 22 – 25 September 2014, in violation of Article 112a, UCMJ. Their punishment imposed a reduction to PVT; forfeiture of \$765.00 pay per month for two months; extra duty for 45 days; restriction to the limits of company area, dining/medical facility, and place of worship for 45 days; oral reprimand. They did not appeal.

(3) On 10 April 2015, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse), for wrongful use of d-amphetamine and recommended an Honorable characterization of service. The applicant acknowledged receipt of their separation notice.

(a) On 14 April 2015, the applicant elected to waive their right to consult with defense counsel and elected to submit a statement on their behalf; however, as noted by the paralegal, no matters were submitted.

(b) On 22 April 2015, the battalion commander recommended the applicant be separated with a General (Under Honorable Conditions) characterization of service.

(c) On 28 April 2015, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(4) On 29 May 2015, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 19 June 2015, with 3 years, 5 months, and 2 days of total service. The applicant validated this document with an electronic signature and has not completed their first full term of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Application for Correction of Military Record; Certificate of Release or Discharge from Active Duty

6. POST SERVICE ACCOMPLISHMENTS: They have changed their personal life for the better, as they are in school, does not do drugs, is a person of God, and they have a newborn.

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

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

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

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

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the

severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), 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.

(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) 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 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.

(5) 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.

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 14-12c (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 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:

(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)), provided a comprehensive alcohol and drug abuse prevention and control policies, procedures, and responsibilities for Soldiers for ASAP services. 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) All Soldiers who are identified as drug abusers, without exception, will be referred to the ASAP counseling center for screening; be considered for disciplinary action under the UCMJ, as appropriate; and be processed for administrative separation in accordance with Army

Regulation 635-200.

h. Manual for Courts-Martial, United States (2012 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. Article 112a (Wrongful Use, Possession, etc., of Schedule II Controlled Substances) stated in subparagraph, the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

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. A review of the records provides there was administrative irregularity in the proper retention of official military records, specifically, the referral to ASAP [a two-part mandatory clinical assessment, required within 4 days of the first positive urinalysis].

b. The available evidence provides the applicant enlisted in the Regular Army as a PVT, served in Korea for one year, promoted up to PFC, and served for two and a half years prior to having been flagged for drug abuse adverse action and involuntary separation, for wrongfully using d-amphetamine. Their nonjudicial punishment imposed a reduction to PVT and as a result, separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12c (2), Misconduct (Drug Abuse). Although their company commander recommended an Honorable, they were separated with a General (Under Honorable Conditions) characterization of service. The applicant waived their rights to defense counsel and elected to submit matters on their behalf; however, no statement was provided.

(1) There is no evidence of the required separation mental status and medical examination reports.

(2) They served 3 years and 28 days of their 4 year contractual 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. 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 diagnosis: PTSD

(2) Did the condition exist or experience occur during military service? **Yes.** Trauma: MCA in May 2015

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the trauma occurred after the misconduct and did not contribute.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s): The applicant seeks relief contending, they have changed their personal life for the better, as they are in school, does not do drugs, is a person of God, and they have a newborn. The Board considered this contention and appreciated the applicant's post service accomplishments. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that the applicant does not have a BH condition that mitigates the applicant's misconduct drug abuse.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the 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.

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 applicant's statement, record of service, the frequency and nature of misconduct, and the reason for separation, the Board found insufficient evidence of in-service mitigating factors. The Board concurred with the conclusion of the medical advising official that the applicant does not have a BH condition that mitigates the applicant's misconduct drug abuse. The trauma occurred after the misconduct. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. The applicant did not present any issues of impropriety for the Board's consideration. 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. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.

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

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order:** No
- b. Change Characterization to:** No Change
- c. Change Reason / SPD Code to:** No Change
- d. Change RE Code to:** No Change
- e. Change Authority to:** No Change

Authenticating Official:

3/12/2025

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

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