

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 31 August 2020
- b. **Date Received:** 11 September 2020
- c. **Counsel:** None

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 Other than Honorable Conditions. The applicant requests an upgrade to an Honorable and a change to their separation and reentry codes.

b. The applicant seeks relief contending, they were suffering from posttraumatic stress disorder (PTSD) and other mental health issues but afraid to seek help at the time. They developed a substance abuse addiction while serving which led to the circumstances surrounding their discharge. The addiction continued post-service until they were incarcerated in June 2012; they are currently on medication and receiving treatment under the care of their spouse. The applicant does not provide specific information regarding the change in narrative reason or reentry code.

c. **Board Type and Decision:** In a records review conducted on 6 March 2024 and by a 5-0 vote, the Board determined the discharge is inequitable. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other than Honorable Conditions

b. **Date of Discharge:** 29 April 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF

(2) **Basis for Separation:** Pursuant to the applicant's request for voluntary discharge under provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(3) **Recommended Characterization:** NIF

(4) **Legal Consultation Date:** 7 April 2010

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

(6) **Separation Decision Date / Characterization:** 14 April 2010 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

- a. **Date / Period of Enlistment:** 14 September 2007 / 6 years (1st Reenlistment)
- b. **Age at Enlistment / Education / GT Score:** 23 / GED / 110
- c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 74D10 Chemical Ops Sp / 4 years, 1 month
- d. **Prior Service / Characterizations:**
- ARNG (6 December 2002 – 14 March 2006) / Honorable
 - ARNG/IADT (17 October 2003 – 17 October 2004) / Honorable
- e. **Overseas Service / Combat Service:** SWA / Iraq (21 September 2008 – 20 September 2009)
- f. **Awards and Decorations:** ARCOM, AAM, NDSM, ICM-CS, GWTSM, ASR, OSR
- g. **Performance Ratings:** NA
- h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 14 September 2007, the applicant reenlisted for the first time for 6 years as a PFC, with 3 years, 3 months, and 9 days of prior service.

(2) The Enlisted Records Brief (ERB) provides the applicant was promoted SPC on 1 November 2008 and deployed to Iraq for 12 months. Their awards include the Army Commendation Medal, Army Achievement Medal, and Iraq Campaign Medal with campaign star. On 28 January 2010, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

(3) On 18 November 2009, the Alcohol and Drug Control Officer (Army Substance Abuse Program (ASAP)), provides the applicant tested positive (29 October 2009) for oxymorphone (OXYMOR). ASAP informed the commander they must refer the Soldier to law enforcement; the positive result must be reported to Criminal Investigation Division (CID) within 48 hours; the Soldier must be referred to ASAP MEDDAC Rehabilitation Section; an appointment for initial screening must be scheduled as soon as possible and may not exceed 3 days. The record is void of the Soldier's referral to ASAP.

(4) On 14 January 2010, the Chief, Department of Pathology, provides no legitimate use and notes, "Soldier has no recent prescription for oxycodone contain medication (last prescribed in SEP 08). Soldier states she was prescribed Tylenol 3 (contains codeine) on 31 Aug 09, but this drug would not cause an oxymorphone positive result. Soldier denies taking of her older oxycodone medication."

(5) On 16 February 2010, the applicant accepted nonjudicial punishment (NJP) for wrongful use of oxymorphone (OXYMOR) on or between 26 – 29 October 2009. The applicant elected to demand a trial by court-martial, the hearing to be open, and a person to speak on their behalf.

(6) On 19 February 2010, the applicant was charged for illegal use of oxymorphone (OXYMOR) on 29 October 2009, in violation of Article 112a, UCMJ; charges were preferred.

(7) On 3 – 4, and 29 March 2010, they were counseled for failing to report to formation. The applicant concurred, signed, and noted on 29 March, they were currently under medical care for ear infections.

(8) On 7 April 2010, the trial defense counsel provides the case was preferred (19 February 2010) and indicated they anticipated referring this case to a special court-martial.

(9) On 14 April 2010, notwithstanding the applicant's voluntary request for discharge IAW AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial, the chain of command endorsements, and whether or not the applicant elected/waived counsel missing from the record, the separation authority approved the request for discharge, with an Under Other than Honorable Conditions characterization of service and a reduction to the lowest enlisted grade.

(10) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly, on 29 April 2010, with 7 years, 4 months, and 24 days. The applicant has completed the first full term of service.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:** The applicant checked "PTSD" and "Other Mental Health" issues on their DD Form 293 (Application for the Review of Discharge) dated 31 August 2020; however, the record is void of a mental health status evaluation.

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Two DD Form 293s (Application for the Review of Discharge) dated 31 August 2020 and 25 February 2023; Various copies of medical records and/or documents that provide, in pertinent part:

a. Between 2007 and 2009, the applicant was treated for a number of medical conditions to include severe chronic pain caused by endometriosis and prescribed a multitude of medications, to include medications such as Vicodin, Flexeril, Hydrocodone, and Percocet. As it pertains to the oxycodone prescription, the records provide the following history regarding prescription dates:

- 16 March 2009
- 13 March 2009
- 19 September 2008
- 18 September 2008
- 30 July 2008
- 29 July 2008
- 20 May 2008
- 15 May 2008
- 3 May 2008
- 2 May 2008
- 19 December 2008
- 13 December 2007
- 12 December 2007

(b) A copy of a Medical Warnings, Information, Interactions, and Use specifically for Hydrocodone.

6. POST SERVICE ACCOMPLISHMENTS: The applicant articulates they have completed treatment for the addiction.

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 10, Discharge in Lieu of Trial by Court Martial is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate, unless the record was so meritorious it would warrant an honorable.

(a) After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions.

(b) The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making his/her recommendation, including any information presented for consideration by the soldier or consulting counsel.

- A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

(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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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

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

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

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

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission.

(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 of the Uniform Code of Military Justice (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. e. 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 (2008 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Article 112a (Wrongful Use, Possession, etc., of Controlled Substances) stated in subparagraph e (Maximum Punishment) the wrongful use, possession, manufacture, or introduction of controlled substance, to include cocaine the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement 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 and a change to their separation and reenry codes. A review of the record provides administrative irregularity in the proper retention of required records, specifically, the AMHRR is void of the required voluntary request to be discharged and investigation(s)/reports, and ASAP initial screening requirements as directed by the Army Substance Abuse Program for the wrongful use of oxymorphone.

b. The available evidence provides the applicant was in their first reenlistment of six years as a PFC, with a total of 3 years, 3 months, and 9 days served. The medical documents submitted by the applicant provides because of medical care they were prescribed a multitude of medications between 2007 and 2009, to include Vicodin, Hydrocodone, Percocet, Flexeril, and Oxycodone for several medical conditions, to include diagnosis of severe chronic pain caused by endometriosis and other treatment. Aside from the medical history, on 21 September 2008, they deployed in support of Operation Iraqi Freedom for a period of 12 months, was awarded an ARCOM, the ICS-CS, and was promoted to SPC.

(1) Approximately 37 days following their return from deployment, they tested positive for oxymorphone. The MRO reviewed and determined "NO LEGITIMATE USE", indicating the applicant has not been prescribed medicine, which would have caused a positive urinalysis. The applicant provided medical records indicating they were prescribed oxycodone on two occasions in March, with the most recent being approximately seven months and 11 days from 26 October 2009. The applicant accepted nonjudicial punishment, indicated they demand a trial by court-martial, and did not indicate whether or not they appealed. The charge was preferred. Notwithstanding the lack of evidence, the separation authority approved the applicant's request

for discharge, in lieu of trial by court-martial, with an Under Other than Honorable Conditions characterization of service and a reduction to the lowest enlisted grade.

(2) They completed 2 years, 7 months, and 19 days of their 6-year contractual obligation prior to the misconduct, which led to their discharge.

c. Army Regulation, 635-200 states a Chapter 10 is voluntary discharge request in-lieu of trial by court martial. A discharge under other than honorable conditions normally is appropriate for a soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the soldier's overall record during the current enlistment. For soldier who have completed entry level status, characterization of service as honorable is not authorized unless the soldier's record is otherwise so meritorious that any other characterization clearly would be improper. A medical and mental examination was not required for a voluntary request ILO trial by court-martial but could have been requested by the service member. The records are void of the evidence that showed whether they were requested.

d. Published Department of Defense guidance indicates the guidance is not intended to interfere or impeded on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether its 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 diagnoses/experiences: Depressive Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found diagnosis of Depressive DO was made 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, Depressive Disorder. As there is an association between Depressive DO, self-medication to treat painful emotional symptoms and avoidance behavior, there is a nexus between this condition, her wrongful use of oxycodone and her FTR. Applicant also contends she suffers from PTSD. Medical records do not indicate a diagnosis of PTSD. However, she did have a positive PTSD screen (PCL-M-35). While not diagnostic, under liberal consideration, the applicant's contention of PTSD and her positive screen also merit consideration by the board.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition outweighed the basis of separation.

(5) Response to Contention: The applicant contends they developed a substance abuse addiction during their time in the service, which led to their discharge and instead of seeking help, they denied the problem.

The Board considered this contention and determined that there is an association between Depressive DO, self-medication to treat painful emotional symptoms and avoidance behavior, so there is a nexus between this condition, her wrongful use of oxycodone and her FTR.

b. The Board determined the discharge is inequitable based on the applicant's length and quality of service as well as the circumstances surrounding the discharge (Depressive Disorder diagnosis). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the separation authority to AR 635-200, paragraph 14- 12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

c. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable based on the following reasons: The applicant has an in-service diagnosis of Depressive DO. The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, Depressive Disorder. As there is an association between Depressive DO, self-medication to treat painful emotional symptoms and avoidance behavior, there is a nexus between this condition, her wrongful use of oxycodone and her FTR. Applicant also contends she suffers from PTSD. Medical records do not indicate a diagnosis of PTSD. However, she had a positive PTSD screen (PCL-M-35). While not diagnostic, under liberal consideration, the applicant's contention of PTSD and her positive screen also merit consideration by the board. The Board discussed the applicant's contentions, carefully considered the applicant's request, evidence in the records, and medical review recommendation. Based on the BH mitigation of misconduct (wrongful use of oxymorphone) the Board concurred the current discharge is inequitable and warrants an upgrade

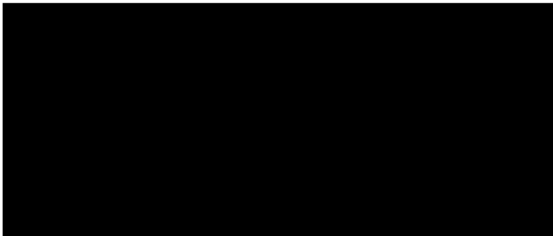
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

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

10. BOARD ACTION DIRECTED:

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

Authenticating Official:



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