

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**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 honorable and a narrative reason change.

The applicant seeks relief contending, in effect, the discharge is inequitable and improper because the applicant was recommended for administrative separation while undergoing treatment for serious mental and physical health issues. The applicant claims they were in no mental or physical condition to consider their options and were forced to make decisions. The applicant erroneously waived their right to an administrative separation board. The applicant suffered a traumatic brain injury and was physically assaulted; these incidences prompted two line of duty investigations. The applicant was deemed unfit for duty due to their injuries, and Major General B., requested the applicant's case be handled through the physical disability system rather than administrative separation. In August 2011, the applicant was informed of the commander's intention to separate them from the Army; however, the applicant did not receive a copy of the notification memorandum or supporting documents.

**b. Board Type and Decision:** In a records review conducted on 10 October 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length of service and medical mitigation of the applicant's AWOL offense combining to partially outweigh the discharge. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

*Please see Section 9 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 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 5 August 2011

**c. Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file.

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

**(2) Basis for Separation:** NIF

**(3) Recommended Characterization:** NIF

**(4) Legal Consultation Date:** NIF

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

**(6) Separation Decision Date / Characterization:** NIF

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 19 March 2008 / 4 years, 19 weeks

**b. Age at Enlistment / Education / GT Score:** 27 / some college / NIF

**c. Highest Grade Achieved / MOS / Total Service:** NIF / 13D10, Field Artillery Automation / 3 years, 2 months, 24 days

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

**e. Overseas Service / Combat Service:** NIF

**f. Awards and Decorations:** GWOTSM, ASR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:** The applicant provided a Developmental Counseling Form, reflecting on 9 January 2009, the applicant was tested as part of their returning back to duty from AWOL. The applicant tested positive for THC. The applicant had been informed this type of behavior was totally unacceptable and would not be tolerated.

The applicant provided a Military Police Report, 4 August 2009, reflecting the applicant was assaulted by Private B., on post.

**i. Lost Time / Mode of Return:** 50 days:

NIF, 16 December 2008 – 8 January 2009 / NIF

NIF, 28 February 2011 – 27 March 2011 / NIF

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

**(1) Applicant provided:** Memorandum for Deputy Commander Clinical Services, Medical Evaluation Board Proceedings, 4 January 2009, reflects a medical diagnosis.

Physical Profile, 13 March 2009, reflects the applicant had medical diagnosis.

The William Beaumont Army Medical Center, Psychiatric Medical Evaluation Board, 17 July 2009, reflects a medical diagnosis.

The William Beaumont Army Medical Center, progress notes, reflect the patient has passed medical history of TBI and prior drug abuse. The applicant's urine tested positive for cocaine, opiates and cannabinoids.

A Neuropsychological Evaluation, 30 September 2009, reflects a medical diagnosis.

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The William Beaumont Army Medical Center, Medical Evaluation Board Narsum, 7 December 2009, reflects a medical diagnosis.

A Medical Evaluation Board Proceeding, 9 December 2009, reflects a medical diagnosis.

A Memorandum for Deputy Commander Clinical Services, Medical Evaluation Board, 18 March 2010, reflects a medical diagnosis.

Radiology results, 10 April 2009, reflects a medical diagnosis.

A Memorandum for Physical Evaluation Board Liaison Officer, William Beaumont Army Medical Center, 24 June 2010, reflects after reviewing both the administrative separation file and medical evaluation board results pertaining to the applicant, this case would be processed through the physical disability system in lieu of separation under the provisions of AR 635-200, paragraph 14-12c(2). The commander found the applicant's medical condition was a direct and substantial contributing cause of the conduct which led to the commander recommending an administrative separation and the circumstances of the case warranted disability processing instead of further processing for administrative separation.

Report of Investigation Line of Duty and Misconduct Status, 7 April 2011, reflects, on 9 January 2009, the applicant while under the influence of drugs, attempted to ride a skateboard when the applicant fell and injured themselves. The investigating officer found the applicant was not in the line of duty and reflects a medical diagnosis.

Report of Investigation Line of Duty and Misconduct Status, 7 April 2011, reflects, on 4 August 2009, the applicant while meeting with Private B., to purchase heroine was assaulted by Private B., and fled to the Charge of Quarters desk. The investigating officer found the applicant was in the line of duty and reflects a medical diagnosis.

**(2) AMHRR Listed: None**

*The ARBA's medical advisor reviewed DoD and VA medical records, including documents listed in 4j(1) and (2) above.*

**5. APPLICANT-PROVIDED EVIDENCE:** Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; lawyers brief; medical records; two Physical Profiles; William Beaumont Army Medical Center, Psychiatric Medical Evaluation Board; Military Police Report; Neuropsychological Evaluation; Medical Evaluation Board Narsum, 7 December 2009; Memorandum for Deputy Commander Clinical Services, Medical Evaluation Board Proceedings, 4 January 2009; Medical Evaluation Board Proceedings, 9 December 2009; Traumatic Brain Injury brief; Appendix 7: Special guidance on Traumatic Brain Injury Coding; letter of support; Memorandum for Deputy Commander Clinical Services, Medical Evaluation Board, 18 March 2010; National Public Radio news report; Memorandum for Physical Evaluation Board Liaison Officer, William Beaumont Army Medical Center, 24 June 2010; Memorandum for investigating Officer, Rebuttal Matters Regarding the Line of Duty Investigation 22 October 2010; Drug testing in the workplace drug test cutoff levels; Blood and Urine Drug Testing for Cannabinoids; Developmental Counseling Form; DA Form 200, Transmittal Record; Line of Duty Investigation letter, 15 December 2010; two Reports of Investigation Line of Duty and Misconduct Status; Email from P.B.

**6. POST SERVICE ACCOMPLISHMENTS:** None were provided with the application.

**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), 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 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

**(1)** Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

**(2)** Paragraph 3-7a states 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.

**(3)** Paragraph 3-7b states 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.

**(4)** Paragraph 3-7c states 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.

**(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.

**(6)** Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

**(7)** Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

**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, 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: 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.

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

The applicant requests an upgrade to honorable.

The applicant's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant's AMHRR does contain a properly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant's electronic signature. The applicant's DD Form 214 indicates the applicant was discharged under the provisions of AR 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of under other than honorable conditions.

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with a under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends, the discharge is inequitable and improper because the applicant was recommended for administrative separation while undergoing treatment for serious mental and physical health issues. The applicant contends they were in no mental or physical condition to consider their options and were forced to make decisions. The applicant was deemed unfit for duty due to their injuries, and Major General B., requested the applicant's case be handled through the physical disability system rather than administrative separation. The applicant provided a Memorandum for the Physical Evaluation Board Liaison Officer, William Beaumont Army Medical Center, 24 June 2010, reflecting after reviewing both the administrative separation file and medical evaluation board results pertaining to the applicant this case will be processed through the physical disability system in lieu of separation under the provisions of AR 635-200, paragraph 14-12c(2). The commander found the applicant's medical condition was a direct and substantial contributing cause of the conduct which led to the commander recommending an administrative separation and the circumstances of this case warranted disability processing instead of further processing for administrative separation. The third-party statement provided with the application reflecting one of the most common effects of frontal damage can be a dramatic change in social behavior and this is true in their child's case. A person's personality can undergo significant changes after an injury to the frontal lobes, especially when both lobes are involved. The applicant does not understand how their behavior or actions affect those around them. The applicant used to be extremely sensitive to how their

actions affected others and was always extremely kind and considerate. The applicant has complained about serious depression and anxiety since the injury. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation or referred to a court-martial for misconduct, the disability evaluation is suspended. The Physical Evaluation Board case remains in suspense pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct, the medical process is stopped, and the board report is filed in the member's medical record. The AMHRR is void of a mental status evaluation.

The applicant contends in August 2011, the applicant was informed of the commander's intention to separate them from the Army; however, the applicant did not receive a copy of the notification memorandum or supporting documents. The applicant submitted a legal brief stating that the applicant did not receive notification of separation. The applicant's Army Military Human Resource Record (AMHRR) is void of the case separation file.

#### **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: Depression, Anxiety, TBI, Cognitive Disorder NOS/Postconcussion Syndrome, Dysthymic Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined that, based on the Board Medical Advisor, that the applicant Depression, Anxiety, TBI, Cognitive Disorder NOS/Postconcussion Syndrome, and Dysthymic Disorder existed during the applicant's military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the Board Medical Advisor opine, that the applicant's behavioral health conditions partially mitigate the discharge. The applicant's initial Chapter 14 MSE for AWOL and testing positive for marijuana occurred on 15 January 2009 prior to the diagnoses or evidence of any of the BH conditions, so this misconduct is not mitigated. While the full facts and circumstances regarding the applicant's separation are not contained in the file, the medical record reveals multiple instances of testing positive for drugs after 22 January 2009 when the applicant's initial TBI occurred. Given the nexus between TBI and self-medicating with substances, all drug abuse that occurred after 22 January 2009 is mitigated. The applicant's Depression, Anxiety, and Dysthymic Disorder were diagnosed after the initial TBI incident and also have a nexus with self-medicating with substances, so these conditions more likely than not contributed to the drug abuse as well.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Depression, Anxiety, Traumatic Brain Injury, and Dysthymic Disorder outweighed the applicant's medically unmitigated offense of illegal substance abuse and AWOL.

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

(1) The applicant contends, the discharge is inequitable and improper because the applicant was recommended for administrative separation while undergoing treatment for serious mental and physical health issues. The applicant contends the applicant was in no mental or physical condition to consider their options and were forced to make decisions. The applicant was deemed unfit for duty due to their injuries, and Major General B., requested the applicant's case be handled through the physical disability system rather than administrative separation. The Board considered this contention but determined that the pausing of the applicant's medical action in favor of administrative separation for misconduct was in accordance with AR 635-200. The Board found insufficient evidence to show that the command's action was arbitrary or capricious, therefore, a discharge upgrade is not warranted based on this contention.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but determined that the applicant's Misconduct (Drug Abuse) narrative reason for separation is proper and equitable given the applicant's medically unmitigated urinalysis failure prior to the applicant's diagnoses for the medical conditions which provided mitigation for the later urinalysis failures.

(3) The applicant contends in August 2011, the applicant was informed of the commander's intention to separate them from the Army; however, the applicant did not receive a copy of the notification memorandum or supporting documents. The Board considered this contention and based on the Separation Authority's determination memo referring the applicant to IDES instead of ADSEP, the applicant was given notice.

(4) The applicant contends that the applicant's discharge is inequitable because the leadership at Fort Bliss during the time of the applicant's discharge regarded suicide as selfish act as evidence by the Commanding General's blog post stating "I've have now come to the conclusion that suicide is an absolutely selfish act. I am personally fed up with soldiers who are choosing to take their own lives so that others can clean up their mess. Be an adult, act like an adult and deal with your real-life problems like the rest of us" resulting in the CG issuing an apology.

(5) The applicant contends, the discharge is inequitable and improper because the applicant was recommended for administrative separation while undergoing treatment for serious mental and physical health issues. The applicant contends they were in no mental or physical condition to consider their options and were forced to make decisions. The applicant contends the applicant's discharge is improper because the applicant, through TDS counsel, waived the applicant's right to an administrative board because the Separation Authority approved the applicant's referral to the Physical Evaluation Board in lieu of administrative separation rendering the applicant's waiver invalid.

**c.** The Board determined that the characterization of service was inequitable based on the applicant's length of service and medical mitigation of the applicant's drug offenses that occurred after 22 January 2009 combining to partially outweigh the discharge. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them. 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.



**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE****AR20210000763****d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to General because the length of service and medical mitigation of the applicant's drug offenses that occurred after 22 January 2009 combining to partially outweigh the discharge. Thus, the prior characterization is no longer appropriate.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code as the applicant had a medically unmitigated urinalysis failure making the reason the applicant was discharged both proper and equitable.

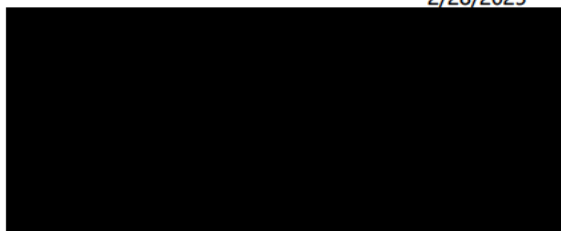
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214: Yes**
- b. Change Characterization to: General, Under Honorable Conditions**
- c. Change Reason / SPD Code to: No Change**
- d. Change RE Code to: No Change**
- e. Change Authority to: No Change**

**Authenticating Official:**

2/28/2025



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