

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, while the applicant was in the Army the applicant attended the Army Substance Abuse Program (ASAP). The applicant tried to take the program very seriously but could not get the proper support from the chain of command. Sergeants B., M., and W., who were in the applicant's direct line of supervision and continuously brought drugs and alcohol over to the applicant's home knowing the applicant was in the program. When the applicant's family or the applicant would let them know they could not participate in these activities, they would be told the applicant was alienating oneself from the their peers and they were not a team player. The more the applicant fought these actions, the more they were mistreated at work. The applicant did not receive any help with everyday actions and tasks, which included fueling assignments and preventive maintenance checks and services (PMCS) on vehicles in the motor pool. After receiving enough of this treatment, the applicant informed Lieutenant (LT) S. and LT S.'s way of handling the situation was to take marijuana to the applicant's house with the attitude, "If you can't beat them join them." Since the discharge, the applicant has completed the drug and alcohol course because the applicant took the program as seriously as they tried in the ASAP program. The applicant had no back-slips. The applicant surrounded themselves with positive people who did not partake in such activities, and the applicant had not had any mishaps with the law. The applicant believes the applicant would not have been discharged early for any actions related to this issue if the applicant had a chain of command who believed in Army values instead of the values forced upon the applicant. The applicant further details the contentions in the Attorney's Questionnaire submitted with the application.

b. Board Type and Decision: In a records review conducted on 25 July 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the applicant's adjustment disorder, Major Depressive Disorder (MDD), and anxiety diagnoses outweighing the applicant's wrongful use of marijuana on two separate occasions, FTR, disobeyed a no contact order given by the applicant's battalion commander, and failure to maintain a family care plan basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3. *Please see Section 9 of this document for more detail regarding the Board's decision.*

(Board member names available upon request)

3. DISCHARGE DETAILS:

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a. Reason / Authority / Codes / Characterization: Misconduct (Drug Abuse) / AR 635-200, Paragraph 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 12 September 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 8 August 2011

(2) Basis for Separation: The applicant was informed of the following reasons:

The applicant wrongfully used marijuana on two separate occasions;

The applicant disobeyed a no contact order given by the applicant's battalion commander;

The applicant failed to report; and

The applicant failed to maintain a family care plan in accordance with Army Regulation 635-200.

(3) Recommended Characterization: General (Under Honorable Conditions)

(4) Legal Consultation Date: 9 August 2011

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: NIF

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 1 October 2008 / 4 years, 23 weeks

b. Age at Enlistment / Education / GT Score: 27 / 1 Year College / 104

c. Highest Grade Achieved / MOS / Total Service: E-4 / 92F10, Petroleum Supply Specialist / 2 years, 11 months, 12 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Iraq (13 October 2009 – 29 July 2010)

f. Awards and Decorations: AAM, NDSM, GWOTSM, ICM-CS, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Family Care Plan, 10 March 2011, reflects the commander counseled the applicant regarding the policy on family member care responsibilities and the applicant was provided 30 days to complete the plan. The form was not completed by the applicant.

Memorandum for Record, 31 March 2010 [sic], reflects the applicant requested a 30-day extension to complete the family care plan.

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Memorandum for Record, 4 May 2011, reflects the applicant requested separation because the applicant was unable to provide a family care plan and to care for their child.

Electronic Copy of DD Form 2624, 5 May 2011, reflects the applicant tested positive for THC 116 (marijuana), during a Probable Cause (PO) urinalysis testing, conducted on 26 April 2011.

Field Grade Article 15, 24 May 2011 for willfully disobeying a written no contact order from a superior commissioned officer (26 April 2011) and wrongfully using marijuana (between 28 March and 26 April 2011). The punishment consisted of a reduction to E-1; forfeiture of \$733 pay per month for two months (suspended); extra duty for 45 days; and an oral reprimand.

Record Of Supplementary Action Under Article 15, UCMJ, 8 June 2011, reflects the suspended portion of the punishment imposed on 24 May 2011, was vacated for: Article 86, failure go at the time prescribed to the appointed place of duty.

Electronic Copy of DD Form 2624, 17 June 2011, reflects the applicant tested positive for THC 69 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 1 June 2011.

Criminal Investigation Division (CID) Report of Investigation - Initial Final, 27 June 2011, reflects an investigation established probable cause to believe the applicant committed the offense of Wrongful Use of Marijuana as determined by a urinalysis conducted on 1 June 2011. The applicant was interviewed and admitted to the offense.

Memorandum for record, 6 September 2011, reflects the applicant's commander gave SGT K. the authorization to clear the applicant from the installation because the applicant was in jail. The applicant was pending separation under Army Regulation 14-12c(2), with a general (under honorable conditions).

Three Developmental Counseling Forms, for failure to report; requirements of a family care plan; and failure to complete a family care plan.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Mental Status Evaluation, 19 July 2011, reflects the applicant was cleared for administrative discharge. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was diagnosed with anxiety disorder, not otherwise specified (NOS); major depression; alcohol dependence; cannabis abuse; and personality disorder, NOS.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; Questionnaire; five third party statements; Certificates of Completion: Outpatient Treatment, Anger Management Group, and Peace Group.

6. POST SERVICE ACCOMPLISHMENTS: The applicant completed the drug and alcohol program and had not had any mishaps with the law.

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 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(3) 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.

(4) 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.

(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 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(7) 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.

(8) 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 contends depression affected behavior, which ultimately led to the discharge. The applicant's AMHRR shows the applicant underwent a mental status evaluation (MSE) on 19 July 2011, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant was diagnosed with anxiety disorder, NOS; major depression; alcohol dependence; cannabis abuse; and personality disorder, NOS. The MSE was considered by the separation authority.

The applicant contends the offenses leading to the discharge were minor. The applicant's AMHRR indicates the applicant committed many discrediting offenses. Army Regulation 635-200, in pertinent part, stipulates circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends the applicant did not receive any support from the chain of command, the command did not follow the regulation, and under the current standards the applicant would not have received the type of discharge. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends harassment by members of the chain of command who forced the applicant to indulge in drugs and alcohol. The applicant provided third party letters from the applicant's parent and a fellow Soldier, which described circumstances surrounding the harassment and/or alcohol and drug issues to support the contention. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

The applicant contends good service, including a combat tour.

The applicant contends the discharge should have been for medical reasons. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

The applicant contends an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends completing the drug and alcohol program and not having any mishaps with the law. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good military service and/or good conduct after leaving the Army.

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: (Chronic) Adjustment Disorder, Major Depression, Anxiety Disorder NOS.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, Major Depression, and Anxiety Disorder NOS. The applicant is also service connected by the VA for Chronic Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant was diagnosed in service with an Adjustment Disorder, Major Depression, and Anxiety Disorder NOS. The applicant is also service connected by the VA for Chronic Adjustment Disorder. Given the nexus between Chronic Adjustment Disorder, Major Depression, and self-medicating with substances, the wrongful use of marijuana is mitigated. There is also a nexus between Major Depression, avoidance, low motivation, and decreased energy, so the applicant's Major Depression mitigates the FTR. However, disobeying a no contact order is not mitigated by Chronic Adjustment Disorder, Major Depression, or Anxiety Disorder NOS since none of these conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. Finally, there is no evidence that any of the applicant's BH conditions contributed to applicant's inability to maintain a family care plan, which appeared to be a deliberate and rationale choice made by the applicant motivated by the desire to be separated from the Army.

(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 Adjustment Disorder, Major Depression, and Anxiety Disorder NOS outweighed the basis for applicant's separation – disobeyed a no contact order given by the applicant's battalion commander, and failure to maintain a family care plan.

b. Response to Contention(s):

(1) The applicant contends offenses leading to the discharge were minor and depression affected behavior, which ultimately led to the discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, the applicant's adjustment disorder, Major Depressive Disorder (MDD), and anxiety diagnoses outweighing the applicant's wrongful use of marijuana on two separate occasions, FTR, disobeyed a no contact order given by the applicant's battalion commander, and failure to maintain a family care plan basis for separation.

(2) The applicant contends the applicant did not receive any support from the chain of command, the command did not follow the regulation, and under the current standards the applicant would not have received the type of discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, the applicant's adjustment disorder, Major Depressive Disorder (MDD), and anxiety diagnoses outweighing the applicant's wrongful use of marijuana on two separate occasions, FTR, disobeyed a no contact order given by the applicant's battalion commander, and failure to maintain a family care plan basis for separation.

(3) The applicant contends harassment by members of the chain of command who forced the applicant to indulge in drugs and alcohol. The Board considered this contention and determined there is insufficient evidence in the file to support the applicant's chain of command harassed and forced the applicant to indulge in drugs and alcohol.

(4) The applicant contends good service, including a combat tour. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(5) The applicant contends the discharge should have been for medical reasons. The Board determined that the applicant's requested change to the DD Form 214 does not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

(6) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

(7) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(8) The applicant contends completing the drug and alcohol program and not having any mishaps with the law. The Board considered this contention during proceedings, but

ultimately did not address the contention due to an upgrade being granted based on the applicant's length and quality of service, to include combat service, the applicant's adjustment disorder, Major Depressive Disorder (MDD), and anxiety diagnoses outweighing the applicant's wrongful use of marijuana on two separate occasions, FTR, disobeyed a no contact order given by the applicant's battalion commander, and failure to maintain a family care plan basis for separation.

c. The Board determined the discharge is inequitable based on the applicant's length and quality of service, to include combat service, the applicant's adjustment disorder, Major Depressive Disorder (MDD), and anxiety diagnoses outweighing the applicant's wrongful use of marijuana on two separate occasions, FTR, disobeyed a no contact order given by the applicant's battalion commander, and failure to maintain a family care plan basis for separation. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation was changed to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3. 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.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's length and quality of service, to include combat service, the applicant's adjustment disorder, MDD, and anxiety diagnoses outweighing the applicant's wrongful use of marijuana on two separate occasions, FTR, disobeyed a no contact order given by the applicant's battalion commander, and failure to maintain a family care plan basis for separation. Thus, the prior characterization is no longer appropriate.

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

(3) The Board voted to change the RE code to RE-3.

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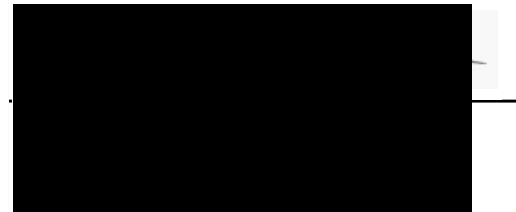
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10. BOARD ACTION DIRECTED:

- 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: RE-3
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:

1/10/2025



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
UOTHHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs