

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, the discharge was inequitable because the applicant's diagnosed anxiety, chronic sleep impairment, and related issues as a result of the applicant's service in Iraq, were not considered. The applicant was discharged because of the applicant's actions after returning from Iraq. The applicant began drinking to cope with flashbacks, nightmares, and the inability to sleep, which affected the duty performance. Although the applicant did receive some treatment, the applicant's first sergeant (1SG) consistently prevented the applicant from attending classes or meetings meant to help the applicant cope with the mental health issues. The 1SG particularly would not accommodate classes scheduled while the applicant was in the field and made it clear the applicant was undesirable in the unit and was going to be chaptered out. The unit commander directed the rest of the units to shun and stay away from those who were being discharged. The applicant was not allowed to socialize with fellow Soldiers. There were several suicides at Fort Hood during the time and some of the Soldiers were in the applicant's unit which increased the applicant's stress level. The 1SG made it a mission to chapter the applicant out and trumped up charges against the applicant. The applicant was given an Article 15 for possession of spice. The 1SG knew the drug did not belong to the applicant, but it was in a car the applicant was traveling in. The applicant did not own the car. The applicant's barracks room was searched, and no drugs were found. The applicant never tested positive for drugs, but this was the final piece they were looking for to finish the process. The applicant did not fight the chapter because the applicant needed to leave Fort Hood and the Army.

The applicant's original expiration term of service (ETS) date was in December 2010. The discharge was in January 2011. The unit could have revoked the reenlistment and allowed the applicant ETS or a medical discharge, but the unit was determined to see the applicant humiliated and kicked out. The applicant dreamed of a 20-year career in the Army. At that point, the applicant was pretty beaten down; therefore, the applicant did not accept the help the applicant needed for several months after the discharge. When the applicant finally sought treatment at the local Department of Veterans Affairs (VA), the applicant was granted service-connected disability for anxiety, including difficulty adapting to stressful situations or conditions, chronic sleep impairment, and occupational and social impairment. Receiving a diagnosis made a huge impact on the applicant's recovery. The applicant believes if the applicant had received more support and encouragement from the command, the outcome of the applicant's military career would have been different. The applicant may have been discharged, but it would have been an honorable discharge. The applicant is not excusing the applicant's actions and conduct because the applicant knew the actions did not meet the Army policy, but the applicant believes the actions were beyond the applicant's control. An upgrade to honorable would allow the applicant to attend technical school to attain welding certification for employment.

b. Board Type and Decision: In a records review conducted on 21 May 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's applicant's Anxiety Disorder and Adjustment Disorder with Anxiety outweighing the applicant's DUI, underage drinking, drunk on duty and possession of spice basis for separation and the additional misconduct of a DUI and arrest in 2008, and wrongfully smashing a dog's head. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, 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:

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: 18 January 2011

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 16 December 2010

(2) Basis for Separation: The applicant was informed under the provisions of Army Regulation 635-200, paragraph 14-12c, Commission of a Serious Offense, of the following reasons: The applicant was cited for driving while intoxicated in which the applicant was also underage of 21 on 9 December 2009, and the applicant wrongfully possessed spice on 17 August 2010.

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

(4) Legal Consultation Date: 29 December 2010

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 6 January 2011 / General (Under Honorable Conditions) / The separation authority approved the separation under the provisions of Army Regulation 635-200, paragraph 14-12c, Commission of a Serious Offense.

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 22 October 2009 / 6 years / The Commander's Report reflects the enlistment period as shown. The AMHRR is void of any enlistment contract retaining the applicant on active duty after the initial enlistment period 14 August 2007 for 3 years, 20 weeks, with an original ETS date of 31 December 2010.

b. Age at Enlistment / Education / GT Score: 20 / HS Graduate / 94

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B10, Infantryman / 3 years, 5 months, 5 days

d. Prior Service / Characterizations: RA, 14 August 2007 – 21 October 2009 / HD

e. **Overseas Service / Combat Service:** SWA / Iraq (3 January 2009 – 26 December 2009)

f. **Awards and Decorations:** ARCOM, MUC, VUA, NDSM, GWOTSM, ICM-CS, ASR, OSR

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Company Grade Article 15, 25 November 2009, for in Iraq, wrongfully smashed a dog in the head with a rock in an attempt to kill the dog (8 November 2009). The punishment consisted of a reduction to E-3; forfeiture of \$409 pay (suspended); and extra duty and restriction for 14 days.

Military Police Report, 30 December 2009, reflects the applicant was apprehended for: driving while intoxicated property (on post). On 19 December 2009, a military police officer observed the applicant approaching the gate while driving a vehicle. The officer approached the vehicle and detected and odor of an alcoholic beverage emitting from the applicant. The applicant was transported to the police station where the applicant failed a videotaped standardized field sobriety test. The applicant consented to a blood draw, with results pending.

Intoxilyzer 500 Instrument results, 19 August 2010, reflects the applicant had a blood alcohol content of .119.

The applicant's Enlisted Record Brief (ERB), 21 September 2010, reflects the applicant was flagged for Adverse Action (AA), effective 23 July 2010; and the applicant's ETS date was 21 October 2015.

General Officer Memorandum Of Reprimand, 29 September 2010, reflects the applicant was driving while intoxicated. After approaching Access Control Point 1, Bernie Beck Gate on 19 December 2009, a military police officer detected a strong odor of an alcoholic beverage on the applicant. The applicant failed a standardized field sobriety test and was administered a blood alcohol test which registered the blood alcohol level as .15.

Field Grade Article 15, 15 October 2010, for failing to obey a lawful general order by wrongfully possessing spice (17 August 2010). The punishment consisted of a reduction to E-1; forfeiture of \$723 pay per month for two months; and extra duty and restriction for 45 days.

Three Developmental Counseling Forms, for driving under the influence (DUI) arrest; drinking underage; ticket for open container and failure to control speed; driving privileges being suspended; being involved in a vehicle accident and arrested for DUI on 19 April 2008; being drunk on duty on 19 August 2010, with a blood alcohol content of .119; having three previous alcohol incidents and being enrolled in the Army Substance Abuse Program (ASAP); and killing a puppy by throwing rocks at the puppy.

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

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

(1) **Applicant provided:** The Carlson Law Firm, P. C. letter, 29 December 2010, reflects the applicant's civilian defense counsel, at the time of separation, indicated on 29 October 2010, the applicant was diagnosed with adjustment disorder with anxiety, and the physician stated the applicant met the criteria for administrative separation under Army

Regulation 635-200, paragraph 5-17. The providers recommended the applicant follow-up with substance abuse / ETOH abuse counseling and continued treatment by mental health providers. The misconduct the commander used to support the recommendation for separation was a direct consequence of the applicant's medical and mental condition. The applicant was admitted in the inpatient facility from 23 August to 21 September 2010. The applicant had not been in any misconduct since the release from the treatment facility. Counsel requested the separation proceedings be discontinued and the applicant be retained, or the applicant be separated under Army Regulation 635-200, paragraph 5-17, (Other Designated Physical or Mental Conditions).

Two Department of Veterans Affairs letters, 16 and 21 May 2013, reflecting the VA rated the applicant 30 percent disabled for anxiety disorder, not otherwise specified (NOS).

(2) AMHRR Listed: The Carlson Law Firm, P. C. letter as described in previous paragraph 4j(1).

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; Enlisted Record Brief; GOMOR; Military Police Report (blotter report); separation packet, including The Carlson Law Firm, P. C. letter; two VA letters, with supporting documents; and VA Rating Decision.

6. POST SERVICE ACCOMPLISHMENTS: None submitted 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) 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.

(5) 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.

(6) 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), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends being diagnosed with anxiety, chronic sleep impairment, and related issues; the VA granted the applicant a service-connected disability for anxiety, including difficulty adapting to stressful conditions; and the conditions affected behavior which led to the discharge. The applicant provided several medical documents to support the diagnoses and the VA rated the applicant 30 percent service-connected disabled for anxiety disorder, NOS. The applicant's AMHRR contains the letter from the applicant's attorney describing the applicant's in-service diagnoses. The record is void of a mental status evaluation. The attorney's letter was considered by the separation authority.

The applicant contends harassment by members of the chain of command. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

The applicant contends the applicant's reenlistment contract could have been revoked and the applicant allowed to ETS in December 2010. The applicant's AMHRR reflects the applicant's original ETS date was 31 December 2010. The record reflects the applicant's ETS date as of

21 September 2010 was 21 October 2015. The record does not contain any indication or evidence of arbitrary or capricious actions by the command.

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 would allow educational benefits through the GI Bill. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill 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.

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: Anxiety Disorder, Adjustment Disorder with Anxiety.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 30 percent service connected (SC) for Anxiety 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 a review of the records shows the applicant is 30 percent SC for Anxiety Disorder. Applicant also has an in-service diagnosis of Adjustment Disorder with Anxiety that is subsumed under SC Anxiety Disorder. As there is an association between Anxiety Disorder and self-medicating to treat symptoms, there is a nexus between the applicant's substance-stance related misconduct that occurred post-deployment, to include underage drinking, DUI, being drunk on duty, and possession of spice – assuming it was for personal use. However, misconduct characterized by DUI and arrest in 2008 is not mitigated as the applicant had not experienced the events that resulted in the Anxiety Disorder diagnosis. Also, misconduct characterized by wrongfully smashing a dog's head is also not mitigated as the misconduct is not natural sequela of Anxiety Disorder.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Anxiety Disorder and Adjustment Disorder with Anxiety partially outweighed the DUI, underage drinking, drunk on duty and possession of spice; however, the applicant's Anxiety Disorder and Adjustment Disorder with Anxiety did not mitigate the applicant's additional misconduct in the file of DUI and arrest in 2008, and wrongfully smashing a dog's head. The Board determined that the remaining unmitigated misconduct did not rise to a level that negated meritorious service required for an Honorable Discharge.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs to be changed. 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 Anxiety Disorder and Adjustment Disorder with Anxiety outweighing the applicant's DUI, underage drinking, drunk on duty and possession of spice basis for separation and the additional misconduct found in the file.

(2) The applicant contends being diagnosed with anxiety, chronic sleep impairment, and related issues; the VA granted the applicant a service-connected disability for anxiety, including difficulty adapting to stressful conditions; and the conditions affected behavior which 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 Anxiety Disorder and Adjustment Disorder with Anxiety outweighing the applicant's DUI, underage drinking, drunk on duty and possession of spice basis for separation and the additional misconduct found in the file.

(3) The applicant contends harassment by members of the chain of command and the applicant's reenlistment contract could have been revoked and the applicant allowed to ETS in December 2010. The Board considered this contention and determined there is insufficient evidence in the applicant's file to support the applicant was harassed by members of the chain of command. Ultimately the Board voted to upgrade the characterization of service to Honorable.

(4) 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.

(5) The applicant contends an upgrade would allow educational benefits through the GI Bill. 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.

(6) 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.

c. The Board determined the discharge is inequitable based on the applicant's Anxiety Disorder and Adjustment Disorder with Anxiety outweighing the applicant's DUI, underage drinking, drunk on duty and possession of spice basis for separation and the additional misconduct of a DUI and arrest in 2008, and wrongfully smashing a dog's head. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable, 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.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Anxiety Disorder and Adjustment Disorder with Anxiety outweighing the applicant's DUI, underage drinking, drunk on duty and possession of spice basis for separation and the additional misconduct of a DUI and arrest in 2008, and wrongfully smashing a dog's head. 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.

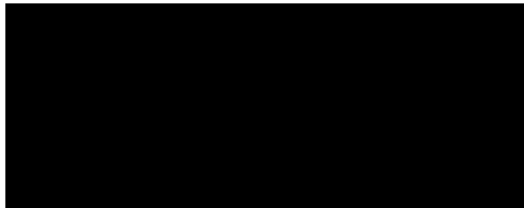
(3) The Board voted to change the RE code to RE-3.

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:

8/20/2024



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