

**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.

The applicant seeks relief contending, in effect, prior to the civilian conviction, the applicant had served honorably the first full term of a three-year service and was in the process of separating from the military because of the inability to continue the service. A psychiatrist evaluated and treated the applicant for PTSD symptoms with medication. The applicant paid back the bonus and had the conviction expunged. The applicant served honorably and received two honorable discharges from the Regular Army from 1999 to 2002 and from the Kansas Army National Guard from 2005 to 2006. The applicant also served honorably for three years, from 22 February 2007 to 2010, with a second tour in Iraq.

b. **Board Type and Decision:** In a records review conducted on 1 February 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service in Iraq, outweighing the civil conviction misconduct. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. However, the applicant's medically unmitigated, civil conviction misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge. 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 (Civil Conviction) / AR 635-200, Chapter 14, Sec II / JKB / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 8 March 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 26 October 2010

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

The applicant was convicted of one count of domestic battery in the District Court of Geary County, KS. The applicant received a six-month jail sentence.

It was in the best interest of the US Army for the applicant to be separated prior to the expiration of the term of service.

(3) **Recommended Characterization:** Under Other Than Honorable Conditions

(4) **Legal Consultation Date:** 28 October 2010

(5) **Administrative Separation Board:** On 17 December 2010, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) **Separation Decision Date / Characterization:** 3 March 2011 / Under Other Than Honorable Conditions / The GCMCA approved the unconditional waiver by the applicant.

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 28 December 2008 / 4 years

b. **Age at Enlistment / Education / GT Score:** 28 / High School Graduate / 87

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 13B20, Cannon Crewmember / 10 years, 11 months, 25 days

d. **Prior Service / Characterizations:** RA, 28 September 1999 – 27 September 2002 / HD  
USARCG, 28 September 2002 – 17 July 2005 / NA  
MOB, 18 July 2005 – 14 November 2006 / HD  
ARNG, 15 November 2006 – 21 February 2007 / HD  
RA, 22 February 2007 – 27 December 2008 / HD

e. **Overseas Service / Combat Service:** SWA / Iraq (8 October 2008 – 18 September 2009)

f. **Awards and Decorations:** ARCOM, AAM, MUC, AGCM, NDSM, GWOTSM, KDSM, ICM-CS, ASR, OSR-2, AFRMMD / The applicant's evidence reflects award of the six additional AAMs, however, the additional awards are not reflected on the DD Form 214.

g. **Performance Ratings:** 1 October 2008 – 30 September 2009 / Among the Best

h. **Disciplinary Action(s) / Evidentiary Record:** Eight Developmental Counseling Forms lying to an NCO, falsifying POV inspection form, having an arrest warrant, not paying spousal support, being escorted out of the courtroom, the prohibitions of the Lautenberg Act, failing to go at the time prescribed to the appointed place of duty, and being indebted.

District Court of Geary County, KS, Journal Entry, reflects on 5 August 2010, the applicant pleaded Nolo Contendere to Count 1, Domestic Battery, a Class B misdemeanor committed on 21 January 2010, and the court finding the applicant guilty of Count 1.

District Court of Geary County, KS, Journal Entry, reflects on 23 September 2010, the applicant having been convicted of Count 1, Domestic Battery, a Class B misdemeanor was sentenced to the custody of the Sheriff of Geary County for a period of six months with a three-day jail credit. The applicant was ordered to pay court costs of \$155.50 and attorney fees of \$150.

Personnel Action form reflects the applicant's duty status changed from "Present for Duty (PDY)" to "Confined by Civil Authorities (CCA)," effective 23 September 2010.

District Court of Geary County Order of Expungement, 28 July 2014, provided by the applicant, reflects because the applicant was not convicted of a felony and no proceeding of any crime

pending or being instituted, and the circumstances and behavior of the applicant warranted the expungement; thereby, the Judge of the District Court having considered, ordered, adjudged, and decreed, the stated conviction and the related arrest record were expunged.

**i. Lost Time / Mode of Return:** 167 days (Confined by Civil Authorities, 23 September 2010 to 8 March 2011) / The applicant was discharged on 8 March 2011.

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

**(1) Applicant provided:** Memorandum reflecting a Mental Health Evaluation, 13 August 2010, indicates the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The examiner indicated the applicant's state of emotional and/or behavioral dysfunction was of such severity which significantly impaired the applicant's ability to perform the military duties; was at high risk to continue to engage in self-destructive and disruptive behaviors; and the command was advised to consider an expeditious separation in the best interest of the applicant and the unit.

Chronological Records of Medical Care, 29 October 2009 to 16 August 2010, reflect the applicant was diagnosed with and treated for Episodic Mood Disorders; Nightmare disorder; Adjustment disorder with anxiety and depressed mood; Intermittent explosive disorder; Dysthymic disorder; and Adjustment disorder.

Department of Veterans Affairs disability rating decision, 14 November 2013, reflecting the applicant was rated 50 percent disability for PTSD including nightmare, depression, and mood swings/dysthymic disorder.

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 214; Order of Expungement; VA Rating Decision; VA compensation letter; NGB Form 22; two third-party statements; self-authored statement; seven DA Forms 638; Recognition of Service certificate; parent medical document; Chronological Record of Medical Care; MSE memorandum; and parent's medical letter.

**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) 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) Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings: 1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended; 2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender; Initiation of separation action is not mandatory. Although the conditions established in a (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction.

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 "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, section II, misconduct (civil conviction).

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-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.

**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.

Army Regulation 635-200, stipulates a Soldier may be separated when initially convicted by civil authorities, or when action is taken tantamount to a finding of guilty, if a punitive discharge authorized for the same or a closely related offense under the Manual for Courts Martial or the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation. At the time of the applicant's discharge, the applicant had been confined by civilian authorities for 167 days. The applicant was convicted of Count 1, Domestic Battery, a Class B misdemeanor and on 23 September 2010, the applicant was sentenced to the custody of the Sheriff of Geary County for a period of six months with a three-day jail credit and ordered to pay court costs of \$155.50 and attorney fees of \$150.

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, Section II, AR 635-200 with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Civil Conviction)," and the separation code is "JKB." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214, and dictates 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 serving honorably and receiving two honorable discharges from the Regular Army from 1999 to 2002 and from the Kansas Army National Guard from 2005 to 2006, and serving honorably for three years, from 22 February 2007 to 2010, with a second tour in Iraq.

The applicant contends being treated for PTSD symptoms with medication. The applicant provided several medical documents indicating a diagnosis of Episodic Mood Disorders; Nightmare disorder; Adjustment disorder with anxiety and depressed mood; Intermittent explosive disorder; Dysthymic disorder; and Adjustment disorder, and prescribed medication. The Department of Veterans Affairs disability rating decision, 14 November 2013, reflects the applicant was rated 50 percent disability PTSD including nightmare, depression, and mood swings/dysthymic disorder. The applicant's AMHRR is void of any behavioral health or PTSD diagnoses. The third-party statements provided with the application reflect the author's observation of the changes in the applicant's behavioral health issues following the first tour of service in Iraq and how the applicant becoming a completely different person mentally and physically after the second tour of service in Iraq. The applicant's evidence shows the applicant underwent a mental status evaluation (MSE) on 13 August 2010, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis.

The applicant contends not being able to receive help for the mental health condition because of the current discharge. Eligibility for veterans' 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's evidence shows six additional AAMs were awarded; nevertheless, the awards are not represented on the DD Form 214. The evidence of the six extra AAMs to be reflected as additional revisions to the DD Form 214 is not within the purview of this board. The applicant has the option of applying to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

#### 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: Adjustment Disorder, Depression, Dysthymic Disorder, Episodic Mood Disorder, Post Traumatic Stress Disorder.

(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, Depression, Dysthymic Disorder, and Episodic Mood Disorder. The applicant is also diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate the applicant's domestic battery offense. While Episodic Mood Disorder and PTSD can have a nexus with mood lability and increased anger, there is no evidence that the applicant was in an acutely manic state or experiencing a reoccurrence associated with PTSD when the domestic battery occurred. On the contrary, the applicant described being awoken and having a deliberate thought of being offended by something the applicant's spouse said and consciously electing to confront the spouse. No mitigation for the domestic battery is further supported by the applicant's self report of extensive anger difficulties dating back to childhood, which preceded any of the applicant's BH conditions. So, while the diagnoses of an Adjustment Disorder, Depression, Dysthymic Disorder, Episodic Mood Disorder, and PTSD were all considered, none of these conditions mitigate the domestic battery that led to the applicant's separation.

(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, Depression, Dysthymic Disorder, Episodic Mood Disorder, or Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated domestic battery offense.

b. Response to Contention(s):

(1) The applicant contends being treated for PTSD symptoms with medication. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression, Dysthymic Disorder, Episodic Mood Disorder, or Post Traumatic Stress Disorder outweighed the applicant's medically unmitigated domestic battery offense. However, the Board did find that an upgrade in

characterization of service was warranted by the applicant's length and quality of service, to include combat.

(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 Civil Conviction narrative reason for separation is proper and equitable. The expungement of the offense does not change the reason for which the applicant was separated.

(3) The applicant contends serving honorably and receiving two honorable discharges from the Regular Army from 1999 to 2002 and from the Kansas Army National Guard from 2005 to 2006, and serving honorably for three years, from 22 February 2007 to 2010, with a second tour in Iraq. The Board considered the applicant's record of service and determined that the applicant's length and quality of service, to include combat warranted an upgrade to characterization of service.

(4) The applicant contends not being able to receive help for the mental health condition because of the current discharge. 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.

(5) The applicant's evidence shows six additional AAMs were awarded; nevertheless, the awards are not represented on the DD Form 214. 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 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

c. The Board determined that the characterization of service was inequitable based on the applicant's length and quality of service, to include combat service in Iraq, outweighing the civil conviction misconduct. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. However, the applicant's medically unmitigated, civil conviction misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge. 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 the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to General because the applicant's length and quality of service, to include combat, outweighed the applicant's civil conviction misconduct. The applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge. Therefore, a discharge upgrade is warranted. 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 reason the applicant was discharged was both proper and equitable.



**ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**

**AR20210001304**

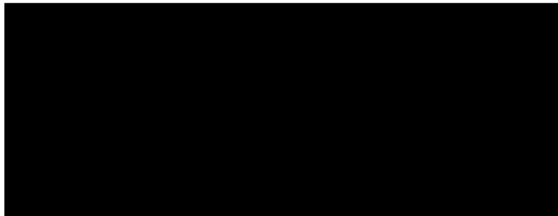
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**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:**

4/2/2024



**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