

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 20 October 2020**b. Date Received:** 23 November 2020**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is Honorable. The applicant requests a change of the type of separation, separation authority, separation code, and narrative reason for separation.

(2) The applicant, through counsel, seeks relief contending, the correction should be made due to no evidence and the fact that they were not using drugs. This was a mistake by their command and was not properly handled. A safety investigation reported the presence of an unspecified amount benzoyllecgonine, a metabolite for cocaine in their system. The safety investigation included no information as to the quantity of the metabolite found or whether it exceeded the testing threshold used to indicate a positive drug test. The separation authority used this safety investigation as the basis for their separation, just days before their expiration term of service (ETS).

(3) The evidence in their separation packet was insufficient to support the conclusion that the greater weight of the evidence indicated they used cocaine. The evidence in the separation packet indicated only a nondescript amount of the metabolite for cocaine in their urine and none detected in their blood.

(4) They received an honorable characterization of service because their command used limited-use evidence from a safety investigation. However, their DD Form 214 (Certificate of Release or Discharge from Active Duty) will indicate they were separated for misconduct (Drug Abuse). Their potential employers will see their DD Form 214 and despite the insufficient evidence forming the basis for separation, it will prejudice them for the rest of their life.

**b. Board Type and Decision:** In a records review conducted on 28 February 2025, and by a 5-0 vote, the Board determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Disciplinary Infractions), and the corresponding separation code to JKN. The Board determined the characterization of service and RE code were proper and equitable and voted not to change them .

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / Army Regulations 635-200, Paragraph 14-12c(2) / JKK / RE-4 / Honorable

**b. Date of Discharge:** 3 March 2020**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 15 January 2020

**(2) Basis for Separation:** between on or about 1 September 2019 and on or about 4 September 2019, wrongfully used cocaine.

**(3) Recommended Characterization:** Honorable

**(4) Legal Consultation Date:** 11 February 2020

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

**(6) Separation Decision Date / Characterization:** 25 February 2020 / Honorable

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 10 March 2014 / 6 years

**b. Age at Enlistment / Education / GT Score:** 18 / HS Graduate / 105

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 15T2O, Helicopter Repairer / 5 years, 11 months, 24 days

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

**e. Overseas Service / Combat Service:** SWA / Iraq (6 November 2017 – 11 December 2017, 6 March 2018 – 4 May 2018, 8 August 2018 – 9 September 2018, and 6 February 2019 – 3 April 2019), Afghanistan (23 September 2019 – 17 October 2017)

**f. Awards and Decorations:** AAM, AGCM, NDSM, GWTSM, ASR, IRCM-CS

**g. Performance Ratings:** 1 April 2018 – 31 March 2019 / Highly Qualified  
1 April 2019 – 2 January 2020 / Qualified

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** A memorandum, Headquarters 160th Special Operations Aviation Regiment (Airborne), subject: Toxicology Examination Report from the Armed Forces Medical Examiner System for [Applicant], dated 17 October 2019, reflects the applicant's urine was screened for drugs and detected positive for Benzoyllecgonine. There was no benzoyllecgonine detected in the blood. Benzoyllecgonine is noted to be the major metabolite for cocaine.

**(2)** A DA Form 3822 (Report of Mental Status Evaluation) dated 22 November 2019 reflects the applicant has no duty limitations due to behavioral health reasons and currently meets medical retention standards. Section V (Diagnoses) – reflects "No diagnosis" and the behavior health provider states the applicant is psychiatrically cleared for administrative separation as deemed necessary.

**(3)** A memorandum, Headquarter, 160th Special Operations Aviation Regiment (Airborne), subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 15 January 2020, the applicant's company commander notified them of their intent to separate them for Misconduct-Abuse of Illegal Drugs, for between on or about 1 September 2019 and on or about 4 September 2019, wrongfully used cocaine. The company recommended the applicant receive an Honorable characterization of

service. On the same day, the applicant acknowledged receipt of separation notice and of the rights available to them.

**(4)** On 11 February 2020, the applicant completed their Election of Rights acknowledging they have been advised by an attorney of the basis for the contemplated action to separate them under Army Regulation 635-200, Paragraph 14-12c, and its effects; of the rights available to them; and the effect of any action taken by them in waiving their rights. They understood they may expect to encounter substantial prejudice in civilian life if a General (Under Honorable Conditions) discharge is issued to them and they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected to submit statements in their behalf –

**(a)** In the applicant's memorandum, subject: Response to Proposed Separation under Army Regulation 635-200 – [Applicant], dated 18 February 2020, they request the honor and privilege to remain on active duty service to complete their service and ETS from the Army on 8 March 2020.

**(b)** Four 3rd Party Statements attest to the applicant's character and supports the applicant's request to remain on active duty to complete their term of service.

**(c)** The applicant's counsel states the evidence in the applicant's separation packet is insufficient to establish the presence of cocaine above the established cutoff threshold and they should be retained on active duty. The evidence fails to establish they had a quantity of cocaine in their system above the 100 nanograms per milliliter cutoff indicated by the Toxicology Drug Testing. The evidence is not sufficient to establish the applicant unlawfully consumed cocaine.

**(5)** A memorandum, Headquarter, 160th Special Operations Aviation Regiment (Airborne), subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], undated, the applicant's company commander recommended the applicant be separated from the Army prior to the expiration of current term of service. They do not consider it feasible or appropriate to accomplish other disposition as the applicant does not possess the candor and maturity to continue serving in the U.S. Army. The applicant does not report suffering from either Post Traumatic Stress Disorder or Traumatic Brain Injury as a result of deployment overseas in support of a contingency operation within the last 24 months.

**(6)** A memorandum, Headquarter, 160th Special Operations Aviation Regiment (Airborne), subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 20 February 2020, the applicant's battalion commander recommended the applicant be separated from the Army prior to their expiration of current term of service and their service be characterized as Honorable.

**(7)** A memorandum, Headquarter, 160th Special Operations Aviation Regiment (Airborne), subject: Separation under Army Regulation 635-200, Paragraph 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], dated 20 February 2020, the applicant's regiment commander recommended the applicant be separated from the Army prior to their expiration of current term of service and their service be characterized as Honorable.

**(8)** A memorandum, Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, subject: Administrative Separation Pertaining to [Applicant], dated 25 February 2020, the separation authority, having reviewed the applicant's separation packet, directed the applicant be discharged from the U.S. Army and their service be characterized as Honorable.

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The separation authority states the applicant has deployed to a contingency operation withing the previous 24 months. They have not been diagnosed with or reasonably alleged PTSD or TBI based on deployed service to a contingency operation during the previous 24 months.

(9) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 3 March 2020, with 5 years, 11 months, and 24 days of net active service this period. The applicant did not completed their first full term of service. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Sergeant
- item 4b (Pay Grade) – E-5
- item 12i (Effective Date of Pay Grade) – 1 April 2018
- item 24 (Character of Service) –Honorable
- item 26 (Separation Code) – JKK [Misconduct (Drug Abuse)]
- item 27 (Reentry Code) – 4 [Nonwaiverable Disqualification]
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

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

j. **Behavioral Health Condition(s):** None

**5. APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214
- Counsel's Memorandum, with attached Case Files for Approved Separations

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Paragraph 1-16 (Counseling and Rehabilitative Requirements) stated Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. The rehabilitative transfer requirements in chapter 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier.

(5) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, however; 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. 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) Chapter 15 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c(2), 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 DoD Instructions 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:

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

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

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

g. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.

h. Manual for Courts-Martial, United States (2019 Edition) stated, military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances).

## **8. SUMMARY OF FACT(S):**

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. A review of the available evidence provides the applicant received notification of separation for wrongful use of cocaine and was involuntary separation from the Army. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of honorable. The applicant completed 5 years, 11 months, and 24 days of net active service this period and did not complete their first full term of service of 6 years.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. An honorable characterization of service is generally required when the Government initially introduces limited-use evidence.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

#### 9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD (50%SC)

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for PTSD establishes nexus with active military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a mitigating BH condition, PTSD (50%SC). As there is an association between PTSD and self-medication with alcohol and/or illicit drugs, there is a nexus between his diagnosis of PTSD and his wrongful use of cocaine.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's condition or experience outweighed the listed basis for separation for the aforementioned reasons.

b. Prior Decisions Cited:

c. Response to Contention(s):

(1) The applicant contends the request should be made due to no evidence and the fact that they were not using drugs. The Board acknowledged this contention during proceedings.

(2) The applicant contends the evidence in their separation packet was insufficient to support the conclusion that the greater weight of the evidence indicated they used cocaine. The evidence in the separation packet indicated only a nondescript amount of the metabolite for cocaine in their urine and none detected in their blood. The Board acknowledged this contention during proceedings.

(3) The applicant contends they received an honorable characterization of service because their command used limited-use evidence from a safety investigation. The Board acknowledged this contention and discussed it during its deliberations.

(4) The applicant contends even though their DD Form 214 reflects honorable characterization of service, it also indicates they were separated for misconduct (Drug Abuse).



Their potential employers will see their DD Form 214 and despite the insufficient evidence forming the basis for separation, it will prejudice them for the rest of their life. The Board acknowledged this contention during proceedings.

**d.** The Board determined the narrative reason for the applicant's separation is now inequitable. Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Disciplinary Infractions), and the separation code to JKN. The Board determined the characterization of service and RE code were proper and equitable and voted not to change them.

**e.** Rationale for Decision:

**(1)** The Board was unanimous in its decision to maintain the applicant's Honorable discharge. The Board concurred with the Medical Advisor that the applicant's BH condition - PTSD fully mitigates the basis for separation (wrongfully used cocaine). Therefore, the prior characterization is no longer appropriate.

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

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

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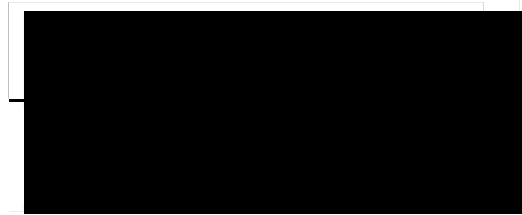
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## 10. BOARD ACTION DIRECTED:

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

## Authenticating Official:

3/6/2025



### 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  
UOTHC – Under Other Than  
Honorable Conditions  
VA – Department of Veterans  
Affairs