1. Applicant's Name:

- a. Application Date: 19 April 2021
- b. Date Received: 27 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.

**b.** The applicant seeks relief contending, they struggled after their deployment and went through a mental health crisis. Instead of help, the applicant was discharged. The applicant made their mistakes and learned from them and after separation has been diagnosed with Posttraumatic Stress Disorder (PTSD) and they are 100% permanent and total because of it, currently working with their therapist monthly working through it.

**c.** Board Type and Decision: In a records review conducted on 15 November 2024, and by a 5-0 vote, the discharge is inequitable. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to honorable and change the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. No change to the reentry code.

*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: Patterns of Misconduct / AR 635-200, Chapter 14-12B / JKA / RE-3 / General (Under Honorable Conditions)

**b. Date of Discharge:** 5 November 2014

- c. Separation Facts:
  - (1) Date of Notification of Intent to Separate: 6 October 2014

(2) Basis for Separation: Failed to be at their appointed place of duty on multiple occasions and was Absent Without Leave (AWOL)

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

- (4) Legal Consultation Date: 6 October 2014
- (5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 October 2014 / General (Under Honorable Conditions)

## 4. SERVICE DETAILS:

a. Date / Period of Enlistment: 4 April 2011 / 3 years, 20 weeks

b. Age at Enlistment / Education / GT Score: 18 / High School Diploma / 95

**c. Highest Grade Achieved / MOS / Total Service:** E-4 (SPC) / 13P10 Multiple Launch Rocket System/Fire Direction Specialist / 3 years, 1 month, 3 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / United Arab of Emirates (UAE), 27 April 2013 – 12 January 2014

f. Awards and Decorations: AAM-2, NDSM, GWOTEM, GWOTSM, ASR, OSR

# g. Performance Ratings: NA

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

(1) On 3 October 2011, the applicant enlisted in the Regular Army for 3 years and 20 weeks as a PFC (E-3). The Enlisted Record Brief provides on 1 January 2014, they were promoted to SPC (E-4); they deployed in support of Operation Enduring Freedom (OEF) for nine months in the UAE (27 April 2013 – 12 January 2014).

(a) On 18 August 2014, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

(b) On 2 October 2014, they were flagged for field initiated involuntary separation (BA).

(2) The applicant received thirteen counseling's for failing to report to formation and to work on diver's occasions, between April – September 2014.

(3) On 22 September 2014, the applicant accepted nonjudicial punishment in violation of Article 86, UCMJ for failing to report on divers' occasions and for having been AWOL for six days (5 – 10 September 2014). They did not appeal. The punishment imposed a reduction to PVT (E-1); forfeiture of \$765.00 pay per month for two months; extra duty for 45 days; restriction to the limits of company area, dining/medical facility, and place of worship for 45 days.

(4) On 30 September 2014, the applicant completed their medical assessment, history, and medical examination (MHE) for separation Reynolds Army Community Hospital, Fort Sill, OK, which does not provide any comments from the applicant.

(a) Their medical history, block 30a, provides the examiner's notes:

- 11d/g: + "Huh?" and TV too loud, tinnitus
- 12c: LBP off/on for ~2-3 years. No trauma, incont, rad, chiro, inject, surg, brace, limit. Had ther.
- 12i: L knee sore for ~2 years. No trauma, give, lock, ther, surg, limit, brace. +Stiffens on occ.
- 12n: R 5th MC, no surg or problems since. Still has T3 profile for it.
- 13f: Mild. Proctofoam helped.

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- 17a/d/e/f: No SI/HI, snore, apnea. +CMHS, +Meds, +helping. Depress, Anx, ADH d/o's.
- 20-24: See above.

(b) Their assessment indicates they were taking Lexapro, Atarax, Wellbutrin, and Trazadone.

(c) Their medical examination qualified them for service and separation. The provider recommended the applicant follow up with their PCM/did not provide any follow-ups/recommendations.

(5) On 6 October 2014, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12b, Pattern of Misconduct, for failing to report on diver's occasions and for having been AWOL for 6 days. They recommended a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of their separation notice.

(a) On 7 October 2014, they elected and consulted with legal and declined to provide a statement on their behalf. Defense counsel counseled the applicant on the possible effects of their separation and rights available to them.

(b) On 9 and 16 October 2014, the battalion commander concurred with the company commander's recommendation, providing the applicant has not conformed and behaved counter to the Army Values.

(c) On 17 October 2014, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service.

(6) On 27 October 2014, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty), with 3 years, 7 months, and 3 days of total service. They were unable to provide their electronic signature and the applicant has not completed their first full term of service.

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

#### j. Behavioral Health Condition(s): ADHD and PTSD

(1) Applicant provided: A rating decision was completed through the VA, which provides effective 19 January 2021, their evaluation of PTSD was increased to 100% service-connected disabling. In addition, they provided their VA medical records, which provides they are currently taking Escitalopram Oxalate, Quetiapine Fumarate, Bupropion HCL, Prazosin, Hydroxyzine, and Meloxicam.

(2) AMHRR Listed: On 12 September 2014, the applicant completed a mental status evaluation (MSE) at Embedded Behavioral Health Clinic, Fort Sill, OK, indicating a BH diagnosis of Attention-Deficit/Hyperactivity Disorder (ADHD). The provider recommended medication continuation with behavioral health. They were fit for full duty; had no cognitive impairments, cooperative behavior, normal perception, with occasional impulsivity. The applicant had the mental capacity to understand and participate in the proceedings; was mentally responsible and was cleared for chapter proceedings. They were psychiatrically cleared for any administrative action deemed appropriate by the command.

**5. APPLICANT-PROVIDED EVIDENCE:** Application for the Review of Discharge; Veterans Affairs (VA) Service-Connected Disability Letter; Partial VA Rating Decision; VA Medical Records

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant is rated at 100% service-connected through the VA and is under the care of a therapist.

#### 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 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

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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), dated 25 September 2019, 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), 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) An 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.

(4) Chapter 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filled in the permanent part of the Soldiers official personnel record.

(b) 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. Except as otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

(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. 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. A Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(6) Chapter 15 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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14-12B, Pattern of Misconduct.

**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:

(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 waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) 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.

**g.** Army Regulation 631-10 (Absence, Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings) provides policies and procedures for reporting unauthorized absentees and deserters, the administering of absent without leave (AWOL) personnel and deserters, returning absentees and deserters to military control and the surrendering of military personnel to civilian law enforcement authorities. When a soldier returns from an absence that is or appears to be unauthorized, the unit commander informally investigates whether disciplinary action should be taken and if the soldier be charge with time

lost.

- (1) Classification of an absence is dependent upon such factors as the following:
  - Order and instructions, written/oral, the Soldier received before/during absence
  - Age, military experience, and general intelligence of the Soldier
  - Number and type of contact the Soldier had with the military absent
  - Complete or incomplete results of a court-martial decision if any

(2) An absence immediately following authorized leave is classified as AWOL. Should the absence subsequently be reclassified, the soldiers leave is corrected to reflect the reclassified absence, except if the absence is caused by the following:

- Mental incapacity
- Detention by civilian authorities
- Early departure of a mobile unit due to operational commitments

**h.** Manual for Courts-Martial (2012 Edition), United States, states 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 orders and discipline in the Armed Forces.

(1) Article 86 (absence from unit, organization, etc./failure to go, going from place of duty) states in subparagraph being absence from unit, organization, etc./failure to go, going from place of duty, not more than 3 day days, the maximum punishment consists of a forfeiture of two-thirds pay for one month, and confinement for one month.

(2) Article 86 (absence without leave) states in subparagraph being absence without leave for more than 3, not more than 30 days, the maximum punishment consists of a forfeiture of two-thirds pay and allowances for six months, and confinement for six months.

**i.** Title 38, U.S. Code, Sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered, medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by the agency.

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

**a.** 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.

**b.** The available evidence provides the applicant enlisted in the Regular Army, promoted to SPC, served in OEF (UAE) for nine months, and served for 2 years, 9 months, and 8 days prior to having been flagged for adverse action, and later involuntary separation. Seven months post redeployment, they accepted nonjudicial punishment for failing to report on diver's occasions and went AWOL for six days; as a result, the applicant was reduced to PVT (E-1). Separation proceedings were initiated under the provisions of AR 635-200, Chapter 14-12B, Pattern of Misconduct, with a General (Under Honorable Conditions) characterization of service.

(1) A MSE provides an Attention-Deficit/Hyperactivity Disorder (ADHD) diagnosis and was recommended to continue medication with behavioral health. The applicant had occasional impulsivity and was psychiatrically cleared for any administrative action deemed appropriate by the command. Moreover, they are 100% service-connected through the VA, for PTSD. In addition, they provided their VA medical records, which provides they are currently taking Escitalopram Oxalate, Quetiapine Fumarate, Bupropion HCL, Prazosin, Hydroxyzine, and Meloxicam.

(2) They served for 3 years, 4 weeks, and 3 days of their 3 year-20 week contractual obligation.

**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.

**d.** Published DoD 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: Dysthymic Disorder; PTSD (100%SC). [Note: Depressive DO NOS is subsumed under diagnosis of Dysthymic DO; ADHD is an EPTS condition.].

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

(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 two mitigating BH conditions, Depressive DO NOS and PTSD. As Depressive DO NOS and PTSD are associated with avoidant behaviors, there is a nexus between these diagnoses, his period of

AWOL and his multiple FTRs. [Note-Diagnosis of Depressive DO NOS is subsumed under diagnosis of Dysthymic DO; ADHD is EPTS condition.]

(4) Does the condition or experience outweigh the discharge? **Yes.** The board concurred with the opinion of the Board's Medical Advisor, a voting member. As a result, the ADRB applied liberal consideration and found that the applicant's found Dysthymic DO outweigh the misconducts (multiple FTRs and AWOL), also the applicant is service connected for PTSD.

**b.** Response to Contention(s): The applicant seeks relief contending, they struggled after their deployment and went through a mental health crisis. Instead of help, the applicant was discharged. The applicant made their mistakes and learned from them and after separation has been diagnosed with Posttraumatic Stress Disorder (PTSD) and they are 100% permanent and total because of it, currently working with their therapist monthly working through it. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the information outlined above in paragraph 9a (3-4) of this document.

**c.** The board determined the discharge is inequitable based on the applicant Dysthymic DO, service connected PTSD, and in-service factors (length, quality) mitigated the applicant's misconduct (AWOL and multiple FTRs) the basis of 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, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN with no change to the reentry code.

**d.** Rationale for Decision:

(1) The board voted to change the applicant's characterization of service because, to honorable because the applicant's Dysthymic DO, service connected PTSD, and in-service factors (length, quality) mitigate the applicant's (AWOL and multiple FTRs) the basis of 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 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 / Separation Order: Yes
  - b. Change Characterization to: Honorable
  - c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
  - d. Change RE Code to: No Change
  - e. Change Authority to: AR 635-200, paragraph 14-12a

#### Authenticating Official:



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