

1. **Applicant's Name:** [REDACTED]
- a. **Application Date:** 1 December 2020
- b. **Date Received:** 17 December 2020
- 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 honorable conditions (general). The applicant requests an upgrade to honorable, separation code change, reentry code change and a narrative reason change.

b. The applicant states, in effect they accept their actions, the circumstances leading up to their discharge they feel should entitle them to some leniency. While they were in the special forces qualification course they found out about their spouse's infidelity, which caused them peer out and be placed in holdover status. While in holdover status they started drinking a lot to cope with unresolved trauma from their previous deployments, they sought help through behavioral health and started receiving counseling. Once they started taking medication and antidepressants their weekly counseling sessions changed to monthly sessions. Their routine counselor was unavailable, and they were rotated to see multiple counselors which made it difficult for them to build trust and open up to new counselors every session. The medication they were taking made things worse, they were drinking and had a lapse of judgement and took pills that were prescribed to another service member. They mentioned what they did and was told they should go to a SUDCC program and Georgia after their positive urinalysis, they agreed so they could back on track. Their command missed the appointment to clear them for the program 10 consecutive weeks in a row; they were hand delivering appointment slips to their command as well as having representatives from behavioral health call their command directly.

c. After weeks of frustration with the army and the lack of concern from their chain of command towards their issues, they left without approved leave. When they returned, they told their chain of command they smoked cannabis, they were given a urinalysis and failed. They were demoted to specialist; their command took over a month to submit the paperwork to restart their pay which caused them to secure loans to pay their rent and bills. They also had to reschedule a medical appointment for their spouse at that time. They received a counseling statement for missing formation after taking their spouse to an appointment that they informed their leadership about. They were discharged immediately after, they know their actions warranted some type of punishment, but it was a cry for help, the people who were supposed to help did not. They feel military records shows they were a quality soldier; a combat veteran with over a decade of service, three combat deployments, good conduct medals, airborne school, SERE school, SFAS selectee and now they are labeled as a drug abuser with no way to right that wrong. They would like the opportunity to right a wrong and have a second chance to do great things for the country that they love without having a lapse in judgement overshadow their service.

d. **Board Type and Decision:** In a records review conducted on 28 February 2024, and by a 5-0 vote, the board determined the discharge is inequitable based on the applicant's in-service mitigating factors (Quality, Length, Combat) and the two mitigated BH conditions (PTSD and TBI) outweighing the basis for separation – drug abuse (tested positive for THC and oxazepam), AWOL and disobeying a lawful order, and missing accountability formation. 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. The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

*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, CH 14-12c / JKK / RE-4 / General (under honorable conditions)

**b. Date of Discharge:** 11 December 2017

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 26 October 2017

**(2) Basis for Separation:** The applicant tested positive for THC on 12 June 2017 and 26 July 2017; AWOL from 1 June 2017 – 12 June 2017; tested positive for oxazepam on 20 June 2017; on 31 July 2017 disobeyed a lawful order by traveling outside the 60 mile radius, missing accountability formation.

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

**(4) Legal Consultation Date:** Waived trial defense services 26 October 2017.

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

**(6) Separation Decision Date / Characterization:** 7 November 2017 / General, under honorable conditions.

### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 4 March 2015 / 5 years

**b. Age at Enlistment / Education / GT Score:** 23 / High School Graduate / 115

**c. Highest Grade Achieved / MOS / Total Service:** E-5 / 11C1P Indirect Fire Infantryman / 6 years, 11 months, 29 days.

**d. Prior Service / Characterizations:** RA; 9 June 2005 – 6 February 2010 / Honorable

**e. Overseas Service / Combat Service:** Hawaii / Iraq 20060901 – 20071121, Iraq 20081201 – 20091107, Afghanistan 20110105– 20111216.

**f. Awards and Decorations:** ARCOM-5, AAM, AGCM-3, NDSM, ACM-CS-2, ICM-CS-2, GWTSM, NOPDR, ASR, OSR-4, NATOMDL,

**g. Performance Ratings:** 20110801 – 20120731 / Successful  
20120801 – 20130505 / Successful  
20130506 – 20140505 / Successful  
20140506 – 20150320 / Successful

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

(1) An Enlistment/Reenlistment Document signed 4 March 2015 provides the applicant reenlisted in the army for 5 years at the rank of sergeant (E-5); third reenlistment.

(2) A Personnel Action Document provides the applicants duty status changed from present for duty (PDY) to absent without leave (AWOL) on 1 June 2017.

- The applicant's duty status changed from AWOL to PDY on 12 June 2017

(3) A memorandum dated 28 June 2017 provides the applicant's immediate commander was notified by the ASAP manager of the Army Substance Abuse Program regarding the applicant testing positive for THC from a urinalysis collected 12 June 2017.

(4) On 21 July 2017 the applicant was evaluated by a Medical Review Office (MRO) after they tested positive for OXAZEPAM from a urinalysis collected 20 June 2017. The applicant confirmed they did not have a prescription benzo (benzodiazepines).

(5) On 25 July 2017 the applicant made a statement under oath to a Fort Bragg, CID investigator that provides while they were AWOL, they went camping, met someone and smoked cannabis with them.

- How much marijuana did you smoke while AWOL? "3-4 times... "
- Did you know using controlled substances in the military is illegal? "Yes"

(6) A Developmental Counseling Form dated 31 July 2017 provides the applicant was counseled for failing to report (FTR) and disobeying an order.

(7) On 7 August 2017 the applicant's immediate commander was notified by the ASAP Manager; the applicant tested positive for OXAZEPAM from a urinalysis collected 20 June 2017.

(8) A Report of Medical Examination dated 9 August 2017, provides the applicant received a separation medical assessment/examination.

(9) Record of Proceedings UCMJ signed 11 August 2017 provides the applicant received a NJP for violating Article 86 of the UCMJ; AWOL from 1 June 2017 – 12 June 2017. Punishment consisted of reduction in rank to E-4 (specialist), extra duty for 30 days and an oral reprimand.

(10) On 21 August 2017 the applicant's immediate commander was notified by the ASAP Manager; the applicant tested positive for THC from urinalysis collected 26 July 2017.

(11) Report of Mental Status Evaluation document dated 7 September 2017, provides the applicant received a separation mental health evaluation and was psychologically cleared for administrative action; diagnosed with alcohol dependency.

(12) A memorandum, 1st Special Warfare Training Group (Airborne), Fort Bragg, North Carolina subject: Separation under the provisions of AR 635-200, Chapter 14-12c dated 26 October 2017 provides the applicant's immediate commander notified them of their intent to separate them for testing positive for THC twice, for being AWOL, testing positive for Oxazepam

and for disobeying a lawful order. The commander recommended a UOTHC characterization of service. The applicant completed their election of rights and waived trial defense services.

(13) On 3 November 2017 the battalion commander recommended an UOTHC characterization of service and on 7 November 2017 the appropriate authority approved the applicant's administrative separation and directed a General, under honorable conditions characterization of service.

i. **Lost Time / Mode of Return:** 1 June 2017 – 11 June 2017 / NIF

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

(1) **Applicant provided:** A report of Mental Status Evaluation document that provides the applicant was diagnosed with alcohol dependency.

(2) **AMHRR Listed:** Alcohol dependency; the applicant was enrolled in SUDCC for treatment and anxiety.

**5. APPLICANT-PROVIDED EVIDENCE:** A DD Form 149 (Application for Correction of Military Record), 2- DD Form 214, A copy of their ERB, their complete separation packet and report of Mental Status Evaluation document that provides the applicant was diagnosed with alcohol dependency.

**6. POST SERVICE ACCOMPLISHMENTS:** They have traveled around the country, easily obtained work, and used their GI Bill at different schools.

**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), 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 provides the basic authority for the separation of enlisted personnel provides the authorized types of characterization of service or description of separation.

(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 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 subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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.

(5) 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 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. It provides 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 missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

f. 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, misconduct (drug abuse).

g. 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-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.

- 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.
- 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.

**a.** The applicant requests an upgrade to honorable. The applicant's DD-214 provides the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTHC) discharge which is normally considered appropriate for a soldier discharged for drug abuse.

**b.** Based on the available evidence the applicant enlisted in the army for a second time at the age of 23, advanced to the rank of E-5 and completed five military education courses during their enlistment. The applicant reenlisted for a third time in 2015, 2 years and 3 months into their contractual obligation they were AWOL and after returning to their unit they tested positive for THC, 8 days later they tested positive for oxazepam. The applicant received an NJP, 10 days later their commander was notified of the applicant testing positive for THC a second time.

**c.** The applicant was notified of the intent to separate them for misconduct (abuse of illegal drugs), the initiating commander recommended a UOTHC; they acknowledged they understood the basis for separation under the provisions AR 635-200, CH 14-12c. They waived consulting with counsel and received the required medical and mental health separation examination. A DD Form 214 shows they were discharged with an under honorable conditions (general) characterization of service on 11 December 2017.

**d.** Chapter 14 establishes policy and prescribes procedures for members being separated 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.

**e.** 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: Acute Stress DO; Adjustment DO with anxiety; TBI/Concussion without LOC; Post Concussion Syndrome; Anxiety DO; PTSD; Trauma/Stressor-Related DO; PTSD (70%SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found that the diagnoses of Acute Stress DO; Adjustment DO with anxiety; TBI/Concussion without LOC; Post Concussion Syndrome; Anxiety DO; PTSD; Trauma/Stressor-Related DO were made while applicant was on active duty. VA service connection for PTSD establishes it occurred or began during 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 two mitigating BH conditions, PTSD and TBI. As there is an association between these conditions, avoidance behavior, self-medication with illicit drug/alcohol and difficulty with authority figures, there is a nexus between these conditions and the applicant's period of AWOL/ missing accountability formation, positive UAs for oxazepam and THC and disobeying a lawful order. [The diagnoses of Acute Stress DO, Trauma/Stressor-Related DO, Adjustment DO with anxiety, and Anxiety DO are all subsumed under the diagnosis of PTSD. The diagnoses of Concussion with LOC and Post Concussion Syndrome are subsumed under the diagnosis of mild TBI.]

(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 in-service mitigating factors (Quality, Length, Combat) and mitigated BH conditions (PTSD and TBI) outweigh the basis for separation – drug abuse (tested positive for THC and oxazepam), AWOL, disobeying a lawful order, and missing accountability formation - for the aforementioned reason.

b. Response to Contention(s):

(1) The applicant requests an upgrade to honorable, separation code change, reentry code change and a narrative reason change. The board considered this contention during proceedings and voted to grant an upgrade because the applicant's in-service mitigating factors (quality, length, combat) and applicant's diagnosis of PTSD/TBI outweighing the applicant's drug abuse (tested positive for THC and oxazepam), AWOL, disobeying a lawful order, and missing accountability formation - basis for separation. Thus, and upgrade of the characterization of service to honorable and the narrative reason and separation code to Misconduct (Minor Infractions)/JKN is warranted. The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

(2) The applicant contends the chain of command showed a lack of concern towards the applicant's issues. The board considered this contention during proceedings and after a review of the applicant's military record determined that there is no evidence of said conduct by command and only the applicant assertion. The applicant did not provide any supporting documentation to support the contention. Nevertheless, the Board voted that relief was warranted based on other circumstances as outlined above in paragraph 9a (3-4) and 9b (1).



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

**AR20210011055**

c. The board determined the discharge is inequitable based on the applicant's in-service mitigating factors (Quality, Length, Combat) and applicant's diagnosis of PTSD/TBI which mitigated the applicant's misconduct. However, the applicant may request a personal appearance hearing to address further issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to honorable because the applicant's mitigated conditions (PTSD and TBI) outweighed the basis for separation – misconduct; drug abuse (tested positive for THC and oxazepam), AWOL, disobeying a lawful order, and missing accountability formation. 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.

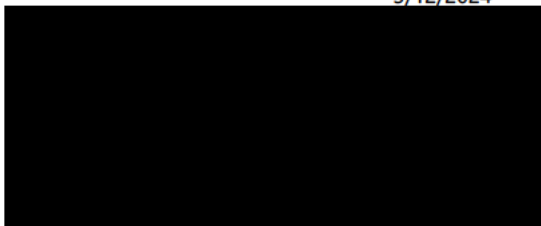
(3) The RE code will not change, as the mitigating conditions are also service limiting.

**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:**

3/12/2024



**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