- 1. Applicant's Name:
 - a. Application Date: 30 January 2021
 - b. Date Received: 3 February 2021
 - c. Counsel:

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, a narrative reason change, and both their separation and reenlistment codes changed.

b. The applicant seeks relief, contending they were discharged with Under Other than Honorable Conditions because they married to a person purely for the financial gain (BAH and BAS). While this marriage was not fraudulent by any means, as all of the necessary legal paperwork was filled out and authentic, having gone through the correct legal channels, there was no love involved whatsoever. It was an agreement that was mutually beneficial. They did not suffer from any sort of mental illness or physical injury, nor did they have a single excuse for their actions. They saw an opportunity, that at the time, seemed like a "no-brainer", so they took the opportunity out of greed.

(1) The applicant took full responsibility for how the marriage started, acknowledging it was illegal; nevertheless, they both fell in love within a few months of being married and provided a copied book (52 Simple Reasons Why I Love You), written by their ex-spouse to the applicant, while they were in Ranger School. The applicant ultimately felt their relationship was not going to work out for a variety of reasons and wanted a divorce, although, the spouse did not. This led to the spouse reporting the origin of their marriage to the Criminal Investigation Division (CID), which is why they are not claiming Honorable service, but the applicant contends portions of their service was Honorable. The applicant strived to be the best Infantryman they could be from the beginning and immediately out of basic training, went to Airborne School, followed by the Ranger Assessment and Selection Program, and went to the 2nd Ranger Battalion in Fort Lewis. While the applicant attempted Ranger School twice and fell, resulting in them being kicked out of the 75th Ranger Regiment, the effort was ever present [as it still is to this day]. Once at Fort Polk, the applicant immediately started putting together a packet for PSYOP Assessment and Selection. The applicant believed in the Army and believed in their potential to make a difference.

(2) The applicant is building their life anew and is requesting aid in attending school. Currently, they are working as a Nurse Aid in a long term care facility and -will be attending school in the fall for their Associates of Applied Science (A.A.S.) in Paramedicine. By upgrading their discharge, they believe this will create more job opportunities for them in the future and opportunities to pursue their passions, helping people in the later stages of life and responding to emergency trauma situations.

c. Board Type and Decision: In a records review conducted on 28 February 2024, and by a 4-1 vote, the board determined the discharge is inequitable. The board found sufficient evidence of in-service mitigating factors (length, quality), and post service accomplishments which outweigh the applicant misconduct - BAH Fraud. Therefore, the board voted to grant relief

in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, paragraph 14-12a, the narrative reason to misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other than Honorable Conditions

- b. Date of Discharge: 8 July 2020
- c. Separation Facts:
 - (1) Date of Notification of Intent to Separate: NIF

(2) Basis for Separation: Pursuant to the applicant's request for voluntary discharge under provisions of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

- (3) Recommended Characterization: NIF
- (4) Legal Consultation Date: NIF
- (5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 2 July 2020 / Under Other than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 13 September 2016 / 4 years, 21 weeks; executed 1 year extension, increasing their contractual obligation to 5 years, 21 weeks.

b. Age at Enlistment / Education / GT Score: 18 / High School Diploma / 106

c. Highest Grade Achieved / MOS / Total Service: E-4 / 11B1P Infantryman / 3 years, 6 months.

d. Prior Service / Characterizations: None

- e. Overseas Service / Combat Service: None
- f. Awards and Decorations: AGCM, NDSM, ASR, PRCHTBAD
- g. Performance Ratings: NA
- h. Disciplinary Action(s) / Evidentiary Record:

(1) On 10 May 2016, the applicant enlisted in the United States Army Reserve's Delayed Entry Program; on 13 September 2016, they enlisted in the Regular Army for 4 years and 21 weeks as a PV2. On 6 December 2019, the applicant executed a 1 year extension.

(2) The Enlisted Record Brief provides on 13 September 2018, the applicant promoted to SPC. They were awarded their Army Good Conduct Medal and their Parachute Badge. On 23

April 2020, they were flagged, a Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

(3) Although missing from the AMHRR, the applicant provides on 23 April 2020, they were charged in violation of Article 81, UCMJ, for conspiring to commit larceny of BAH and BAS (valuing over \$500) by getting married to their spouse (23 February 2018) and Article 121, UCMJ for stealing BAH entitlement (valuing over \$500); charges were preferred. The Court-Martial Charge(s) Transmittal Form indicates the company commander recommended a General Court-Martial, based on the dollar amount and the length of the crime.

(4) On 8 June 2020, after consulting with counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10, Discharge In Lieu of Trial by Court-Martial. In their request they affirmed no one had subjected them to coercion, and counsel had advised them of the implications of their request. The applicant further acknowledged they were guilty of the charges against them or lesser ones, electing to submit a statement on their behalf.

(5) On 10, 11, and 26 June 2020, the chain of command recommended approval of the applicant's voluntary separation request, with an Under Other than Honorable Conditions characterization of service.

(6) On 2 July 2020, the appropriate approval authority approved the separation and directed their discharge with a characterization of service of Under Other than Honorable Conditions and a reduction to the lowest enlisted grade.

(7) On 7 and 8 July 2020, their separation orders were issued, and the effective date changed from 10 to 8 July 2020. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged accordingly on 8 July 2020, with 4 years, 1 month, and 19 days; they have completed their first full term of service.

- i. Lost Time / Mode of Return: None
- j. Behavioral Health Condition(s):
 - (1) Applicant provided: None
 - (2) AMHRR Listed: None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); Self-Authored Statement; DD Form 214 (Certificate of Release or Discharge from Active Duty); Charge Sheet; A Book Titled: 52 Simple Reasons Why I Love You; Enlisted Record Brief (ERB); Servicemembers' Group Life Insurance (SGLI) Election and Certificate; Record of Emergency Data; DA Form 3286 (Statement for Enlistment U.S. Army Enlistment Program); Certificate of Completion for Nurse Aide Training Program; Four third-party statements indicates the following:

a. On an undated statement, provides they have known the applicant from a young age and know from experience, the applicant embodies all of the army values, most notably, loyalty, respect, and integrity. It is clear from their efforts, both during service and post service, they demonstrate an incredible work ethic and drive. It is not only discouraging to see a good Soldier cast aside but also a gross miscarriage of justice.

b. On an undated statement from their former squad leader, provides they met the applicant when they were assigned to their squad. The applicant embodied everything you could ask for in a brand new Ranger private; highly attentive, willing to learn, obedient but free thinking, hardworking, mentally, and physically resilient. They married the applicant and their now ex-spouse prior to them leaving for Ranger School, as they were an ordained minister. A year or so later, they were questioned by CID concerning the origin of the applicant's marriage. They were shocked considering the applicant's adoration and care they took for their ex-spouse during their relationship. They became roommates after the applicant was discharged and they witnessed the applicant bounce back and charge forward with their life. They quickly became the go to person at their new place of work and threw themselves into becoming the best medical professional they can be. After all the applicant sacrificed and worked hard for, they were unjustly tossed out and stripped of the benefits they earned through sheer grit and determination. They are requesting the applicant's discharge be rightfully upgraded in order for the applicant to better their life, by improving themselves and others.

c. An undated statement from another Soldier the applicant was stationed with, providing the applicant was always helpful with a good attitude and a good friend. They never witnessed the beginning of the applicant's marriage; however, when they met, the applicant loved their spouse, as much as any new spouse would. The applicant deserves a discharge upgrade for their time served in the Army.

d. On 25 January 2021, the Director of Nursing at the Healthcare and Rehabilitation Center the applicant works, provides they met in September 2020 when the applicant applied to the facility as a nursing assistant and will receive their official certificate this month. They have been a vital, exemplary employee and caregiver. They have stepped up and offered to care for COVID 19 positive residents both at this facility and others. The applicant is kind, gentle, and compassionate with the residents and tends to have a calming effect on difficult residents. They are fortunate to have the applicant on their team.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is a Certified Nursing Aid (CNA) for a long term care facility, and attending school in the fall for their associate degree in Paramedicine.

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 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

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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.

(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.

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(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 10, Discharge in Lieu of Trial by Court Martial is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general was authorized, an under other than honorable conditions discharge was considered appropriate, unless the record was so meritorious it would warrant an honorable. After receiving legal counseling, the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that they have been counseled, understands their rights, and may receive a discharge under other than honorable conditions. The following will accompany the request for discharge:

- A copy of the court-martial Charge Sheet (DD Form 458)
- Report of medical examination and mental status evaluation, if conducted
- A complete copy of all reports of investigation
- Any statement, documents, or other matter considered by the commanding officer in making their recommendation, including any information presented for consideration by the soldier or consulting counsel.

(5) A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

(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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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.

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(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.

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 applicant were carefully reviewed.

b. A review of the available evidence provides the applicant enlisted in the Regular Army and as an Infantryman, promoted to SPC. They were awarded an Army Good Conduct Medal and Parachute Badge. The applicant served 3 years, 7 months, and 10 days prior to their indiscipline. In April 2020, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA).

(1) They were charged (two specifications) for larceny of BAS and BAH, valuing over \$500, conspiring by having entered into a marriage; charges were preferred. After consulting with defense counsel, the applicant voluntarily requested to be discharged in lieu of trial by court-martial and elected to submit a statement on their behalf, however, the record is void of the pertinent document. They received an Under Other than Honorable Conditions characterization of service and was reduced to the lowest enlisted grade.

(2) In a self-authored statement, the applicant took full responsibility for how the marriage started, acknowledging it was illegal; nevertheless, they both fell in love within a few months of being married and provided a copied book (52 Simple Reasons Why I Love You), written by their ex-spouse to the applicant, while they were in Ranger School. The applicant ultimately felt their relationship was not going to work out for a variety of reasons and wanted a divorce, although, the spouse did not. This led to the spouse reporting the origin of their marriage to the Criminal Investigation Division (CID). This action is why they are not claiming Honorable service, but the applicant contends portions of their service was Honorable. The applicant strived to be the best Infantryman they could be from the beginning and immediately out of basic training, went to Airborne School, followed by the Ranger Assessment and Selection Program, and went to the 2nd Ranger Battalion in Fort Lewis. While the applicant attempted Ranger School twice and fell, resulting in them being kicked out of the 75th Ranger Regiment, the effort was ever present (as it still is to this day). Once they arrived at Fort Polk, they immediately started putting together a packet for PSYOP Assessment and Selection. The applicant believed in the Army and believed in their potential to make a difference.

(3) The third-party statements speak highly of the applicant. They all speak to the applicant's dedicated military service and success after leaving the Army.

(4) A medical and mental health examination was not required for the voluntary discharge ILO trial by court-martial, however, could have been requested by the servicemember. The applicant completed 3 years, 9 months, and 26 days of their 5-year, 21 week contractual obligation.

c. Army Regulation 635-200 states Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a soldier who is discharge in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

- (2) Did the condition exist, or experience occur during military service? N/A
- (3) Does the condition or experience actually excuse or mitigate the discharge? N/A
- (4) Does the condition or experience outweigh the discharge? N/A
- **b.** Response to Contention(s):

(1) The applicant requests an upgrade to honorable, a narrative reason change, and both the separation and reenlistment codes changed. The board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests and found sufficient evidence of in-service mitigating factors (length, quality), and post service accomplishments which mitigate the applicant misconduct - BAH Fraud and determined that this contention was valid and voted to upgrade the characterization of service to honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason to misconduct (Minor Infractions), with a corresponding separation code of JKN, and a change to the reentry code to RE-3.

(2) The applicant contends they both fell in love within a few months of being married and provided a copied book (52 Simple Reasons Why I Love You), written by their ex-spouse to the applicant, while they were in Ranger School. The applicant ultimately felt their relationship was not going to work out for a variety of reasons and wanted a divorce, although, the spouse did not. This led to the spouse reporting the origin of their marriage to the Criminal Investigation Division (CID). The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based off the applicant's in-service mitigating factors (length, quality), and post service accomplishments as outlined above in paragraph 9b (1).

(3) The applicant contends Honorable service as they strived to be the best Infantryman they could be from the beginning and immediately out of basic training, went to Airborne School, followed by the Ranger Assessment and Selection Program, and went to the 2nd Ranger Battalion in Fort Lewis. While the applicant attempted Ranger School twice and fell, resulting in them being kicked out of the 75th Ranger Regiment, the effort was ever present (as it still is to this day). Once they arrived at Fort Polk, they immediately started putting together a packet for PSYOP Assessment and Selection. The applicant believed in the Army and believed in their potential to make a difference. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based off the applicant's in-service mitigating factors (length, quality), and post service accomplishments as outlined above in paragraph 9b (1).

c. The board determined that the discharge is inequitable based on the applicant in-service mitigating factors (length, quality), and post service accomplishments outweighing the applicant's misconduct (BAH Fraud) – basis for separation. Thus, relief is warranted.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable because the applicant's in-service mitigating factors (length, quality), and post service accomplishments outweighed the basis for separation – BHA Fraud. 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 rationale, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

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

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200, paragraph 14-12a

Authenticating Official:



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