

**1. Applicant's Name:** [REDACTED]**a. Application Date:** 29 April 2021**b. Date Received:** 3 May 2021**c. Counsel:** None.**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

**a. Applicant's Requests and Issues:** The current characterization of service for the period under review is under other than honorable conditions. The applicant requests an upgrade to honorable, SPD code change, reentry code and a narrative reason change.

(1) The applicant states in effect, as a bisexual soldier in the Army during the "Don't ask don't tell" policy they understood their place in the military. The applicant sexually was hidden until a random health and welfare check; gay porno magazines and DVDs were discovered in their room. They were reassigned to another company within the battalion, and once other service members found out why they were reassigned that's when everything began. Specialist Fag was the nickname given to them by their peers and NCOs. They told their new command team about the names they were being called and they were told if things were not physical nothing could be done about it. The antics continued and became worse, dildos were found in their gas tank and on the hood of their car, faggot was written on their car and posted on their barracks room door. NCOs and officers constantly looked at them in disgust and refused to talk to them when it came to supply matters. They became suicidal, they wanted to die, they started drinking heavily and drove drunk hoping they would be in a car accident so they would be done with the nightmare.

(2) While deployed to Iraq, they were there for 15 months and for 10 of those months the weapon assigned to them was a pair of bolt cutters. After the first KIA soldiers in their unit started looking for ways to get out of Iraq. Their Battalion Commander, strongly disliked homosexuals. Two soldiers in different companies submitted Sworn Statements, accusing the applicant of sexual harassment, additionally they stated they were uncomfortable being on the same FOB as the applicant and they feared they would be raped. The second soldier stated they had sexual relations with the applicant. It was proved that they did not commit any of the allegations. Things started getting better for them mentally, and things got better at work until October 2007 when they were attacked, they were physically assaulted by a group of soldiers and were called faggot, and racially charged names. They told their chain of command, and nothing was done, they became depressed and started taking pills, three more random attacks happened, and no one did anything about it. In November 2007 they reenlisted because they wanted a new duty station. Two weeks after their reenlistment they befriended a soldier from another unit. Their friend had a mission on the night that they were attacked; raped and tied down by three people. They did not tell anyone because no one did anything when they were attacked previously. In March 2008 they became friends with a soldier, one evening they watched a movie together in the applicant's room. They had consensual sex, the next evening their First Sergeant told them they were being charged with sodomy and rape and that CID wanted to investigate them. When they talked to CID, they drew pictures of their sexual encounter and asked how it is rape and sodomy if they were on the receiving end. The soldier was accused of giving false information and they were sent back to the states. When soldiers in their unit found out what happened, they started calling them SPC Faggot again.

(3) When they returned from deployment they were ostracized, and the harassment started again. The chain of command did nothing, when they went on leave, they received

numerous texts and calls from people in their unit threatening to kill them. They asked one of the soldiers why and they were told because they raped someone and got them in trouble all while the applicant remained unharmed. They knew if they went back to Fort Riley they would be killed, so they did not return. When they were caught, Fort Riley was ready to confine them for ten years. They told them what happened and how they contracted HIV when they were raped in Iraq, and instead of being in confinement for ten years they were released under Chapter 10. During their time in the Army, they were a great soldier, and if there had not been multiple false statements, beatings, the rape, and knowing that someone wanted to kill them they would have been on their 18th year in the Army.

**b. Board Type and Decision:** In a records review conducted on 4 December 2024, and by a 5-0 vote, the board determined that the characterization was improper based on the applicant's in service factors (length, quality, combat). Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to General Under Honorable Conditions.

*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:** In Lieu of Trial by Court Martial / AR 635-200, Chapter 10 / KFS / RE- 4 / UOTHC

**b. Date of Discharge:** 3 December 2010

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** N/A

**(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:** UOTHC

**(4) Legal Consultation Date:** 26 October 2010

**(5) Administrative Separation Board:** N/A

**(6) Separation Decision Date / Characterization:** 24 November 2010 / UOTHC

### 4. SERVICE DETAILS:

**a. Date / Period of Enlistment:** 27 November 2007 / 5 years.

**b. Age at Enlistment / Education / GT Score:** 18 / High School Diploma / 86

**c. Highest Grade Achieved / MOS / Total Service:** E-4 (Specialist) / 92Y10 Unit Supply Specialist / 3 years, 6 months, 15 days.

**d. Prior Service / Characterizations:** USAR; 20030728 – 20050206 / Honorable  
RA; 20050207 – 20071126 / Concurrent Service

**e. Overseas Service / Combat Service:** None / Iraq; 20070207 – 20080414

**f. Awards and Decorations:** NDSM, GWTSM, ICM-CS, ASR, OSR, CAB

**g. Performance Ratings:** N/A

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

(1) Three Personnel Action Documents provides that the applicant's duty status changed from present for duty (PDY) to absent without leave (AWOL) on 9 June 2008. Their duty status changed from AWOL to dropped from rolls (DFR) on 9 July 2008. On 30 December 2009 the applicant's duty status changed from DFR to Civilian Confinement.

(2) The applicant's duty status changed from Civilian Confinement to absent without leave AWOL on 22 June 2010. Their duty status changed from AWOL to dropped from DFR on 24 June 2010. On 29 June 2010 the applicant's duty status changed from DFR to PDY when they surrendered to military authorities.

(3) A Lab Results Report document provides the applicant tested positive for THC from a sample collected on 6 July 2010.

(4) On 8 July 2010 the applicant signed a Sworn Statement and answered questions regarding their AWOL status.

(5) A DD Form 458 (Charge Sheet) shows that on 22 September 2010 the applicant was charged with violating Article 85 of the Uniform Code of Military Justice (UCMJ); without authority the applicant was absent from their unit located at Fort Riley, Kansas from 9 June 2008 – 29 June 2010. Additionally, they were charged with violating Article 112a: the applicant wrongfully used marijuana between 7 June 2010 – 7 July 2010.

(6) On 26 October 2010 the applicant consulted with counsel and voluntarily requested a discharge in lieu of trial by court-martial.

(7) On 24 November 2010 the applicant's request for discharge in lieu of trial by court-martial was approved by the appropriate approving authority with an Under Other than Honorable Conditions discharge characterization and a reduction in rank to E-1.

**i. Lost Time / Mode of Return:** 20061003 – 20061003, 20061026 – 20070116, 20080609 – 20100628 / Surrendered.

**j. Behavioral Health Condition(s):** PTSD, TBI, Sexual assault/ Harassment

(1) **Applicant provided:** The applicant did not submit supporting documentation.

(2) **AMHRR Listed:** None.

**5. APPLICANT-PROVIDED EVIDENCE:** A DD Form 293 (Record Review) application, four page statement, Certification of Military Service document, and a DD Form 214.

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted in support of their application.

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), 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) provides the basic authority for the separation of enlisted personnel. Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

(2) A general discharge is a separation from the Army under honorable conditions. When authorized, it 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. It may be issued for misconduct. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, they have been awarded a personal decoration or if warranted by the circumstances of a specific case.

(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 discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate, unless the record was so meritorious it would warrant an honorable

(a) 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.

(b) The following data 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 his/her recommendation, including any information presented for consideration by the soldier or consulting counsel
- 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

(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 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 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.

**g.** 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.

**h.** 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

i. Army Regulation 630-10 (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.

(1) 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 should be charged with time lost.

(2) Classification of an absence is dependent upon such factors as the following

- Orders and instructions, written and oral, the Soldier received before and during the absence.
- Age, military experience, and general intelligence of the soldier.
- Number and type of contact the soldier had with the military while absent.
- Complete or incomplete results of a court-martial decision, if any.

(3) An absence immediately following authorized leave is classified as AWOL. Should the absence subsequently be reclassified, the soldier's 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

j. Manual for Courts-Martial (2008 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued there under, 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.

- Article 85 (Desertion: In time of war) states punishment consists of death, dishonorable discharge, or a bad conduct discharge, forfeiture of all pay and allowances and confinement for life.
- Article 112a (Wrongful use of controlled substances) states punishment consists of a dishonorable discharge, or a bad conduct discharge, forfeiture of all pay and allowances and confinement for 5 years.

**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 Form 214 indicates that the applicant received an under other than honorable condition (UOTHC) discharge, this discharge is normally appropriate for a soldier who voluntarily requests to be discharge in lieu of trial by courts-martial, CH 10.

b. Based on the available evidence the applicant deployed to Iraq, while deployed they reenlisted to serve for five more years in the Army. Two months after they returned from deployment, they were AWOL. Records provide that there was not any communication between the applicant and the military during their period of absence from 9 June 2008 – 29 June 2010.

c. The applicant was apprehended by the Cumberland County, Sheriff's office in North Carolina; they had a warrant for desertion. The applicant was released on 22 June 2010 and instructed to return to Fort Riley, Kansas. After the applicant returned to duty, they tested positive for THC. The applicant was charged with violating Articles 85 and 112a of the UCMJ, after consulting with counsel, they voluntarily requested to be discharged in lieu of trial by courts-martial and did not elect to submit a statement on their behalf. A medical and mental examination was not required; however, they could have been requested by the service member. The Applicant's OMPF is void of evidence indicating whether they requested either examination.

d. Army Regulation 635-200 states a 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 discharged 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.

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: PTSD and MST.

(2) Did the condition exist, or experience occur during military service? **Yes.** MST with resulting PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that given the trauma occurred prior to the misconduct and nexus between trauma, avoidance, and drugs, the basis is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** Based on liberally considering all the evidence before the board, the ADRB determined that the applicant's PTSD resulting from MST outweighed the basis of separation (multiple AWOL, tested positive for THC). The applicant elected for separation via an administrative process under the provisions



of Chapter 10, AR 635-200, in lieu of trial by court-martial and the convening authority approved that request In Lieu of Trial by Court Martial.

**b. Response to Contention(s):**

(1) The applicant contends they feared for their safety and their life. The board consider this contention and the applicant assertion during proceedings, but ultimately did not address the contention due to relief being granted based on the applicant service factors (length, quality, combat) and the applicant diagnosis of PTSD resulting from MST.

(2) The applicant contends they were harassed, physically attacked, sexually assaulted; contracted HIV while serving In the Army. The board consider this contention and the applicant assertion during proceedings, but ultimately did not address the contention due to relief being granted based on the applicant service factors (length, quality, combat) and the applicant diagnosis of PTSD resulting from MST.

**c.** The board determined that the characterization of service is inequitable base on the applicant's in service factors (length, quality, combat) and the applicant's diagnosis of PTSD resulting from MST. Accordingly, the board voted to grant relief in the form of an upgrade to the characterization of service to General, Under Honorable Conditions. 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 General Under Honorable Conditions based on the totality of the applicant's in service factors (length, quality, combat) and the applicant's diagnosis of PTSD resulting from MST. Thus, the prior characterization is no longer appropriate.

(2) The board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.

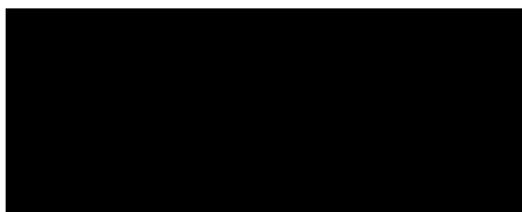
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: General, Under Honorable Conditions
- c. Change Reason / SPD code to: No Change
- d. Change RE Code to: No Change
- e. Change Authority to: No Change

**Authenticating Official:**

7/1/2025



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