- 1. Applicant's Name:
 - a. Application Date: 18 January 2023
 - b. Date Received: 14 January 2023
 - c. Counsel: None
- 2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. Applicant's Requests and Issues:

(1) The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

(2) The applicant seeks relief stating a change is requested due to the nature of their separation from the military being solely based on refusal of the Coronavirus Disease 2019 (COVID-19) vaccine. The applicant contends the characterization of their discharge is inequitable because it is based on one isolated incident in their 42 months of service. Their military records display not one adverse action outside of adverse actions related to refusal of the COVID-19 vaccine. This discharge characterization is unjustifiable due to the COVID-19 vaccine mandate no longer being required among service members as of 23 December 2022.

b. Board Type and Decision: In a records review conducted on 23 February 2024, and by a 5-0 vote, the Board determined the discharge was inequitable and voted to grant relief in the form of an upgrade of the characterization of service to Honorable, changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The reentry eligibility (RE) code will also change to code to 1.

1. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Misconduct (Serious Offense) / Army Regulation 635-200, Paragraph 14-12c / JKQ / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 29 June 2022

- c. Separation Facts:
 - (1) Date of Notification of Intent to Separate: 13 May 2022

(2) Basis for Separation: On or about 13 October 2021, ordered to become fully vaccinated with the COVID-19 Vaccine, but failed to do so.

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

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

(6) Separation Decision Date / Characterization: 8 June 2022 / General (Under Honorable Conditions)

2. SERVICE DETAILS:

- a. Date / Period of Enlistment: 19 November 2018 / 4 years
- b. Age at Enlistment / Education / GT Score: 20 / Some College / 116

c. Highest Grade Achieved / MOS / Total Service: E-4 / 56M1O, Religious Support / 3 years, 7 months, 11 days

- d. Prior Service / Characterizations: None
- e. Overseas Service / Combat Service: Poland / None
- f. Awards and Decorations: ARCOM, AGCM, NDSM, ASR, OSR
- g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Form 4856 (Developmental Counseling Form) dated 21 October 2021, reflects the applicant received counseling for declining to receive the COVID-19 vaccine. The applicant agreed with the information and signed the form.

(2) A memorandum, Headquarters, 1st Cavalry Division, subject: General Officer Memorandum of Reprimand (GOMOR) dated 1 November 2021, reflects the applicant received a reprimand for failing to comply with a lawful order to become fully vaccinated with a COVID-19 vaccine, but failed to do so. On 3 November 2021 the applicant acknowledged receipt of the GOMOR and elected to submit a statement in their behalf, stating –

(a) Before the Federal and Drug Administration (FDA) approval was authorized on any of the COVID-19 vaccinations, the Division implemented policies that incentivized the receipt of the COVID-19 vaccination. Discrimination against those hesitant to inoculated themselves with a vaccine that required FDA approval began months before approval was acquired.

(b) They have considered providing reasons as to why they do not feel comfortable becoming inoculated with the COVID Vaccine; however, those whom they have spoken to in their chain of command, have not cared nor genuinely listened to their thoughts and concerns. Instead, they will provide a brief history of their military service.

(c) They are very disheartened at the decision the Department of Defense has made to issue GOMORs and separate the unvaccinated personnel, but they are even more disheartened by the consideration to give the unvaccinated anything below an Honorable Discharge. They would hate to bring dishonor upon their family by being classified as not serving honorably, especially when they have done their absolute best to serve our country and the troopers they have worked alongside.

(3) On 14 February 2022 the commanding general, having carefully considered the GOMOR of the applicant, the circumstances of the misconduct, any rebuttal matters, and the recommendations of the chain of command, directed the GOMOR be permanently placed in the applicant's Army Military Human Resource Record.

(4) A memorandum, Headquarters and Headquarters Battery, 1st Battalion, 82nd Field Artillery Regiment, subject: Notification of Administrative Separation under Army Regulation 635-200, Chapter 14-12c, dated 13 May 2022, the applicant's company commander notified them of initiating actions to separate them for Commission of a Serious Offense. The reason for the proposed action is, on or about 13 October 2021, they were ordered to become fully vaccinated with the COVID-19 Vaccine but failed to do so. The commander recommended the applicant receive a general (under honorable conditions) characterization of service.

(5) A memorandum, Headquarters and Headquarters Battery, 1st Battalion, 82nd Field Artillery Regiment, subject: Commander's Report for Separation under Army Regulation 635-200, Chapter 14-12c, dated 24 May 2022, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The commander recommended the applicant's service be characterized as "Honorable."

(6) A memorandum, Headquarters, 1st Battalion, 82nd Field Artillery Regiment, subject: Administrative Separation under Army Regulation 635-200, Chapter 14-12c, dated 24 May 2022, the applicant's battalion commander submitted the request to separate the applicant prior to their expiration term of service. The battalion commander recommended the applicant's service be characterized as "General (Under Honorable Conditions)."

(7) A memorandum, Headquarters, 1st Armored Brigade Combat Team, subject: Administrative Separation under Army Regulation 635-200, Chapter 14-12c, [Applicant], 8 June 2022, the separation authority having reviewed the separation packet and after careful consideration of all matters, directed the applicant be separated from the Army prior to the expiration of current term of service. The separation authority directed the applicant will be furnished a General (Under Honorable Conditions) discharge.

(8) A DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 29 June 2022, shows in:

- item 4a (Grade, Rate or Rank) Specialist
- item 4b (Pay Grade) E-4
- item 12c (Net Active Service This Period) 3 years, 7 months, 11 days
- item 18 (Remarks) MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE
- item 24 (Character of Service) General (Under Honorable Conditions)
- item 25 (Separation Authority) Army Regulation 635-200
- item 26 (Separation Code) JKQ [Misconduct, Commission of a Serious Offense]
- item 27 (Reentry Code) 3
- item 28 (Narrative Reason for Separation) Misconduct, (Serious Offense)
- i. Lost Time / Mode of Return: None
- j. Behavioral Health Condition(s): NIF

3. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- excerpts of their service record to include
 - Army Commendation Medal Certificate

- Air Assault Badge Permanent Order
- excerpts of their Case Files for Approved Separation to include three Character Reference Statements to attest to the applicant's strong work ethic and stellar character
- DD Form 214
- Enlisted Record Brief
- 4. **POST SERVICE ACCOMPLISHMENTS:** None submitted with application.

5. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

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

b. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Title 10 U.S. Code; Section 1553 and DoD Directive 1332.41 and DoD Instruction 1332.28.

c. Office, Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder), 3 September 2014, directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

d. Office, Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017 issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence

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sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

e. Office, Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations), 25 July 2018 issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

(1) This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, DRBs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

(2) Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

f. Office, Secretary of Defense memorandum (Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Member of the Armed Forces) 10 January 2023, implemented 23 December 2022, James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 which rescinded the mandate for members of the Armed Forced to be vaccinated against Corona Virus 2019 (COVID-19), as issued on 24 August 2021 in the now-rescinded Secretary of Defense Guidance for Mandatory COVID-19 Vaccination for Department of Defense Service Members issued on 30 November 2021. For Service members administratively discharged on the sole bases of failure to obey a lawful order to receive vaccine for COVID-19, the Department precluded by law from awarding any characterization less than a general (under honorable conditions) discharge. Former service members may petition the Military Departments DRBs and BCM/NRs to individually request correction to their personnel records, including records regarding the characterization of their discharge.

g. Office, Secretary of the Army memorandum (Army Policy Implementing the Secretary of Defense Coronavirus 2019 (COVID-19) Vaccination Mandate Recission), 24 February 2023 implemented policy to rescind the COVID-19 vaccination mandate, applicable to Soldiers servicing in the Regular Army (RA), Army National Guard (ARNG)/Army National Guard of the United States (ARNGUS), and the U.S. Army Reserve (USAR), cadets of the US. Military Academy (USMA), cadet candidates at the U.S. Military Academy Preparatory School (USAMPS), and cadets in the Senior Reserve Officer Training Corps (SROTC). It provides that Soldiers currently serving shall not be separated solely on their refusal to receive the COVID-19 vaccine if they sought an exemption on religious, administrative, or medical grounds. Furthermore, the guidance provides details for updating records of current Soldiers, however, former Soldiers may petition the Army Discharge Review Board or the Army Board for Correction of Military Records to request corrections to their personnel records regarding the characterization of their discharge.

h. Office, Assistant Secretary of the Army, Manpower and Reserve Affairs (SAMR) memorandum (Correction of Military Records for Former Members of the Army Following Recission of August 24, 2021 and November 30, 2021, Coronavirus Disease 2019 Vaccination Requirements for Former Soldiers), 6 September 2023, provided supplemental guidance to the Army Discharge Review Board (ADRB) and the Army Board for Correction of Military Records (ABCMR) when considering requests for discharge upgrade requests involving former service members who did not meet the COVID-19 vaccination mandate. If the Board determines relief is warranted, this does not imply the vaccination mandate or involuntary separation itself constituted an "injustice" or "inequity" as the vaccination mandate was a valid lawful policy at the time. Consistent with previous published Under Secretary of Defense, Personnel and Readiness Guidance and Board processes regarding changes to policy and/or standards, the COVID-19 vaccination requirement rescission is a relevant factor in evaluating an application for upgrade of the characterization of service. Reinstatement is not under the purview of the Military Review Board. Former Soldier would need to submit their requests for reinstatement to the Army Board for Correction of Military Records. Additionally, the Board should:

(1) Generally grant a request to upgrade the characterization of service from a former Soldier when they were involuntarily separated, and the Reentry Code would prevent them from rejoining the military without a waiver should they desire to do so; and meet three conditions: (1) The original action was based solely on refusal to receive the COVID-19 vaccination, (2) The former Soldier formally sought an accommodation on religious or medical grounds prior to contemporaneous with official initiation of the action; and (3) there are no aggravating factors in the member's record, such as misconduct.

(2) If the above conditions are met, normally grant enlisted requests to show the following correction:

- Separation Authority: Army Regulation 635-200, Chapter 15
- Separation Code: JKA
- Reenlistment Code: RE1
- Narrative Reason for Separation: Secretarial Plenary Authority
- Character of Service: Honorable

(3) Officer records should be changed to have similar effect.

(4) It further states to apply existing policy that requires the former Soldier to establish evidence of an error, impropriety, inequity, or injustice in support of their petition in cases with multiple reasons for separation.

i. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, authority for separation of Soldiers, and the general provisions governing the separation of Soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers.

(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.

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

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

(4) Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence 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. Paragraph 14-12c (Commission of a Service Offense), stated 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 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

j. 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 "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, misconduct (serious offense).

k. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DoD Instruction 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

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separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

6. SUMMARY OF FACT(S):

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

b. A review of the available evidence provides the applicant received developmental counseling for declining to receive the COVID-19 vaccine and was reprimanded in writing for disobeying a lawful order to become fully vaccinated against COVID-19. The DD Form 214, signed by the applicant, provides the applicant was discharged with a character of service of general (under honorable conditions) for misconduct (serious offense) rather than a discharge under other than honorable conditions, which is normally considered appropriate. They completed 2 years, 10 months, and 237 days of their contractual obligation. The applicant has not completed their first full term of service.

c. The rescission of the COVID-19 vaccination mandate does not negate the propriety of the discharges or separations that occurred prior to this policy change or imply the vaccination mandate or involuntary separation constituted an inequity; it was a valid lawful policy at the time. However, the COVID-19 vaccination requirement rescission is a relevant factor in evaluating an application for discharge upgrade relief based on religious or medical grounds prior to or simultaneously with the official initiation of the separation action; and there are no aggravating factors of indiscipline and/or misconduct.

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.

7. 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.** Prior Decisions Cited: None
- c. Response to Contention(s):

(1) The applicant contends a change is requested due to the nature of their separation from the military being solely based on refusal of the Coronavirus Disease 2019 (COVID-19) vaccine. The characterization of their discharge is inequitable because it is based on one isolated incident in their 42 months of service. The applicant contends their military records display not one adverse action outside of adverse actions related to refusal of the COVID-19 vaccination. The applicant contends their discharge characterization is unjustifiable due to the COVID-19 vaccine mandate no longer being required among service members as of 23 December 2022. The Board determined the applicant's discharge was inequitable for the reasons discussed in subparagraph d below.

d. The Board determined the discharge was inequitable based on the 24 February 2023 SECARMY Policy Memo "Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission". Based on the applicant's request for an exemption no other misconduct in the record, 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, the narrative reason for separation to Secretarial Authority with a corresponding separation code of JFF, and the reentry code to RE-1.

e. Rationale for Decision:

(1) The Board carefully considered the applicant's request, supporting documents, evidence in the records, published Department of Defense guidance for liberal consideration of discharge upgrade requests, and the 24 February 2023 SECARMY Policy Memo "Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission". The Board considered the applicant's statements, record of service, including no other disciplinary/adverse actions, the nature of misconduct, and the reason for separation. The Board noted COVID-19 vaccination refusal was the sole reason for separation and the change in policy since the applicant's involuntary separation. The Board found the applicant's statements to the chain of command during counseling and in response to the GOMOR filing could be construed as a request for exemption. The Board also found sufficient evidence of in-service mitigating factors, including the length and quality of the applicant's service. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were inequitable.

(2) The Board voted to change the applicant's narrative reason for discharge to Secretarial Authority, with a corresponding separation code to JFF, as the reason the applicant was discharged was inequitable.

(3) The RE code will change to RE-1.

8. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Secretarial Authority / JFF
- d. Change RE Code to: RE-1
- e. Change Authority to: AR 635-200

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 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