

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 28 September 2023
- b. **Date Received:** 10 October 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 a change to honorable.

(2) The applicant seeks relief stating they served as a Military Police on Joint Base Lewis McChord and experienced multiple stressful incidents which led to self-medicating by drinking alcohol as a coping mechanism. This led to them being arrested for driving under the influence (DUI); resulting in their general (under honorable conditions) discharge.

(3) They have been service connected by the Department of Veterans Affairs (VA) for Post-Traumatic Stress Disorder (PTSD) based on their experiences in the Army. They are requesting an upgrade of the characterization of service so they can use VA education benefits to better support their family.

b. Board Type and Decision: In a records review conducted on 19 April 2024, and by a 4-1 vote, the Board determined the discharge is inequitable based on the applicant's PTSD partially mitigating the use of alcohol to self-medicate and the arrest for a DUI. It does not mitigate damaging property by sideswiping another vehicle, causing it to flip on its roof. Based on the one-time DUI, lack of injuries and compassion from the Board, the Board determined the discharge inequitable. 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 for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

3. 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: 17 November 2017

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 24 October 2017

(2) **Basis for Separation:** on or about 29 July 2017, a state trooper arrived at the scene of the applicant's accident. Investigation revealed the applicant's vehicle lost control and struck another vehicle. The applicant was administered a Field Sobriety Test, which revealed impairment. They were arrested and transported to the Lacey Police Department where a Blood Alcohol Content (BAC) test resulted in a BAC of 0.163.

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

(4) Legal Consultation Date: 25 October 2017

(5) Administrative Elimination Board: NA

(6) Separation Decision Date / Characterization: 1 November 2017 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 12 January 2015 / 5 years

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 108

c. Highest Grade Achieved / MOS / Total Service: E-4 / 31B1O, Military Police / 2 years, 10 months, 6 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, GWTSM

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) A DA Forms 4856 (Developmental Counseling Form) dated 29 July 2017, reflects the applicant received event-oriented counseling for a DUI, violation of Article 91 (Insubordinate Conduct Toward Warrant Officer, Noncommissioned Officer (NCO), or Petty Officer), violation of Article 92 (Failure to Obey Order or Regulation), violation of Article 111 (Drunken or Reckless Driving), and violation of Article 134 (General Article). The Plan of Action recommended revocation of off-post privileges, no consumption of alcohol until successful completion of Arm Substance Abuse Program (ASAP), flagged for adverse action, and recommend Uniform Code of Military Justice (UCMJ). The applicant agreed with the information and signed the form.

(2) A DA Form 8003 (ASAP Enrollment) dated 31 July 2017, reflects the applicant's company commander's referral of the applicant to the ASAP for a comprehensive assessment to determine whether or not the applicant meets the criteria for enrollment. The commander states the applicant was drinking and driving which caused an accident, resulting in a DUI charge with a BAC level of 0.163.

(3) A memorandum, Joint Base Lewis-McChord, subject: Law Enforcement Report – Initial-Final/Collateral, dated 16 August 2016, reflects the applicant as the named subject with the offense of a civil charge, Driving While Under the Influence of Alcohol, on or about 29 July 2017.

(4) A memorandum, Headquarters I Corps, subject: General Officer Memorandum of Reprimand (GOMOR), dated 30 October 2017, reflects the commanding general reprimanded the applicant in writing for DUI. Specifically, on 29 July 2017, the applicant decided to drive after drinking with friends. On the interstate, they lost control of their vehicle and collided with a vehicle. The collision caused the other vehicle to spin, flip upside down, and land on its roof. A

state police officer arrived on the scene and arrested the applicant and transported them to a local police state. A breathalyzer test was administered which resulted in a BAC of 0.163.

(5) A memorandum, Headquarters I Corps, subject: GOMOR Filing Determination, undated, reflects the applicant was provided a copy of the GOMOR and its supporting documents, was notified of their opportunity to respond, and elected to submit matters but failed to do so. The commanding general carefully considered the GOMOR and supporting documents, the circumstances of the misconduct, and the recommendation of subordinate commanders; and directed the GOMOR be filed permanently filed in the applicant's Army Human Resource Record.

(6) A DD Form 2807-1 (Report of Medical History) dated 19 September 2017, the applicant marked "Yes" for multiple questions to "Have you ever had, or no do you have;" to include; asthma, wearing of contact lenses or glasses, hearing loss, painful shoulder, elbow or wrist, recurrent back pain or any back problem, numbness or tingling, foot trouble, knee trouble, skin diseases, frequent or severe headaches, frequent trouble sleeping, and has been treated in an Emergency Room and has been a patient in any type of hospital.

(7) A DD Form 2808 (Report of Medical Examination) dated 19 September 2017, the examiner marked "Abnormal" for upper extremities, lower extremities, tattoos, and skin, lymphatics. The examiner checked "Normal" for psychiatric and indicated the applicant is qualified for separation with no physical profile restrictions.

- item 77 (Summary of Defects and Diagnoses) reflects bilateral shoulder pain, bilateral knee pain, acne, history of lower back pain, episodes of breathing issues, hearing loss and sleep issues
- item 78 (Recommendations) – follow up with primary care manager for above noted issues as needed

(8) A DA Form 3822 (Report of Mental Status Evaluation), dated 5 October 2017, reflects the applicant had no duty limitations due to behavioral health reasons, meets medical retention standards and is cleared for administrative action.

- Section IV (Diagnoses) reflects a behavioral health diagnosis of Alcohol Use Disorder
- Section V (Follow-Up Recommendations) – reflects follow-up as already scheduled with Substance Use Disorder Clinical Care
- Section VI (Recommendations and Comments for Commander) – the behavioral health provider states the applicant is cleared by behavioral health for an administrative action deemed appropriate by command

(9) A memorandum, 66th Military Police Company, 504th Military Police Battalion, subject: Separation under Army Regulation 635-200, Chapter 14, Paragraph 12c, Commission of a Serious Offense, dated 24 October 2017, notified the applicant of initiating actions to separate them for Commission of a Serious Offense, for on or about 29 July 2017, arrested and transported to the Lacey Police Department where a Blood Alcohol Content (BAC) test resulted in a BAC of 0.163. The company commander recommended the applicant's service be characterized as General (Under Honorable Conditions). On the same day the applicant acknowledged receipt of notification for separation.

(10) On 25 October 2017, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They acknowledged their understanding that they may expect to encounter

substantial prejudice in civilian life if a general (under honorable conditions discharge is issued to them. They further understand that as the result of issuance of a discharge that is less than honorable, they may be ineligible for many or all benefits as a veteran under both Federal and State laws. They elected to submit statements in their behalf stating they would like to sincerely apologize for making the decision to drive under the influence. They regret their actions that caused problems for their leadership, unit, and their life. They have completed the ASAP. Retention on active duty would give them the opportunity to continue what they started and accomplish their goals and serving the country honorably.

(11) A memorandum, 66th Military Police Company, 504th Military Police Battalion, subject: Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, [Applicant], dated 26 October 2017, the applicant's company commander submitted the request to separate the applicant prior to their expiration term of service. The company commander states it is not feasible or appropriate to accomplish other disposition because the applicant not demonstrated sufficient desire to overcome their shortcomings and become a contributing member of the unit or the Army. There is no medical or other data meriting consideration in the overall evaluation to separate the Soldier and in the determination as to the appropriate characterization of service.

(12) A memorandum, 42nd Military Police Brigade, subject: Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense [Applicant], dated 1 November 2017, the separation authority, after careful consideration of all matters, directed the applicant be separated from the Army prior to their expiration of current term of service and their service be characterized as General (Under Honorable Conditions). The separation authority waived the rehabilitative transfer requirement, as the transfer would serve no useful purpose or product a quality Soldier.

(13) On 17 November 2017, the applicant was discharged accordingly, the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant completed 2 year, 10 months, and 6 days of net active service this period and did not complete their first full term of service obligation of 5 years.

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

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

(1) **Applicant provided:** VA Medical Records excerpt reflecting their diagnoses of PTSD with a disability rating of 50-percent, effective 18 August 2021.

(2) **AMHRR Listed:** MSE/BHE as described in previous paragraph 4h(8).

5. **APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214
- VA Initial PTSD Disability Benefits Questionnaire
- VA Letter
- VA Rating Decision

6. **POST SERVICE ACCOMPLISHMENTS:** None submitted with the application.

7. **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. Multiple Department of Defense (DoD) 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) 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.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

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

(3) 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) established policy and prescribed procedures for separating members for misconduct. 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.

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 "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).

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 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

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

8. SUMMARY OF FACT(S):

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

b. A review of the applicant's Army Military Human Resource Record (AMHRR) reflects the applicant received a General Officer Memorandum of Reprimand for driving under the influence of alcohol and was involuntarily separated from the Army. The DD Form 214 provides the applicant was discharged with a character of service of General (Under Honorable Conditions), for misconduct, (serious offense). They completed 2 years, 10 months, and 6 days of net active service this period; however, they did not complete their 5 year contractual service obligation.

c. Chapter 14 establishes policy and prescribes procedures for separation members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. The applicant's AMHRR did not provide documentation of a diagnosis of PTSD during the applicant's military service. However, the applicant's VA documents reflects a diagnosis of PTSD with an evaluation of 50-percent effective 18 August 2021.

e. Published DoD guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences' (50%SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection establishes condition began during active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a BH condition, PTSD, which partially mitigates his misconduct. As there is an association between PTSD and use of alcohol to self-medicate symptoms, there is a nexus between his diagnosis of PTSD and his arrest for DUI. PTSD, does not, however, mitigate applicant causing another vehicle to flip onto its roof from applicant side-swiping the other car while intoxicated given that damaging property and potentially harming other persons is not part of the natural sequelae or history of PTSD.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD fully outweighed the medically unmitigated damaging property.

b. Response to Contention(s):

(1) The applicant contends they served as a Military Police on Joint Base Lewis McChord and experienced multiple stressful incidents which led to self-medicating by drinking alcohol as a coping mechanism. This led to them being arrested for a DUI; resulting in their general (under honorable conditions) discharge. The Board considered this contention and determined relief was warranted based on partial mitigation from PTSD and compassion from the Board members.

(2) The applicant contends they have been service connected by the VA for PTSD based on their experiences in the Army. The Board considered this contention and determined relief was warranted based on partial mitigation from PTSD and compassion from the Board members.

(3) The applicant contends they are requesting an upgrade of the characterization of service so they can use VA education benefits to better support their family. The Board

considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

c. The Board determined the discharge is inequitable based on the applicant's PTSD partially mitigating the use of alcohol to self-medicate and the arrest for a DUI. It does not mitigate damaging property by sideswiping another vehicle, causing it to flip on its roof. Based on the one-time DUI, lack of injuries and compassion from the Board, the Board determined the discharge inequitable. 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 for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD outweighed the applicant's use of alcohol to self-medicate and the arrest for the DUI. Based on the one-time DUI and compassion from the Board, the Board voted to mitigate the remaining misconduct of damaging property. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

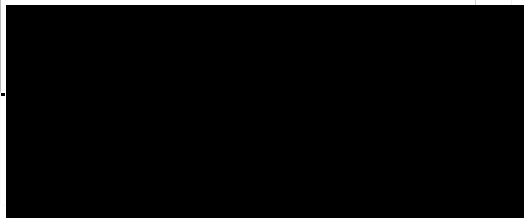
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: 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

Authenticating Official:

6/3/2024



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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20240000757

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