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Discharge Upgrades

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A service discharge that is characterized as anything less than fully honorable imposes significant limitations on VA benefit entitlements and employment opportunities. Within the last decade, the Department of Defense (“DOD”) has repealed or updated several regulations that create a real opportunity for veterans, discharged under less than fully honorable conditions, to obtain a more favorable characterization of service. In the past year, the DOD has encouraged all veterans who believe they have experienced an error or injustice to request relief from their service Board for Correction of Military/Naval Records (“BCMR”) or Discharge Review Board (“DRB”).

<https://www.defense.gov/News/News-Releases/News-Release-View/Article/1039945/dod-announces-new-outreach-efforts-to-veterans-regarding-discharges-and-military-source/GovDelivery/>

<https://www.militarytimes.com/pay-benefits/military-benefits/2016/12/30/dod-issues-new-guidance-for-veterans-seeking-discharge-upgrades-military-record-corrections/>

Contrary to popular belief General (under honorable) and Under Other Than Honorable discharges are NOT automatically reviewed or upgraded after 6 months to a year of discharge. Discharge upgrades are possible but veterans must apply and submit supporting documentation that demonstrates the upgrade is warranted. This newsletter discusses the most recently repealed and updated regulations that may entitle you to an upgrade and the application process.

REPEALED AND UPDATED DOD REGULATIONS

(1) Post-Traumatic Stress Disorder (“PTSD”) or Traumatic Brain Disorder (“TBI”)

The Army, alone, has separated 469,294 Soldiers since January 2009 through July of 2015 for misconduct. As many as 67,697 of these Soldiers had behavior or other related health diagnoses in their records. Some 22,000 Soldiers were separated for misconduct after returning home from Iraq or Afghanistan. Because the staggering number of veterans being separated had underlying mental health issues, the DOD began to take a hard look at its policies.

On September 3, 2014, The DOD announced a new policy relevant to service members being discharged with PTSD. This new policy, known as the “Hagel Memo” <https://www.repwavets.org/hagel-memo.html>, was put in place to give PTSD/TBI veterans a reasonable opportunity to establish the extenuating circumstances surrounding their discharge.

Under the Hagel Memo, Boards of Correction must (1) give liberal consideration to applications and supporting records that document *symptoms* of PTSD, even where there is not an actual diagnosis; (2) give liberal consideration to records containing a PTSD diagnosis from a civilian provider; (3) give special consideration to records containing a PTSD diagnosis from the VA; (4) consider whether undiagnosed PTSD contributed to the misconduct; (5) liberally waive the statute of limitations and reconsider cases relating to PTSD; (6) give timely consideration to PTSD applications; and (7) consult the DOD mental health professionals to assess a veteran's PTSD claim.

Due to the thousands of service members suffering from PTSD or TBI who had been discharged under less than fully honorable conditions, Congress amended the Discharge Review Board statute in 2009 to include two important provisions. First, if a veteran was deployed in support of a contingency operation and afterwards was diagnosed by a physician, clinical psychologist, or psychiatrist as having *experienced* PTSD or TBI the Board *must* include a physician, clinical psychologist, or psychiatrist. Second, if the relief requested is based on matters relating to PTSD or TBI, the board *must* give the case sufficient priority to reach an expedited decision.

It is now widely recognized that PTSD and other disorders and conditions resulting from military service may not surface for years. Considering this, veterans from any era, with symptoms or a diagnosis of PTSD/TBI can seek an upgraded discharge.

(2) The Repeal of “Don’t Ask, Don’t Tell” (“DADT”)

DADT was a controversial law implemented, ostensibly, to “protect” gay, lesbian, or bisexual service members from discrimination or harassment. While the policy prohibited military personnel from discriminating against or harassing closeted homosexual or bisexual service members or applicants, it barred openly gay, lesbian, or bisexual persons from military service.

DADT was repealed on September 20, 2011. Prior to its repeal, over 14,000 service members were discharged under the policy. Since the repeal, the DOD has issued new guidance to discharge review Boards. The DOD's new guidance allows those separated under General (under honorable) or Under Other Than Honorable conditions to be upgraded to Honorable under certain circumstances. Veterans separated under DADT may apply for an upgraded discharge and a change in the narrative reason for their discharge.

(3) Sexual Assault Victims

Over the past several years, the military has made a concentrated effort to improve its handling of sexual assault cases. There are many reforms that provide additional resources and protections to service members that are sexually assaulted while serving. However, prior to 2017, very little had been done to address the harm done to veterans, who were victims of sexual assault or harassment before the reforms took place. On August 25, 2017, the DOD set forth new guidelines that provide liberal consideration to veterans that were the victim of sexual assault or sexual harassment at the time of their discharge, even if the sexual assault or harassment was unreported.

<https://www.defense.gov/Portals/1/Documents/pubs/Clarifying-Guidance-to-Military-Discharge-Review-Boards.pdf>.

DISCHARGE UPGRADE APPLICATION PROCESS

Discharge upgrades are possible but veterans must apply and submit supporting documentation that demonstrates the upgraded is warranted. Success at the Board varies depending on the service and the Board at which you apply. Additionally, you will have a better chance at success if you submit a thorough presentation of your case.

Each branch of service has two separate Boards that reviews discharges. The review Boards are commonly called: (1) Discharge Review Board and (2) Board for Correction of Military/Naval Records. Each Board has its own processes, procedures and authorized remedies. Depending on your circumstances and the remedies you are seeking, you might be required to apply to one Board and not the other.

Before beginning the application process, you should submit a request for your records. Submitting a request for your records ahead of time will prevent delays in the process. You can request records on-line using the links below.

Post 1997 veterans can obtain a copy of their service records on-line by going to <https://www.dpris.dod.mil>. At the home page, select individual veteran access, on the left side of the website, and follow the instructions. This process takes approximately 10 minutes.

If electronic records are not available, you can request records from the National Personnel Records Center (NPRC) utilizing the eVetRecs at <https://vetrecs.archives.gov/VeteranRequest/home.html>.

Veterans entering service before 1997 can obtain a copy of their service records from the National Personnel Records Center (NPRC) utilizing the eVetRecs at <https://vetrecs.archives.gov/VeteranRequest/home.html>.

An application to the appropriate review Board is initiated by completing and submitting either a DD Form 293 or 149 depending on which Board you select. In order to thoroughly present your case, your application package should include all evidence that supports the remedy you seek, reference letters and community service documents, if applicable. If you are arguing that your behavior or misconduct was a result of PTSD, TBI or other health condition you may need to set up an evaluation and present those reports to the Board.

Because the DOD has updated and repealed several key policies, there has never been a more favorable time for veterans to seek an upgraded discharge. Upgraded discharge applications and corrections of military records can be complex and time-consuming. In order to put your best foot forward it is always best to retain an experienced attorney to help you determine the best way to challenge your discharge rating, prepare your application and represent your interests before the Board.

The law firm of Williams Stone Carpenter Buczek, PC will work with you to develop and submit your application to upgrade your general or other than honorable discharge to the appropriate administrative board. The upgrade attorneys at Williams Stone Carpenter Buczek, PC, are former military judge advocates (“JAGS”) with more than 50 years total experience at all levels of military justice who understand the stress, stigma, and disadvantages caused by unjust discharge

characterizations. The upgrade attorneys at Williams Stone Carpenter Buczek, PC are experienced in working with veterans suffering from Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) and do not discriminate veterans on any basis.

Williams Stone Carpenter Buczek, PC is conveniently located in Northern Virginia within 30-45 minutes of all Discharge Review Boards and Boards for Correction of Records.

Call the discharge upgrade attorneys of Williams Stone Carpenter Buczek, PC now at **888-755-1243** to obtain a free telephone consultation, or contact our attorneys by **email**.

The information contained in this newsletter is for informational purposes only and not for providing legal advice. You should contact an attorney to obtain advice with respect to any particular problem.

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