

CHARACTER OF DISCHARGE & ACCESS TO BENEFITS



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AGENDA



1. Context

2. Paths to access benefits

- Apply to DOD for discharge upgrade to change discharge status
- Seek VA character of discharge determination
- Enroll in VA health care
- Appeal DVS character of discharge decision

DISCHARGE STATUS



CHARACTER OF DISCHARGE

Honorable

General (Under Honorable Conditions)

Other Than Honorable (formerly Undesirable)

Bad Conduct

Dishonorable or Dismissal

**

Uncharacterized/Entry Level Separation

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES THIS IS AN IMPORTANT RECORD. SAFEGUARD IT! ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID.

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY
This Report Contains Information Subject to the Privacy Act of 1974, As Amended

1. NAME (Last, First, Middle)	2. DEPARTMENT, COMPONENT AND BRANCH	3. SOCIAL SECURITY NUMBER	
4a. GRADE, RATE OR RANK	b. PAY GRADE	5. DATE OF BIRTH (YYYYMMDD)	6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD)
7a. PLACE OF ENTRY INTO ACTIVE DUTY	b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)		
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND	b. STATION WHERE SEPARATED		
9. COMMAND TO WHICH TRANSFERRED	10. SOLI COVERAGE	NONE AMOUNT: \$	
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.)	12. RECORD OF SERVICE		
A	12. DATE ENTERED AD THIS PERIOD		
	b. SEPARATION DATE THIS PERIOD		
	c. NET ACTIVE SERVICE THIS PERIOD		
	d. TOTAL FROM ACTIVE SERVICE		
	e. TOTAL FROM INACTIVE SERVICE		
	f. FOREIGN SERVICE		
	g. SEA SERVICE		
h. INITIAL ENTRY TRAINING			
i. EFFECTIVE DATE OF PAY GRADE			
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (List pertinent awards)	14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed)		
15a. COMMISSIONED THROUGH SERVICE ACADEMY	YES	NO	
b. COMMISSIONED THROUGH ROTC SCHOLARSHIP (10 USC Sec. 2107)	YES	NO	
c. ENLISTED UNDER LEAN REPAIRMENT PROGRAM (10 USC Chap. 109 (f) Yes)	YES	NO	
16. DAYS ACCRUED LEAVE PAID	17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION	YES	NO
18. REMARKS			
The information contained herein is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, this agreement, if a Federal benefit recipient.			
19a. MAILING ADDRESS AFTER SEPARATION (include ZIP Code)	b. NEAREST RELATIVE (Name and address - include ZIP Code)		
20. MEMBER REQUESTS COPY 3 BE SENT TO (Specify state/country)	OFFICE OF VETERANS AFFAIRS	YES	NO
21. MEMBER REQUESTS COPY 7 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS (WASHINGTON, DC)	YES	NO	
21a. MEMBER SIGNATURE	b. DATE (YYYYMMDD)	22a. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade and signature)	b. DATE (YYYYMMDD)
E			
SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)			
23. TYPE OF SEPARATION	24. CHARACTER OF SERVICE (include upgrade)		
25. SEPARATION AUTHORITY	26. SEPARATION CODE	27. REENTRY CODE	
28. NARRATIVE REASON FOR SEPARATION			
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD)			30. MEMBER REQUESTS COPY 4 (Initial)
DD FORM 214, AUG 2009 PREVIOUS EDITION IS OBSOLETE. MEMBER - 4			





The Numbers

19 million veteran in the United States

309,000 veterans in Massachusetts

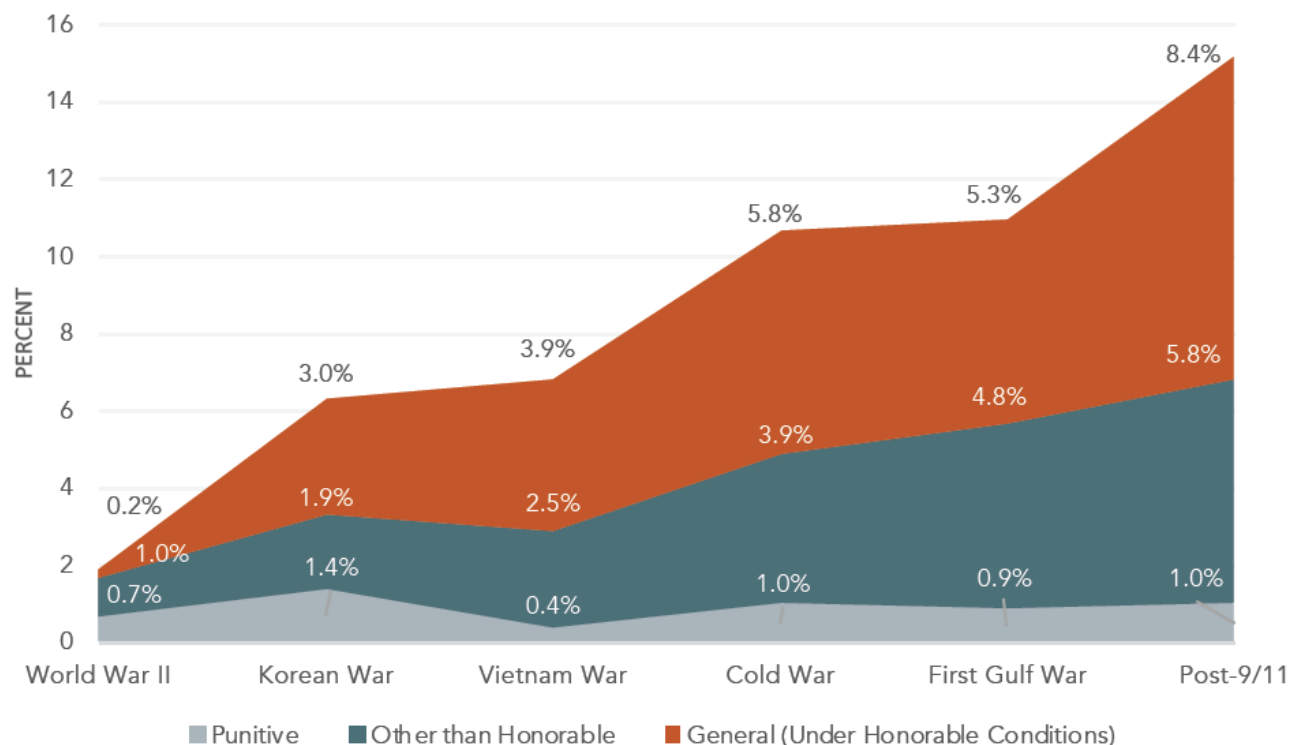
Since World War II, more than 2 million veterans discharged less-than-fully-Honorably

Rates of service members receiving less-than-honorable discharges increasing

Punitive discharges steady at ~1%

Administrative discharges increasing

PERCENT ENLISTED SERVICEMEMBERS WITH BAD PAPER DISCHARGES



FACTORS THAT CONTRIBUTE TO A “BAD PAPER” DISCHARGE

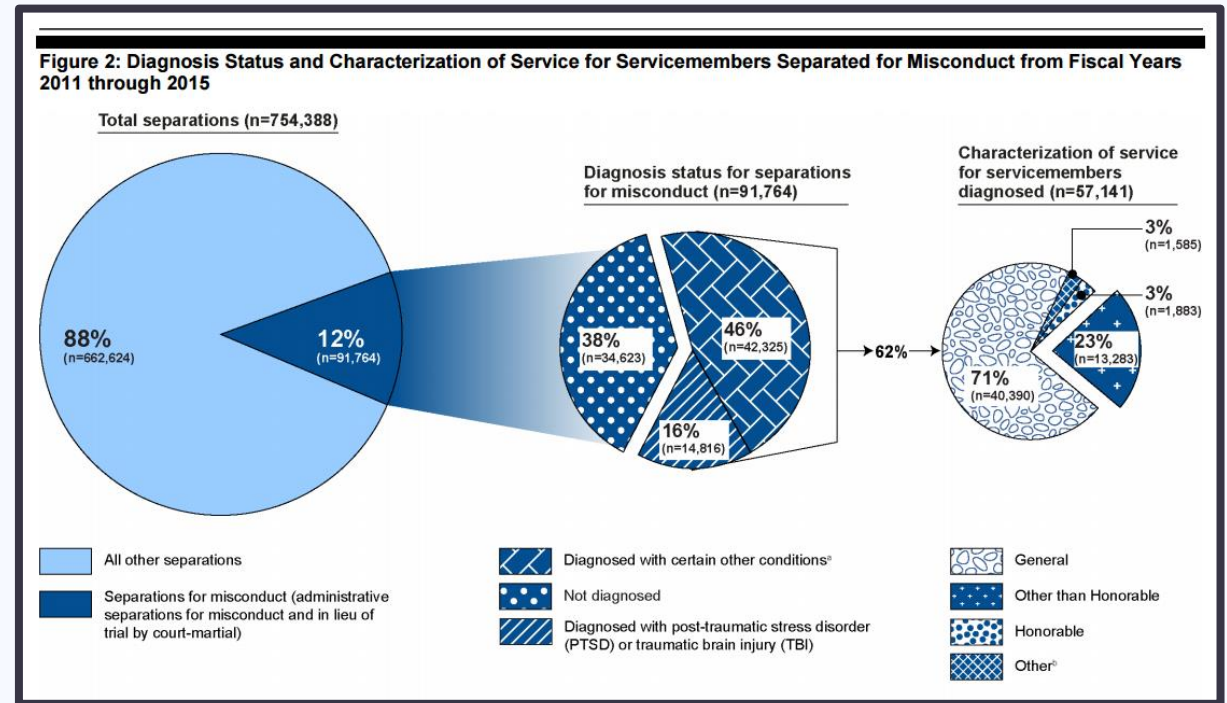
Mental Health

OIF Marine Corps combat veterans with PTSD 11x more likely to be discharged for misconduct, 8x more likely to be discharged for substance abuse

Military Sexual Trauma

More than 22% who reported a sexual assault received a less-than-honorable discharge, from 2009-2015

Discrimination on the basis of Race, Sexual Orientation, Gender Identity





WAYS TO ACCESS VETERANS BENEFITS WITH A “BAD PAPER” DISCHARGE

1. Change discharge status through DOD discharge upgrade
2. Establish eligibility under existing regulations at VA (or other federal/state agency)

DOD DISCHARGE UPGRADE



Discharge Review Boards v. Boards for Correction of Military/Naval Records

- One of each in every service branch (Army, Navy/Marine Corps, Air Force, Coast Guard)
- Staffed by military officers or DOD/DHS civilian staff
- Determine which to apply to based on branch of service, time since discharge, type of discharge, and relief sought

It is never too late to apply for an upgrade, but some advantages to applying within 15 years because right to a hearing at DRB ... and when veteran is ready

- DRB has 15-year deadline
- BCMR has 3-year deadline but waivable

DOD DISCHARGE UPGRADE



ERROR/IMPROPRIETY

Violation of Constitution

- E.g., discharged for drug possession but drugs were found through unlawful search under 4th amendment

Violation of law

- E.g., combat veteran separated for misconduct did not receive required PTSD/TBI exam prior to discharge

Violation of separation regulation

- E.g., not notified of separation; separated OTH without notice of right to separation board

INJUSTICE/INEQUITY

New more favorable law/regulation

- E.g., repeal of Don't Ask, Don't Tell; COVID vaccine refusal

Mental health condition or Military Sexual Trauma led to misconduct

- See Hagel Memo & Kurta Memo
- Note: *Kennedy/Manker* settlements, *Johnson* litigation

Good post-service conduct

- See Wilkie Memo

Extenuating or mitigating circumstances

And more!

DOD RECORDS CORRECTION

Board for Correction of Military/Naval Records also can correct other parts of a veteran's personnel file besides discharge status and related information, such as:

Name change

Medals and awards on DD-214

Medical discharge or retirement

Removal of negative information

Anything else in a veteran's file (with some limited exceptions)

DISCHARGE UPGRADE TIPS

1. There are many myths about discharge upgrades
 - Automatic upgrade after six months → not true
 - “VA upgrade” → not true, only DOD can upgrade
 - It's easy or it's impossible
2. There are steps a veteran can take to increase chances of success
3. Get a full copy of Official Military Personal File
 - Standard Form 180 to request
 - Online portal for some veterans
4. Submit more than just the application form
 - Statement of why upgrade warranted
 - Letters of support
 - Documents and other evidence
5. Favorable changes in the law for many veterans
 - In-service mental health conditions
 - Military Sexual Trauma
 - Don't Ask, Don't Tell/discharge for sexual orientation
 - Personality Disorder
 - Post-service good conduct



VA CHARACTER OF DISCHARGE DETERMINATION



VA defines a “veteran” as “a person who served in the active military, naval, or air service, and who was discharged or released therefrom *under conditions other than dishonorable*” 38 U.S.C. 101 (2), 38 C.F.R. 3.12

IMPORTANT: “veteran” \neq honorably discharged. OTH/BCD/DD **may** be eligible.

VA makes COD decision based on military service, especially misconduct (severity, frequency, timing) and any significant mental health condition

Start VA’s COD process by filing an application for benefits

- Best to apply for compensation, pension, or home loan certification
- Follow through adjudication and appeals process described in VBA presentation

VA HEALTH CARE ACCESS



Many paths for veterans with bad paper to access full or limited VA health care

Full health care access

- COD finds service “other than dishonorable” (“Honorable for VA Purposes”)
- Honorable discharge from prior enlistment

Limited health care access

- COD finds service “dishonorable” by regulatory bar but veteran has service-connected disabilities → health care for service-connected conditions (“Chapter 17”)
- Mental health care for combat veterans, MST survivors, some others with OTH discharges
- Vet Centers mental health and readjustment counseling



VA TIPS

1. Many myths about VA eligibility for veterans with bad paper
 - Categorically ineligible until get an upgrade → not true
 - Not entitled to VA's assistance with proving claim → not true
2. Engage with the process—have right to submit evidence and to request a hearing
3. Consider balance of discharge upgrade application v. VA COD request

DVS CHAPTER 115 ELIGIBILITY APPEAL



Veteran with OTH (or other bad paper discharge) presumed ineligible

Veteran can challenge the presumption and prove that the circumstances of the discharge were “not dishonorable”

Start the process by applying for Chapter 115 benefits (which will be denied), then appeal to DVS for a hearing

Follow adjudication and appeal process set forth in Chapter 115 presentation



CHAPTER 115 TIPS

1. More myths!
 - Categorically ineligible for Chapter 115 benefits until get a discharge upgrade → not true
2. Likely have to appeal beyond DVS to Division of Administrative Law Appeals or Superior Court

RESOURCES



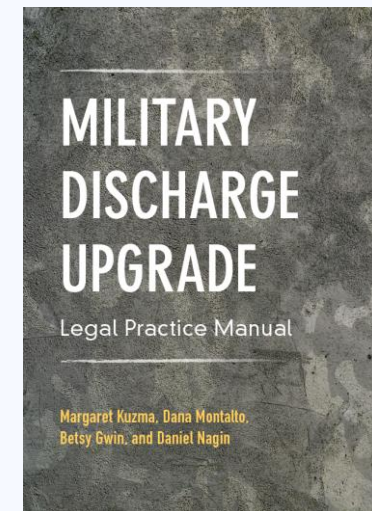
Swords to Plowshares Self-Help Guides: <https://www.swords-to-plowshares.org/resources/self-help-guides>

- Upgrading your discharge
- Discharge corrections for veterans discharged under DADT
- VA Character of Discharge review
- Requesting copies of military records
- Name change for transgender veterans

Stateside Legal: <https://www.statesidelegal.org/>

- Finding legal help
- Self-help guides

Military Discharge Upgrade Legal Practice Manual:
<https://www.americanbar.org/products/inv/book/410982321/>



THE MOST IMPORTANT SLIDE

If a veteran has a discharge that is not Honorable, the veteran may be eligible for federal and/or state veteran benefits.

(You don't know until you try.)