

# REPRESENTING VETERANS IN DISCHARGE UPGRADE CASES

JUNE 2, 2015



Boston Bar  
ASSOCIATION

# Table of Contents

---

Biographies .....	ii
Agenda .....	iv
Application for Correction of Military record Under the Provisions of Title 10, U.S. Code, Section 1552.....	1
Application for the Review of Discharge from the Armed Forces of the United States .....	3
Authorization for Disclosure of Medical or Dental Information .....	7
Instruction and Information Sheet for SF 180, Request Pertaining to Military Records .....	8
Request for an Authorization to Release Medical Records or Health Information .....	11
Glossary of Common Discharge Upgrade Acronyms & Terms .....	12
Potential Questions for Interviewing a Veteran.....	14
List of Resources .....	15
“Psychiatric Diagnoses and Punishment for Misconduct: The effects of PTSD in Combat-Deployed Marines,” Highfill-McRoy et al. <i>BMC Psychiatry</i> 2010, .....	17
“In Need of Correction: How the Army Board for Correction of Military records is Failing Veterans with PTSD,” <i>The Yale Law Journal</i> .....	26
Most Popular Benefits Available for Former Service members Based on Character of Service .....	45
Rank Insignia of the U.S. Armed Forces .....	46

# Biographies

---

## **Sandra Dixon, Psy.D.**

### **William James College**

Dr. Dixon is a core faculty member at William James College, where she teaches classes on Trauma and Meeting the Needs of Returning Veterans and contributes to the development of the Military and Veterans Psychology concentration. She also maintains a private practice in Arlington.

## **Elizabeth R. Gwin**

### **DAV Charitable Service Trust Fellow for the Veterans Law Clinic of the WilmerHale Legal Services Center of Harvard Law School**

Betsy Gwin is an attorney and the DAV Charitable Service Trust Fellow for the Veterans Law Clinic of the WilmerHale Legal Services Center of Harvard Law School. Her work focuses on representing veterans in appeals to the Court of Appeals for Veterans Claims, and she also represents veterans in discharge upgrade petitions, for state veterans' benefits, and in estate planning matters. Ms. Gwin holds a B.A. in Anthropology, summa cum laude, from Syracuse University and a J.D. from Georgetown University Law Center.

## **Sue Lynch**

### **Office of the Judge Advocate General Administrative Law Attorney General Law Branch, Administrative Law Division**

Prior to commissioning, MAJ Lynch served for 14 years at the 3rd Judge Advocate General ("JAG"), Boston, Massachusetts. She deployed to Saudi Arabia as a paralegal specialist with the 46th JAG Detachment, an International Law team with the 3rd JAG in support of Operation Desert Shield and Operation Desert Storm. After commissioning, MAJ Lynch transferred to the 154th Legal Support Organization, the first Reserve Component Trial Defense Service ("TDS") command, where she served as Defense Counsel on the Boston Team representing soldiers in the New England Region. In August 2004, she deployed to Camp Bonsteel, Kosovo to serve as Senior Defense Counsel (SDC) in support of Task Force Falcon for soldiers deployed to Kosovo and Bosnia. Upon returning from Kosovo in January 2005, MAJ Lynch served as an Assistant Staff Judge Advocate at HHC, 94th Regional Readiness Command, Fort Devens, Massachusetts. In January 2007, she moved to the 655th Regional Support Group to serve as Assistant Command Judge Advocate. In February 2008, MAJ Lynch returned to the 154th LSO to serve as SDC for the Fort Dix team serving the Mid-Atlantic Region. In October 2011, she returned to the 3rd LSO (formally 3rd JAG) to become team leader for newly established MEB/PEB mission until she mobilized with the Region I, Office of the Soldiers' Counsel, National Capital Region, in May 2012 where she served as Senior Soldiers' Physical Evaluation Board Counsel and Acting Deputy Supervisory Counsel until May 2014.

**Dana Montalto**  
**Liman Fellow in the Veterans Law Clinic of the**  
**WilmerHale Legal Services Center of Harvard Law School**

Dana Montalto is an attorney and Liman Fellow in the Veterans Law Clinic of the WilmerHale Legal Services Center of Harvard Law School. She represents less-than-honorably discharged veterans in discharge upgrade petitions, VA character of service determinations, and applications for state veterans' benefits. In addition, Ms. Montalto works in partnership with the Red Sox Foundation and Massachusetts General Hospital Home Base Program to provide legal representation and assistance to post-9/11 veterans affected by combat and deployment-related stress. She holds a B.A. in Political Science and Middle Eastern Studies from Wellesley College and a J.D. from the Yale Law School.

**Daniel L. Nagin**  
**Clinical Professor of Law and Faculty Director of the**  
**WilmerHale Legal Services Center of Harvard Law School**

Daniel Nagin is Clinical Professor of Law and Faculty Director of the WilmerHale Legal Services Center of Harvard Law School. He is also Faculty Director of the Center's Veterans Legal Clinic, which he founded in 2012. His teaching and research interests include clinical education, social welfare law and policy, and legal services for veterans. Nagin holds a B.A. in History and Government, Phi Beta Kappa and with distinction in all subjects, from Cornell University, an M.A. in Education from Stanford University, and a J.D. with honors from the University of Chicago Law School.

**Agenda: Representing Veterans in Discharge Upgrades**  
Boston Bar Association | June 2, 2015 | 8 a.m. – 12 p.m.

- 8:00 – 8:05 Welcome & Overview  
Dana Montalto, Attorney, Legal Services Center of Harvard Law School
- 8:05 – 9:00 Introduction to Military Law & Culture  
Major Susan Lynch, U.S. Army Reserve Judge Advocate General Corps
- 9:00 – 9:35 Law & Procedures of Discharge Upgrades: Part One  
Dana Montalto, Attorney, Legal Services Center of Harvard Law School
- 9:35 – 9:45 Break
- 9:45 – 10:45 Trauma, Mental Health & Medical Opinions  
Sandy Dixon, Psy.D., William James College  
  
Working with Experts  
Betsy Gwin, Attorney, Legal Services Center of Harvard Law School
- 10:45 – 10:55 Break
- 10:55 – 11:30 Law & Procedures of Discharge Upgrades: Part Two  
Dana Montalto, Attorney, Legal Services Center of Harvard Law School
- 11:30 – 12:00 Gathering & Developing Evidence  
Daniel L. Nagin, Clinical Professor of Law and Faculty Director, Legal Services Center of Harvard Law School



# VETERANS JUSTICE PRO BONO PARTNERSHIP

## Accessing Training Video

Representing Veterans in Discharge Upgrade Cases

Boston Bar Association

June 2, 2015

Link: <https://vimeo.com/129572594>

Password: 18194

**APPLICATION FOR CORRECTION OF MILITARY RECORD  
UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SECTION 1552**  
*(Please read instructions on reverse side BEFORE completing this application.)*

OMB No. 0704-0003  
OMB approval expires  
Oct 31, 2014

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services Directorate, Information Management Division, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350-3100 (0704-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON THE BACK OF THIS PAGE.**

**PRIVACY ACT STATEMENT**

**AUTHORITY:** 10 U.S.C. 1552, and E.O. 9397, as amended (SSN).

**PRINCIPAL PURPOSE(S):** To initiate an application for correction of military record. The form is used by Board members for review of pertinent information in making a determination of relief through correction of a military record. Completed forms are covered by correction of military records SORNs maintained by each of the Services or the Defense Finance and Accounting Service.

**ROUTINE USE(S):** The DoD Blanket Routine Uses found at: [http://privacy.defense.gov/blanket\\_uses.shtml](http://privacy.defense.gov/blanket_uses.shtml) apply to this collection.

**DISCLOSURE:** Voluntary; however, failure to provide requested information may result in a denial of your application. An applicant's SSN is used to retrieve these records and links to the member's official military personnel file and pay record.

**1. APPLICANT DATA (The person whose record you are requesting to be corrected.)**

a. BRANCH OF SERVICE (X one)	ARMY	NAVY	AIR FORCE	MARINE CORPS	COAST GUARD
b. NAME (Print - Last, First, Middle Initial)	c. PRESENT OR LAST PAY GRADE		d. SERVICE NUMBER (If applicable)	e. SSN	

**2. PRESENT STATUS WITH RESPECT TO THE ARMED SERVICES (Active Duty, Reserve, National Guard, Retired, Discharged, Deceased)**

**3. TYPE OF DISCHARGE (If by court-martial, state the type of court.)**

**4. DATE OF DISCHARGE OR RELEASE FROM ACTIVE DUTY (YYYYMMDD)**

**5. I REQUEST THE FOLLOWING ERROR OR INJUSTICE IN THE RECORD BE CORRECTED: (Entry required)**

**6. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST FOR THE FOLLOWING REASONS: (Entry required)**

**7. ORGANIZATION AND APPROXIMATE DATE (YYYYMMDD) AT THE TIME THE ALLEGED ERROR OR INJUSTICE IN THE RECORD OCCURRED (Entry required)**

**8. DISCOVERY OF ALLEGED ERROR OR INJUSTICE**

a. DATE OF DISCOVERY (YYYYMMDD)	b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED, STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THE APPLICATION.
---------------------------------	---

**9. IN SUPPORT OF THIS APPLICATION, I SUBMIT AS EVIDENCE THE FOLLOWING ATTACHED DOCUMENTS: (If military documents or medical records are pertinent to your case, please send copies. If Veterans Affairs records are pertinent, give regional office location and claim number.)**

**10. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. (At no expense to the Government) (X one)**

YES. THE BOARD WILL DETERMINE IF WARRANTED.

NO. CONSIDER MY APPLICATION BASED ON RECORDS AND EVIDENCE.

**11.a. COUNSEL (If any) NAME (Last, First, Middle Initial) and ADDRESS (Include ZIP Code)**

b. TELEPHONE (Include Area Code)

c. E-MAIL ADDRESS

d. FAX NUMBER (Include Area Code)

**12. APPLICANT MUST SIGN IN ITEM 15 BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name (print)**

and relationship by marking one box below.

SPOUSE     WIDOW     WIDOWER     NEXT OF KIN     LEGAL REPRESENTATIVE     OTHER (Specify)

**13.a. COMPLETE CURRENT ADDRESS (Include ZIP Code) OF APPLICANT OR PERSON IN ITEM 12 ABOVE (Forward notification of all changes of address.)**

b. TELEPHONE (Include Area Code)

c. E-MAIL ADDRESS

d. FAX NUMBER (Include Area Code)

**14. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)**

**CASE NUMBER**  
*(Do not write in this space.)*

**15. SIGNATURE (Applicant must sign here.)**

**16. DATE SIGNED (YYYYMMDD)**

## INSTRUCTIONS

Under Title 10 United States Code Section 1552, Active Duty and Reserve Component Service members, Coast Guard, former Service members, their lawful or legal representatives, spouses of former Service members on issues of Survivor Benefit Program (SBP) benefits, and civilian employees with respect to military records other than those related to civilian employment, who feel that they have suffered an injustice as a result of error or injustice in military records may apply to their respective Boards for Correction of Military Records (BCMR) for a correction of their military records. These Boards are the highest level appellate review authority in the military. The information collected is needed to provide the Boards the basic data needed to process and act on the request.

1. All information should be typed or printed. Complete all applicable items. If the item is not applicable, enter "None."
2. If space is insufficient on the front of the form, use the "Remarks" box below for additional information or attach an additional sheet.
3. List all attachments and enclosures in item 9. Do not send original documents. Send clear, legible copies. Send copies of military documents and orders related to your request, if you have them available. Do not assume that they are all in your military record.
4. The applicant must exhaust all administrative remedies, such as corrective procedures and appeals provided in regulations, before applying to the Board of Corrections.
5. ITEM 5. State the specific correction of record desired. If possible, identify exactly what document or information in your record you believe to be erroneous or unjust and indicate what correction you want made to the document or information.
6. ITEM 6. In order to justify correction of a military record, it is necessary for you to show to the satisfaction of the Board by the evidence that you supply, or it must otherwise satisfactorily appear in the record, that the alleged entry or omission in the record was in error or unjust. Evidence, in addition to documents, may include affidavits or signed testimony of witnesses, executed under oath, and a brief of arguments supporting the application. All evidence not already included in your record must be submitted by you. The responsibility of securing evidence rests with you.
7. ITEM 8. U.S. Code, Title 10, Section 1552b, provides that no correction may be made unless a request is made within three years after the discovery of the error or injustice, but that the Board may excuse failure to file within three years after discovery if it finds it to be in the interest of justice.
8. ITEM 10. Personal appearance before the Board by you and your witnesses or representation by counsel is not required to ensure full and impartial consideration of your application. If the Board determines that a personal appearance is warranted and grants approval, appearance and representation are permitted before the Board at no expense to the government.
9. ITEM 11. Various veterans and service organizations furnish counsel without charge. These organizations prefer that arrangements for representation be made through local posts or chapters.
10. ITEM 12. The person whose record correction is being requested must sign the application. If that person is deceased or incompetent to sign, the application may be signed by a spouse, widow, widower, next of kin (son, daughter, mother, father, brother, or sister), or a legal representative that has been given power of attorney. Other persons may be authorized to sign for the applicant. Proof of death, incompetency, or power of attorney must accompany the application. Former spouses may apply in cases of Survivor Benefit Plan (SBP) issues.
11. For detailed information on application and Board procedures, see: Army Regulation 15-185 and [www.arba.army.pentagon.mil](http://www.arba.army.pentagon.mil); Navy - SECNAVINST 5420.193 and [www.hq.navy.mil/bcnr/bcnr.htm](http://www.hq.navy.mil/bcnr/bcnr.htm); Air Force Instruction 36-2603, Air Force Pamphlet 36-2607, and [www.afpc.randolph.af.mil/safmrbr](http://www.afpc.randolph.af.mil/safmrbr); Coast Guard - Code of Federal Regulations, Title 33, Part 52.

### MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW

ARMY	NAVY AND MARINE CORPS
Army Review Boards Agency 251 18th Street South, Suite 385 Arlington, VA 22202-3531	Board for Correction of Naval Records 701 S. Courthouse Road, Suite 1001 Arlington, VA 22204-2490
AIR FORCE	COAST GUARD
Board for Correction of Air Force Records SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	Department of Homeland Security Office of the General Counsel Board for Correction of Military Records 245 Murray Lane, Stop 0485 Washington, DC 20528-0485

### 17. REMARKS

**APPLICATION FOR THE REVIEW OF DISCHARGE  
FROM THE ARMED FORCES OF THE UNITED STATES**

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

OMB No. 0704-0004  
OMB approval expires  
Oct 31, 2014

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, Executive Services Directorate, Information Management Division, 4800 Mark Center Drive, Alexandria, VA 22340-3100 (0704-0004). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. **PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.**

**PRIVACY ACT STATEMENT**

**AUTHORITY:** 10 U.S.C. 1553; DoD Instruction 1332.28; and E.O. 9397 (SSN), as amended.

**PRINCIPAL PURPOSE(S):** To apply for a change in the characterization or reason for military discharge issued to an individual. The appropriate Military Service Discharge Review Board, reviews submitted packages and makes determinations. Completed forms are covered by the correction of discharge review board and official military records SORNs maintained by each of the Military Services. The DoD Systems of Records Notices can be located at <http://privacy.defense.gov/notices/index.shtml>.

**ROUTINE USE(S):** The DoD Blanket Routine Uses found at [http://privacy.defense.gov/blanket\\_uses.shtml](http://privacy.defense.gov/blanket_uses.shtml) apply to this collection.

**DISCLOSURE:** Voluntary; however, failure to provide identifying information may impede processing of this application. The SSN is used by the Military Services to ensure the correct individual's official military personnel file is updated.

**1. APPLICANT DATA** (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION.

a. BRANCH OF SERVICE (X one)	ARMY	MARINE CORPS	NAVY	AIR FORCE	COAST GUARD
b. NAME (Last, First, Middle Initial)	c. GRADE/RANK AT DISCHARGE			d. SOCIAL SECURITY NUMBER	

e. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11 (Forward notification of any change in address.)	f. TELEPHONE NUMBER (Include Area Code)
	g. E-MAIL
	h. FAX NUMBER (Include Area Code)

**2. DATE OF DISCHARGE OR SEPARATION** (X one) **4. DISCHARGE CHARACTERIZATION RECEIVED** (X one)

HONORABLE	CHANGE TO HONORABLE
GENERAL/UNDER HONORABLE CONDITIONS	CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
UNDER OTHER THAN HONORABLE CONDITIONS	CHANGE TO UNCHARACTERIZED (Not applicable to Air Force or service members with over 6 months of service)
BAD CONDUCT (Special Court-Martial only)	CHANGE NARRATIVE REASON FOR SEPARATION:
UNCHARACTERIZED	
OTHER (Explain)	

**6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST** (Continue in Item 13. See instructions on Page 3.)

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD)  
AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

**8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE:** (Continue in Item 14.  
If military documents or medical records are relevant to your case, please send copies.)

**9. TYPE OF REVIEW REQUESTED** (X one)

CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR (counsel/representative) WILL NOT APPEAR BEFORE THE BOARD.
I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.
I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO (enter city and state) (NOTE: The Naval and Coast Guard Discharge Review Boards do not have traveling panels.)

**10.a. COUNSEL/REPRESENTATIVE** (if any) NAME (Last, First, Middle Initial) AND ADDRESS  
(See Item 10 of the instructions about counsel/representative.)

b. TELEPHONE NUMBER (Include Area Code)  
c. E-MAIL  
d. FAX NUMBER (Include Area Code)

**11. APPLICANT MUST SIGN IN ITEM 12.a. BELOW.** If the record in question is that of a deceased or incompetent person, **LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION.** If the application is signed by other than the applicant, indicate the name (print) and relationship by marking a box below.

SPOUSE  WIDOW  WIDOWER  NEXT OF KIN  LEGAL REPRESENTATIVE  OTHER (Specify)

**12. CERTIFICATION.** I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

CASE NUMBER  
(Do not write in this space.)

a. SIGNATURE - REQUIRED (Applicant or person in Item 11 above)

b. DATE SIGNED - REQUIRED (YYYYMMDD)

**13. CONTINUATION OF ITEM 6, ISSUES (If applicable)**

**14. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)**

**15. REMARKS (If applicable)**

**MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.**

<b>ARMY</b> Army Review Boards Agency 251 18th Street South Suite 385 Arlington, VA 22202-3531 (See <a href="http://arpa.army.pentagon.mil">http://arpa.army.pentagon.mil</a> )	<b>NAVY AND MARINE CORPS</b> Secretary of the Navy Council of Review Boards ATTN: Naval Discharge Review Board 720 Kennon Ave S.E., Suite 309 Washington Navy Yard, DC 20374-5023
<b>AIR FORCE</b> Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	<b>COAST GUARD</b> Commandant (CG-122) Attn: Office of Military Personnel US Coast Guard 2100 2nd Street S.W., Stop 7801 Washington, DC 20593-7801

## INSTRUCTIONS FOR COMPLETION OF DD FORM 293

### REQUESTING COPIES OF YOUR OFFICIAL MILITARY PERSONNEL FILE

Information on how to obtain military or health records is available at the National Personnel Records Center website at [www.nara.gov/regional/mpr.html](http://www.nara.gov/regional/mpr.html) or at your local Veterans Administration office.

Applicants are strongly encouraged to submit any request for their military records prior to applying for a discharge review rather than after submitting a DD Form 293 in order to avoid substantial delays in processing of the application and scheduling of review. Applicants and their counsel may also examine their military personnel records at the site of their scheduled review prior to the review. The Board shall notify applicants of the date of availability of the records for examination in their standard scheduling information.

Submission of a request for an applicant's military records (including a request pursuant to the Freedom of Information Act or Privacy Act) after the DD Form 293 has been submitted will automatically result in the suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and are returned to the possession of the headquarters of the Discharge Review Board. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable.

**DD FORM 293 - PLEASE PRINT OR TYPE INFORMATION.**  
(Items on the form are self-explanatory unless otherwise noted below.)

**ITEM 1b.** Use the name which you served under while in the Armed Forces. If your name has since changed, then also include your current name after adding the abbreviation "AKA". If the former member is deceased or incompetent, see Item 11.

**ITEM 1e.** Indicate the address to be used for all future correspondence regarding this application. If you change this address while this application is pending, you must notify the Discharge Review Board immediately. Failure to attend a hearing as a result of an unreported change in address may result in a waiver of your right to a hearing.

**ITEM 2.** If you received more than one discharge, the information in this item should refer to the discharge that you want changed. Discharge Review Boards cannot consider any type of discharge resulting from a sentence given by a general court-martial.

**ITEM 3.** If the discharge you want reviewed was issued over 15 years ago, instead of applying on a DD Form 293, you must petition the appropriate Board for Correction of Military Record using DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552.

**ITEM 5.** If you request a change of narrative reason for separation, you must list the specific reason for discharge that you believe to be appropriate, otherwise the Board will presume that you do not want a change in reason for discharge. If you do not request a change of discharge characterization in this item, the Board will presume you want to change discharge to Honorable.

If you were separated on or after 1 October 1982 while in an entry level status with an under other than honorable conditions discharge and less than 180 days of active service, you can request a change of discharge characterization to "Uncharacterized" and discharge reason to "Entry Level Separation".

**ITEM 6.** "Issues" are the reasons why you think your discharge should be changed. You are not required to submit any issues with your application. However, if you want the Board to respond in writing to the issues of concern, you must list your specific issues in accordance with those instructions and regulations governing the Board. Issues must be stated clearly and specifically. Your issues should address the reasons why you believe that the discharge received was improper or inequitable. It is important to focus on matters that occurred while you served in the Armed Forces.

The following examples demonstrate one way in which issues may be stated (the example issues do not indicate, in any way, the only type of issues that should be submitted to the Board):

Example 1. My discharge was inequitable because it was based on one isolated incident in 28 months of service with no other adverse action.

Example 2. The discharge is improper because the applicant's pre-service civilian conviction, properly listed on his enlistment documents, was used in the discharge proceedings.

In Item 6 list each of your issues that you want the Board to address. There is no limit to the number of issues that you may submit. If you need additional space, continue in Item 14 or on a plain sheet of paper and attach it to this application.

NOTE: If an issue is not listed in Item 6, it may result in the Board not addressing the issue even if the issue is discussed in a legal brief or other written submissions or at the hearing. Changes or additions to the list may be made on the DD Form 293 anytime before the Discharge Review Board closes the review process for deliberation. Please be sure that your issues are consistent with the Board Action Requested (Item 5). If there is a conflict between what you say in your issues and what you requested in Item 5, the Board will respond to your issue in the context of the action requested in Item 5. For example, if you request a General Discharge in Item 5 but your issue in Item 6 indicated you want an Honorable Discharge, the Board will respond to the issue in terms of your request for a General Discharge. Therefore, if you are submitting issues for the purpose of obtaining an Honorable Discharge, be sure to mark the box for an Honorable Discharge in Item 5.

## INSTRUCTIONS FOR COMPLETION OF DD FORM 293 *(Continued)*

**Incorporation by Reference.** Issues that are listed on a legal brief or other written submissions may be incorporated by reference in Item 6. The reference must be specific enough for the Board to clearly identify the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated.

Example: Issue 1. Brief, page 2, paragraph 1, sentences one and two.

Applicants should be as specific as possible with all references so the Board can clearly distinguish the scope of the issue. Because it is to your benefit to bring such issues to the Board's attention as early as possible in the review, if you submit a brief, you are strongly urged to set forth all such issues as a separate item at the beginning of the brief.

**ITEM 8.** Evidence not in your official records should be submitted to the Board before the review date. It is to your advantage to submit such documentation with this application. This also applies to legal briefs or counsel submissions. However, you have the right to submit evidence until the time the Discharge Review Board closes the review process for deliberation. Documents that are of the most benefit are those which substantiate or relate directly to your issues in Item 6. Other documents that may be helpful are character references, criminal, credit and employment reports, educational achievements, exemplary post-service conduct, and medical reports. You should add your name and Social Security Number to each document submitted. The Board will consider all documents submitted in your behalf, but will respond in writing only to those issues set forth in Item 6.

### **ITEM 9. TYPE OF REVIEW REQUESTED**

A Discharge Review is conducted in two basic ways:  
(1) Records Review or (2) Hearing.

1. **Records Review.** You may have the Board conduct a discharge review based solely on military records and any additional documentation that you provide. This review is conducted without personal appearance by you and/or your counsel appearing. A personal appearance hearing can be requested, however, you forfeit your right to a record review.

2. **Hearing.** You may appear personally (alone or assisted by a representative/counsel) before the Board in the Washington, D.C. Metro Area or before a Traveling Panel of the Board in selected locations throughout the U.S., if appropriate. The Department of Defense is not responsible for, nor will it pay for, any costs incurred by the applicant or representative/counsel for appearance or providing testimony or documentation. Detailed notification and/or scheduling information for all personal appearances will be provided after the application has been processed. In addition, without appearing yourself, you may have your case presented by a representative/counsel of your choice.

Applicants participating in a personal appearance or hearing examination may make sworn or unsworn statements, introduce witnesses, documents, or other information on their behalf.

Applicants may make oral or written arguments personally and/or through representative/ counsel. Applicants and witnesses who present sworn or unsworn statements may be questioned by the Board.

**FAILURE TO APPEAR AT A HEARING OR RESPOND TO A SCHEDULING NOTICE.** If you do not appear at a scheduled hearing or respond as required to a scheduling notice, and you did not make a prior, timely request for a continuance, postponement, or withdrawal of the application, you will forfeit the right to a personal appearance and the Board shall complete its review of the discharge based upon the evidence of record.

**ITEM 10.a - d.** Omit if you do not have a representative/counsel. If you later obtain the services of either, inform the Board immediately.

The military services do not provide counsel representation or evidence for you, nor do they pay the cost of such representation under any circumstance. The following organizations regularly furnish representation at no charge to you. Representatives may or may not be lawyers.

1. American Legion
2. Disabled American Veterans
3. Veterans of Foreign Wars
4. State or Regional Veterans Offices

In addition, there are other organizations willing to assist you in completing this application and to provide representation at no cost. It is to your advantage to coordinate with your counsel prior to submitting this application. This will insure that your counsel is able to appear at the location you listed in Item 9. Please note that some of the organizations listed above only represent applicants who appear before the Board in the Washington, D.C. Metro Area. Contact your local veterans affairs office, Veterans Administration Office or veterans service organization for further information.

**ITEM 11.** If the former member is deceased or incompetent, the application may be submitted by the next of kin, a surviving spouse or a legal representative. Legal proof of death or incompetency and satisfactory evidence of the relationship to the former member must accompany this application.

**ITEM 12.a. and b.** A signature and date entered by the applicant or person identified in Item 11 are required.

## AUTHORIZATION FOR DISCLOSURE OF MEDICAL OR DENTAL INFORMATION

### PRIVACY ACT STATEMENT

In accordance with the Privacy Act of 1974 (Public Law 93-579), the notice informs you of the purpose of the form and how it will be used. Please read it carefully.

**AUTHORITY:** Public Law 104-191; E.O. 9397 (SSAN); DoD 6025.18-R.

**PRINCIPAL PURPOSE(S):** This form is to provide the Military Treatment Facility/Dental Treatment Facility/TRICARE Health Plan with a means to request the use and/or disclosure of an individual's protected health information.

**ROUTINE USE(S):** To any third party or the individual upon authorization for the disclosure from the individual for: personal use; insurance; continued medical care; school; legal; retirement/separation; or other reasons.

**DISCLOSURE:** Voluntary. Failure to sign the authorization form will result in the non-release of the protected health information.

This form will not be used for the authorization to disclose alcohol or drug abuse patient information from medical records or for authorization to disclose information from records of an alcohol or drug abuse treatment program. In addition, any use as an authorization to use or disclose psychotherapy notes may not be combined with another authorization except one to use or disclose psychotherapy notes.

### SECTION I - PATIENT DATA

1. NAME (Last, First, Middle Initial)	2. DATE OF BIRTH (YYYYMMDD)	3. SOCIAL SECURITY NUMBER
4. PERIOD OF TREATMENT: FROM - TO (YYYYMMDD)		5. TYPE OF TREATMENT (X one)
		<input type="checkbox"/> OUTPATIENT <input type="checkbox"/> INPATIENT <input type="checkbox"/> BOTH

### SECTION II - DISCLOSURE

6. I AUTHORIZE _____ TO RELEASE MY PATIENT INFORMATION TO: <i>(Name of Facility/TRICARE Health Plan)</i>			
a. NAME OF PHYSICIAN, FACILITY, OR TRICARE HEALTH PLAN	b. ADDRESS (Street, City, State and ZIP Code)		
c. TELEPHONE (Include Area Code)	d. FAX (Include Area Code)		
7. REASON FOR REQUEST/USE OF MEDICAL INFORMATION (X as applicable)			
<input type="checkbox"/> PERSONAL USE <input type="checkbox"/> INSURANCE	<input type="checkbox"/> CONTINUED MEDICAL CARE <input type="checkbox"/> RETIREMENT/SEPARATION	<input type="checkbox"/> SCHOOL <input type="checkbox"/> LEGAL	<input type="checkbox"/> OTHER (Specify) _____

### 8. INFORMATION TO BE RELEASED

9. AUTHORIZATION START DATE (YYYYMMDD)	10. AUTHORIZATION EXPIRATION <input type="checkbox"/> DATE (YYYYMMDD)	ACTION COMPLETED <input type="checkbox"/>
--	--	--

### SECTION III - RELEASE AUTHORIZATION

I understand that:

- a. I have the right to revoke this authorization at any time. My revocation must be in writing and provided to the facility where my medical records are kept or to the TMA Privacy Officer if this is an authorization for information possessed by the TRICARE Health Plan rather than an MTF or DTF. I am aware that if I later revoke this authorization, the person(s) I herein name will have used and/or disclosed my protected information on the basis of this authorization.
- b. If I authorize my protected health information to be disclosed to someone who is not required to comply with federal privacy protection regulations, then such information may be re-disclosed and would no longer be protected.
- c. I have a right to inspect and receive a copy of my own protected health information to be used or disclosed, in accordance with the requirements of the federal privacy protection regulations found in the Privacy Act and 45 CFR §164.524.
- d. The Military Health System (which includes the TRICARE Health Plan) may not condition treatment in MTFs/DTFs, payment by the TRICARE Health Plan, enrollment in the TRICARE Health Plan or eligibility for TRICARE Health Plan benefits on failure to obtain this authorization.

I request and authorize the named provider/treatment facility/TRICARE Health Plan to release the information described above to the named individual/organization indicated.

11. SIGNATURE OF PATIENT/PARENT/LEGAL REPRESENTATIVE	12. RELATIONSHIP TO PATIENT <i>(If applicable)</i>	13. DATE (YYYYMMDD)
--	---	---------------------

### SECTION IV - FOR STAFF USE ONLY (To be completed only upon receipt of written revocation)

14. X IF APPLICABLE: <input type="checkbox"/> AUTHORIZATION REVOKED	15. REVOCATION COMPLETED BY	16. DATE (YYYYMMDD)
--	-----------------------------	---------------------

17. IMPRINT OF PATIENT IDENTIFICATION PLATE WHEN AVAILABLE	SPONSOR NAME: SPONSOR RANK: FMP/SPONSOR SSN: BRANCH OF SERVICE: PHONE NUMBER:
--	---

## INSTRUCTION AND INFORMATION SHEET FOR SF 180, REQUEST PERTAINING TO MILITARY RECORDS

**1. General Information.** The Standard Form 180, Request Pertaining to Military Records (SF180) is used to request information from military records. Certain identifying information is necessary to determine the location of an individual's record of military service. Please try to answer each item on the SF 180. If you do not have and cannot obtain the information for an item, show "NA," meaning the information is "not available." Include as much of the requested information as you can. Incomplete information may delay response time. To determine where to mail this request see Page 2 of the SF180 for record locations and facility addresses.

Online requests may be submitted to the National Personnel Records Center (NPRC) by a veteran or deceased veteran's next of kin using eVetRecs at <http://www.archives.gov/veterans/military-service-records/>.

**2. Personnel Records/Military Human Resource Records/Official Military Personnel File (OMPF) and Medical Records/Service Treatment Records (STR).** Personnel records of military members who were discharged, retired, or died in service less than 62 years ago and medical records are in the legal custody of the military service department and are administered in accordance with rules issued by the Department of Defense and the Department of Homeland Security (DHS, Coast Guard). STR's of persons on active duty are generally kept at the local servicing clinic, and usually are available from the Department of Veterans Affairs approximately 40 days after the last day of active duty. (See item 3, Archival Records, if the military member was discharged, retired or died in service over 62 years ago.)

a. Release of information: Release of information is subject to restrictions imposed by the military services consistent with Department of Defense regulations and the provisions of the Freedom of Information Act (FOIA) and the Privacy Act of 1974. The service member (either past or present) or the member's legal guardian has access to almost any information contained in that member's own record. An authorization signature, of the service member or the member's legal guardian, is needed in Section III of the SF180. Others requesting information from military personnel records and/or STR's must have the release authorization in Section III of the SF 180 signed by the member or legal guardian. If the appropriate signature cannot be obtained, only limited types of information can be provided. If the former member is deceased, surviving next of kin may, under certain circumstances, be entitled to greater access to a deceased veteran's records than a member of the general public. The next of kin may be any of the following: unremarried surviving spouse, father, mother, son, daughter, sister, or brother. Requesters **must provide proof of death, such as a copy of a death certificate, newspaper article (obituary) or death notice, coroner's report of death; funeral director's signed statement of death, or verdict of coroner's jury.**

b. Fees for records: There is no charge for most services provided to service members or next of kin of deceased veterans. A nominal fee is charged for certain types of service. In most instances service fees cannot be determined in advance. If your request involves a service fee, you will be notified.

**3. Archival Records.** Personnel records of military members who were discharged, retired, or died in service 62 or more years ago have been transferred to the legal custody of NARA and are referred to as "archival" records.

a. Release of Information: Archival records are open to the public. The Privacy Act of 1974 does not apply to archival records, therefore, written authorization from the veteran or next of kin is not required. However, in order to protect the privacy of the veteran, his/her family, and third parties named in the records, the personal privacy exemption of the Freedom of Information Act (5 U.S.C. 552 (b) (6)) may still apply and preclude the release of some information.

b. Fees for Archival Records: Access to archival records is granted by offering copies of the records for a fee (44 U.S.C. 2116 (c)). You will be notified if there is a charge for photocopies of documents contained in the record you are requesting. For more information see <http://www.archives.gov/st-louis/archival-programs/military-personnel-archival/ompf-archival-requests.html>.

**4. Where reply may be sent.** The reply may be sent to the service member or any other address designated by the service member or other authorized requester.

**5. Definitions and abbreviations.** DISCHARGED -- the individual has no current military status; SERVICE TREATMENT RECORD (STR) -- The chronology of medical, mental health and dental care received by service members during the course of their military career (does not include records of treatment while hospitalized); TDRL -- Temporary Disability Retired List.

**6. Service completed before World War I.** National Archives Trust Fund (NATF) forms must be used to request these records. Obtain the forms by e-mail from [inquire@nara.gov](mailto:inquire@nara.gov) or write to the Code 6 address on page 2 of the SF 180.

### PRIVACY ACT OF 1974 COMPLIANCE INFORMATION

The following information is provided in accordance with 5 U.S.C. 552a(e)(3) and applies to this form. Authority for collection of the information is 44 U.S.C. 2907, 3101, and 3103, and Public Law 104-134 (April 26, 1996), as amended in title 31, section 7701. Disclosure of the information is voluntary. If the requested information is not provided, it may delay servicing your inquiry because the facility servicing the service member's record may not have all of the information needed to locate it. The purpose of the information on this form is to assist the facility servicing the records (see the address list) in locating the correct military service record(s) or information to answer your inquiry. This form is then retained as a record of disclosure. The form may also be disclosed to Department of Defense components, the Department of Veterans Affairs, the Department of Homeland Security (DHS, U.S. Coast Guard), or the National Archives and Records Administration when the original custodian of the military health and personnel records transfers all or part of those records to that agency. If the service member was a member of the National Guard, the form may also be disclosed to the Adjutant General of the appropriate state, District of Columbia, or Puerto Rico, where he or she served.

### PAPERWORK REDUCTION ACT PUBLIC BURDEN STATEMENT

Public burden reporting for this collection of information is estimated to be five minutes per request, including time for reviewing instructions and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to National Archives and Records Administration (NHP), 8601 Adelphi Road, College Park, MD 20740-6001. DO NOT SEND COMPLETED FORMS TO THIS ADDRESS. SEND COMPLETED FORMS AS INDICATED IN THE ADDRESS LIST ON PAGE 2 OF THE SF 180.

## REQUEST PERTAINING TO MILITARY RECORDS

\* Requests from veterans or deceased veteran's next-of-kin may be submitted online by using eVetRecs at <http://www.archives.gov/veterans/military-service-records>.\*

(To ensure the best possible service, please thoroughly review the accompanying instructions before filling out this form. Please print clearly or type.)

### SECTION I - INFORMATION NEEDED TO LOCATE RECORDS (Furnish as much as possible.)

1. NAME USED DURING SERVICE (last, first, and middle)	2. SOCIAL SECURITY NO.	3. DATE OF BIRTH	4. PLACE OF BIRTH			
5. SERVICE, PAST AND PRESENT  (For an effective records search, it is important that all service be shown below.)						
	BRANCH OF SERVICE	DATE ENTERED	DATE RELEASED	OFFICER	ENLISTED	SERVICE NUMBER (If unknown, write "unknown")
a. ACTIVE COMPONENT						
b. RESERVE COMPONENT						
c. NATIONAL GUARD						
6. IS THIS PERSON DECEASED? If "YES" enter the date of death. <input type="checkbox"/> NO <input type="checkbox"/> YES _____			7. IS (WAS) THIS PERSON RETIRED FROM MILITARY SERVICE? <input type="checkbox"/> NO <input type="checkbox"/> YES			

### SECTION II – INFORMATION AND/OR DOCUMENTS REQUESTED

#### 1. CHECK THE ITEM(S) YOU ARE REQUESTING:

- DD Form 214 or equivalent. When was the DD Form(s) 214 issued? YEAR(S): \_\_\_\_\_  
If more than one period of service was performed, even in the same branch, there may be more than one DD214.  
This form contains information normally needed to verify military service. A copy may be sent to the veteran, the deceased veteran's next of kin, or other persons or organizations if authorized in Section III, below. An UNDELETED DD214 is ordinarily required to determine eligibility for benefits. Sensitive items, such as, the character of separation, authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and dates of time lost are usually shown.  
An undeleted copy will be sent unless you specify a deleted copy. Indicate here if you want a deleted copy of the DD Form 214.
- The following items are deleted: authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and for separations after June 30, 1979, character of separation and dates of time lost.
- All Documents in Official Military Personnel File (OMPF)  
 Medical Records (Includes Service Treatment Records, Health (outpatient) and dental records.) If hospitalized (inpatient), the facility name and date for each admission must be provided: \_\_\_\_\_  
 Other (Specify): \_\_\_\_\_

#### 2. PURPOSE: (An explanation of the purpose of the request is strictly voluntary; however, such information may help to provide the best possible response and may result in a faster reply. Information provided will in no way be used to make a decision to deny the request.) Check appropriate box:

- Benefits     Employment     VA Loan Programs     Medical     Genealogy     Correction     Personal  
 Other, explain: \_\_\_\_\_

### SECTION III - RETURN ADDRESS AND SIGNATURE

#### 1. REQUESTER IS: (Signature Required in # 3 below of veteran, next of kin, legal guardian, authorized government agent or "other" authorized representative. If "other" authorized representative, provide copy of authorization letter.) No signature required for Archival records.

- Military service member or veteran identified in Section I, above  
 Next of kin of deceased veteran: \_\_\_\_\_  
(Relationship)

MUST HAVE PROOF OF DEATH - See item 2a on instruction sheet.

#### 2. SEND INFORMATION/DOCUMENTS TO: (Please print or type. See item 4 on accompanying instructions.)

- Legal guardian (Must submit copy of court appointment.)  
 Other (specify) \_\_\_\_\_

#### 3. AUTHORIZATION SIGNATURE WHEN REQUIRED (See items 2a or 3a on accompanying instructions.) I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the information in this Section III is true and correct. No signature required for Archival records.

Name \_\_\_\_\_

Street \_\_\_\_\_ Apt. \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Email address \_\_\_\_\_

Signature Required - Do not print

Date \_\_\_\_\_

(      ) Daytime phone

(      ) Fax Number

\*This form is available at <http://www.archives.gov/research/order/standard-form-180.pdf> on the National Archives and Records Administration (NARA) web site.\*

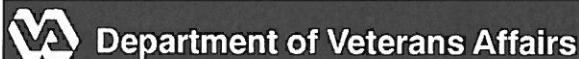
## LOCATION OF MILITARY RECORDS

The various categories of military service records are described in the chart below. For each category there is a code number which indicates the address at the bottom of the page to which this request should be sent. Please refer to the Instruction and Information Sheet accompanying this form as needed.

BRANCH	CURRENT STATUS OF SERVICE MEMBER	ADDRESS CODE	
		Personnel Record	Medical or Service Treatment Record
AIR FORCE	Discharged, deceased, or retired before 5/1/1994	14	14
	Discharged, deceased, or retired 5/1/1994 – 9/30/2004	14	11
	Discharged, deceased, or retired on or after 10/1/2004	1	11
	Active (including National Guard on active duty in the Air Force), TDRL, or general officers retired with pay	1	
	Reserve, retired reserve in nonpay status, current National Guard officers not on active duty in the Air Force, or National Guard released from active duty in the Air Force	2	
	Current National Guard enlisted not on active duty in the Air Force	13	
COAST GUARD	Discharge, deceased, or retired before 1/1/1898	6	
	Discharged, deceased, or retired 1/1/1898 – 3/31/1998	14	14
	Discharged, deceased, or retired on or after 4/1/1998	14	11
	Active, reserve, or TDRL	3	
MARINE CORPS	Discharged, deceased, or retired before 1/1/1905	6	
	Discharged, deceased, or retired 1/1/1905 – 4/30/1994	14	14
	Discharged, deceased, or retired 5/1/1994 – 12/31/1998	14	11
	Discharged, deceased, or retired on or after 1/1/1999	4	11
	Individual Ready Reserve	5	
	Active, Selected Marine Corps Reserve, TDRL	4	
ARMY	Discharged, deceased, or retired before 11/1/1912 (enlisted) or before 7/1/1917 (officer)	6	
	Discharged, deceased, or retired 11/1/1912 – 10/15/1992 (enlisted) or 7/1/1917 – 10/15/1992 (officer)	14	
	Discharged, deceased, or retired after 10/16/1992	14	11
	Active enlisted, officers	7	
	Former National Guard/USAR personnel	14	
NAVY	Discharged, deceased, or retired before 1/1/1886 (enlisted) or before 1/1/1903 (officer)	6	
	Discharged, deceased, or retired 1/1/1886 – 1/30/1994 (enlisted) or 1/1/1903 – 1/30/1994 (officer)	14	14
	Discharged, deceased, or retired 1/31/1994 – 12/31/1994	14	11
	Discharged, deceased, or retired on or after 1/1/1995	10	11
	Active, reserve, or TDRL	10	
PHS	Public Health Service - Commissioned Corps officers only	12	

### ADDRESS LIST OF CUSTODIANS (BY CODE NUMBERS SHOWN ABOVE) – Where to write/send this form

1	Air Force Personnel Center HQ AFPC/DPSIRP 550 C Street West, Suite 19 Randolph AFB, TX 78150-4721	6	National Archives & Records Administration Old Military and Civil Records (NWCTB-Military) Textual Services Division 700 Pennsylvania Ave., N.W. Washington, DC 20408-0001	11	Department of Veterans Affairs Records Management Center P.O. Box 5020 St. Louis, MO 63115-5020
2	Air Reserve Personnel Center Records Management Branch (DPTARA) 18420 E. Silver Creek Ave. Bldg. 390 MS 68 Buckley AFB, CO 80011	7	US Army Human Resources Command ATTN: AHRC-PDR-V 1600 Spearhead Division Ave., Dept 420 Fort Knox, KY 40122-5402 askhrc.army@us.army.mil	12	Division of Commissioned Corps Officer Support ATTN: Records Officer 1101 Wooton Parkway, Plaza Level, Suite 100 Rockville, MD 20852
3	Commander, Personnel Service Center (PSD-MR) MS7200 US Coast Guard 4200 Wilson Blvd., Suite 1100 Arlington, VA 29598-7200 <a href="http://uscg.mil/psc/adm">http://uscg.mil/psc/adm</a>	8	Reserved.	13	Reserved.
4	Headquarters U.S. Marine Corps Manpower Management Support Branch (MMSB-10) 2008 Elliot Road Quantico, VA 22134-5030	9	Reserved.	14	National Personnel Records Center (Military Personnel Records) 1 Archives Dr. St. Louis, MO 63138-1002  eVetRecs! <a href="http://www.archives.gov/veterans/military-service-records/">http://www.archives.gov/veterans/military-service-records/</a>
5	Marine Forces Reserve 4400 Dauphine St. New Orleans, LA 70146-5400	10	Navy Personnel Command (PERS-312E) 5720 Integrity Drive Millington, TN 38055-3120		



## REQUEST FOR AND AUTHORIZATION TO RELEASE MEDICAL RECORDS OR HEALTH INFORMATION

**Privacy Act and Paperwork Reduction Act Information:** The execution of this form does not authorize the release of information other than that specifically described below. The information requested on this form is solicited under Title 38, U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164, 5 U.S.C. 552a, and 38 U.S.C. 5701 and 7352 that you specify. Your disclosure of the information requested on this form is voluntary. However, if the information including Social Security Number (SSN) (the SSN will be used to locate records for release) is not furnished completely and accurately, Department of Veterans Affairs will be unable to comply with the request. The Veterans Health Administration may not condition treatment, payment, enrollment or eligibility on signing the authorization. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices identified as 24VA10P2 "Patient Medical Record - VA" and in accordance with the Notice of Privacy Practices. You do not have to provide the information to VA, but if you don't, VA will be unable to process your request and serve your medical needs. Failure to furnish the information will not have any affect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law. The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 2 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

**ENTER BELOW THE PATIENT'S NAME AND SOCIAL SECURITY NUMBER IF THE PATIENT DATA CARD IMPRINT IS NOT USED.**

TO: DEPARTMENT OF VETERANS AFFAIRS (Print or type name and address of health care facility)	PATIENT NAME (Last, First, Middle Initial)  [Redacted]
	SOCIAL SECURITY NUMBER  [Redacted]

NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED  
  
[Redacted]

**VETERAN'S REQUEST:** I request and authorize Department of Veterans Affairs to release the information specified below to the organization, or individual named on this request. I understand that the information to be released includes information regarding the following condition(s):

DRUG ABUSE     ALCOHOLISM OR ALCOHOL ABUSE     TESTING FOR OR INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS (HIV)     SICKLE CELL ANEMIA

INFORMATION REQUESTED (Check applicable box(es) and state the extent or nature of the information to be disclosed, giving the dates or approximate dates covered by each)

COPY OF HOSPITAL SUMMARY     COPY OF OUTPATIENT TREATMENT NOTE(S)     OTHER (Specify)  
  
[Redacted]

PURPOSE(S) OR NEED FOR WHICH THE INFORMATION IS TO BE USED BY INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED  
  
[Redacted]

**NOTE: ADDITIONAL ITEMS OF INFORMATION DESIRED MAY BE LISTED ON THE BACK OF THIS FORM**

**AUTHORIZATION:** I certify that this request has been made freely, voluntarily and without coercion and that the information given above is accurate and complete to the best of my knowledge. I understand that I will receive a copy of this form after I sign it. I may revoke this authorization, in writing, at any time except to the extent that action has already been taken to comply with it. Written revocation is effective upon receipt by the Release of Information Unit at the facility housing the records. Rediscovery of my medical records by those receiving the above authorized information may be accomplished without my further written authorization and may no longer be protected. Without my express revocation, the authorization will automatically expire: (1) upon satisfaction of the need for disclosure; (2) on [Redacted] (date supplied by patient); (3) under the following condition(s):  
  
[Redacted]

I understand that the VA health care practitioner's opinions and statements are not official VA decisions regarding whether I will receive other VA benefits or, if I receive VA benefits, their amount. They may, however, be considered with other evidence when these decisions are made at a VA Regional Office that specializes in benefit decisions.

DATE (mm/dd/yyyy)	SIGNATURE OF PATIENT OR PERSON AUTHORIZED TO SIGN FOR PATIENT (Attach authority to sign, e.g., POA)	
-------------------	---	--

### FOR VA USE ONLY

IMPRINT PATIENT DATA CARD (or enter Name, Address, Social Security Number)	TYPE AND EXTENT OF MATERIAL RELEASED	
	DATE RELEASED	RELEASED BY



## Glossary of Common Discharge Upgrade Acronyms & Terms

Active Duty	“Full-time duty in the Armed Forces, other than active duty for training” as defined in 38 U.S.C. § 101
AIT	Advanced Individual Training
AO	Area of Operations
APFT	Army Physical Fitness Test, results of which referred to as “PT Score”
ASVAB	Armed Services Vocational Aptitude Battery
Basic	Basic training, aka boot camp
BCD	Bad Conduct Discharge
BCMR/BCNR	Board for Correction of Military/Naval Records
BH	Behavioral Health
CAB/CAR/CIB	Combat Action Badge/Combat Action Ribbon/Combat Infantryman Badge
CO	Commanding Officer
CONUS/OCONUS	Continental United States, referring to 48 contiguous states/Outside of CONUS
COP	Combat Outpost
CSD/COD	Character of Service Determination/Character of Discharge Determination
DD	Dishonorable Discharge
DD-214	Department of Defense Form 214 (discharge certificate)
DoD	Department of Defense
DRB	Discharge Review Board
DSM-V/DSM-5	American Psychiatric Association’s Diagnostic & Statistical Manual of Mental Disorders, Vol. V (2013)
ECP/TCP	Entry Check-Point/Tactical Control Point
ETS	Expiration of Term of Service
FOB	Forward Operating Base
FOIA	Freedom of Information Act
FTX	Field Training Exercise
GCM	General Court-Martial
GI	Government-Issued, a nickname for military personnel
GWOT	Global War on Terrorism
HMMWV	High Mobility Multipurpose Wheeled Vehicle
IED	Improvised Explosive Device
JAG/JAG Corps	Judge Advocate General’s Corps, or a member thereof
MOS	Military Occupational Specialty
MP	Military Police
MRAP	Mine-Resistant Ambush Protected, vehicles designed to withstand IEDs
MRE	Meal, Ready to Eat
MST	Military Sexual Trauma (defined at 38 U.S.C. § 1720D)
NCO	Noncommissioned Officer
NG 22	National Guard Form 22 (discharge certificate)
NJP	Non-Judicial Punishment under Art. 15 of the UCMJ, aka Article 15 (Army/Air Force), Mast (Navy/Coast Guard), or Office Hours (Marine Corps)
OEF	Operation Enduring Freedom
OIF/OND	Operation Iraqi Freedom/Operation New Dawn
OP / LPOP	Observation Post, Looking Point/Observation Point
OTH/UOTHC	Other Than Honorable/Under Other Than Honorable Conditions
PDHA/ PDHRA	Post-Deployment Health Assessment/Reassessment
PTSD/PTS	Post-Traumatic Stress Disorder/Post-Traumatic Stress
RAD	Release from Active Duty

RE Code	Reenlistment Code
RPG	Rocket-Propelled Grenade
SAW	Squad Automatic Weapon
SCM	Summary Court-Martial
SM	Servicemember
SPCM	Special Court-Martial
TBI	Traumatic Brain Injury
TDS	Trial Defense Service, defense counsel of JAG Corps
Title 10/Title 32/SAD	Referring to National Guard operating on full-time duty in active military service under U.S.C. Title 10, on full-time National Guard duty under U.S.C. Title 32, or on State Active Duty
UA	Unauthorized Absence, aka Absent Without Leave (AWOL)
UCMJ	Uniform Code of Military Justice
VA	U.S. Department of Veterans Affairs
VBA	Veterans Benefits Administration
VHA	Veterans Health Administration
VSO	Veterans Service Organization/Veterans Service Officer

*See also* Department of Defense Dictionary of Military & Related Terms at [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf).

## Potential Questions for Interviewing a Veteran

### Pre-Military

1. Where were you born?
2. Where did you grow up?
3. With whom did you live growing up?

### Military Service

1. Why did you enlist?
2. What was your MOS (military occupational specialty)?
3. Tell me about basic training ...
4. Where were you stationed after basic training?
5. Did you deploy? When and where?
6. Did you ever receive Non-Judicial Punishment (NJP) (aka Article 15, Office Hours, Captain's Mast)?
7. Did you ever get court-martialed?
  - a. Was it a summary, special, or general court-martial?
8. Did you receive any medical or mental-health treatment? For what? Where?
9. Tell me about the events leading to discharge . . .

### Post-Separation

1. What have you been doing since discharge?
2. Have you received any medical or mental health treatment? Where and from whom?
3. Why do you want to upgrade your discharge?
4. Have you ever tried to upgrade your discharge before?

### Case Development

1. Is there anyone I can contact who served with you?
2. Is there anyone else I should talk to—fellow servicemembers, family, friends, employers, doctors . . . ?



## **Discharge Upgrade Resources**

### Statutes

1. Review Boards generally: 10 U.S.C. §§ 1551-1559
2. Establishing Boards for Correction of Military/Naval Records: 10 U.S.C. § 1552
3. Establishing Discharge Review Boards: 10 U.S.C. § 1553
4. Establishing Physical Disability Review Boards: 10 U.S.C. §§ 1554, 1554a
5. Timeliness of Actions of Corrections Boards: 10 U.S.C. § 1557
6. Uniform Code of Military Justice, 10 U.S.C. ch. 47
  - a. *See also* Manual for Courts-Martial, <http://www.apd.army.mil/pdffiles/mcm.pdf>

### Current Administrative Separation Regulations

1. DoD:
  - a. DODI 1332.14, <http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf>
  - b. DODI 1332.30, <http://www.dtic.mil/whs/directives/corres/pdf/133230p.pdf>
2. Army: AR 635-200, [http://armypubs.army.mil/epubs/pdf/r635\\_200.pdf](http://armypubs.army.mil/epubs/pdf/r635_200.pdf)
3. Navy: MILPERSMAN Parts 1900 *et seq.*
4. Marines: MARCORSEPMAN P1900.16,  
<http://www.marines.mil/Portals/59/Publications/MCO%20%201900.16.pdf>
5. Air Force: AFI 36-3208, [http://static.e-publishing.af.mil/production/1/af\\_a1/publication/afi36-3208/afi36-3208.pdf](http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3208/afi36-3208.pdf)
6. Coast Guard: COMDTINST 1000.6A ch. 12

### Discharge Review Board Regulations

1. DoD:
  - a. 32 C.F.R. Part 70
  - b. DODI 1332.28, <http://www.dtic.mil/whs/directives/corres/pdf/133228p.pdf>
  - c. DODI 1332.41, <http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf>
2. Army: AR 15-180, [http://armypubs.army.mil/epubs/pdf/r15\\_180.pdf](http://armypubs.army.mil/epubs/pdf/r15_180.pdf)
3. Navy/Marines:
  - a. 32 C.F.R. Part 724
  - b. SECNAVINST 5420.174D,  
<http://www.public.navy.mil/asnmra/corb/NDRB/Documents/NDRB%20reference.pdf>
4. Air Force: 32 C.F.R. § 865, Subpart B
5. Coast Guard: 33 C.F.R. Part 51

### Corrections Boards Regulations

1. DoD:
  - a. 1332.41, <http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf>
  - b. *See* Hagel Memorandum, <http://www.defense.gov/news/osd009883-14.pdf>
2. Army: AR 15-185, [http://www.apd.army.mil/pdffiles/r15\\_185.pdf](http://www.apd.army.mil/pdffiles/r15_185.pdf)
3. Navy/Marines: 32 C.F.R. Part 723
4. Air Force:
  - a. 32 C.F.R. § 865, Subpart A
  - b. AFI 36-2603, [http://static.e-publishing.af.mil/production/1/af\\_a1/publication/afi36-2603/afi36-2603.pdf](http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf)
  - c. *See also* AFP 36-2607, <http://www.afpc.af.mil/shared/media/document/AFD-130528-027.pdf>
5. Coast Guard: 33 C.F.R. Part 52

### Other DoD & Service Branch Regulations

1. Department of Defense Issuances: [www.dtic.mil/whs/directives](http://www.dtic.mil/whs/directives)
2. Army Administrative Publications: [armypubs.army.mil/epubs](http://armypubs.army.mil/epubs)
3. Navy Issuances: <http://doni.daps.dla.mil/default.aspx>
4. Marine Corps Publications Electronic Library: <http://www.marines.mil/news/publications.aspx>
5. Air Force e-Publishing: [www.e-publishing.af.mil](http://www.e-publishing.af.mil)
6. Coast Guard Directives & Publications Division: [www.uscg.mil/directives/default.asp](http://www.uscg.mil/directives/default.asp)

## Commonly Used Forms

1. DD-214
  - a. Nov. 1988: <http://ecfr.gpoaccess.gov/graphics/ec23oc91.003.gif>
  - b. July 1966: <http://www.archives.gov/publications/prologue/2005/spring/images/dd214-sample-form-lg.jpg>
2. DD Form 293, Application for Review of Discharge by Discharge Review Board,  
<http://www.dtic.mil/whs/directives/forms/eforms/dd0293.pdf>
3. DD Form 149, Application for Review of Discharge by Board for Correction of Military/Naval Records,  
<http://www.dtic.mil/whs/directives/forms/eforms/dd0149.pdf>
4. Standard Form 180, Request for Military Records, <http://www.archives.gov/research/order/standard-form-180.pdf>
5. DD Form 2870, Authorization for Disclosure of Medical/Dental Information,  
<http://www.79mdw.af.mil/shared/media/document/AFD-120203-054.pdf>
6. VA Form 10-5345, Request for and Authorization to Release Medical Records or Health Information,  
<http://www.va.gov/vaforms/medical/pdf/vha-10-5345-fill.pdf>
7. VA Form 21-0845, Authorization to Disclose Information to a Third Party,  
<http://www.vba.va.gov/pubs/forms/vba-21-0845-are.pdf>

## Non-Military Resources

1. Swords to Plowshares, Upgrading Your Military Discharge and Changing the Reason for Your Discharge (2012),  
<http://www.swords-to-plowshares.org/wp-content/uploads/Upgrading-Your-Discharge.pdf>
2. Swords to Plowshares, Guidelines for a PTSD Mental Health Evaluation (2012), <http://www.swords-to-plowshares.org/wp-content/uploads/Guidelines-for-PTSD.pdf>
3. Swords to Plowshares, Requesting Copies of Military Records (2012), <http://www.swords-to-plowshares.org/wp-content/uploads/Requesting-Copies.pdf>
4. Swords to Plowshares, Ordering Courts-Martial Transcripts and Military Investigative Records (2012),  
<http://www.swords-to-plowshares.org/wp-content/uploads/Ordering-Courts-Martial-Transcripts.pdf>
5. Connecticut Veterans Legal Center, Veterans Discharge Upgrade Manual (2011), <http://ctveteranslegal.org/wp-content/uploads/2012/12/Connecticut-Veterans-Legal-Center-Discharge-Upgrade-Manual-November-2011.pdf>
6. Veterans Legal Services Clinic, Applying for a Discharge Upgrade When You Have PTSD,  
[http://www.law.yale.edu/documents/pdf/Clinics/wirac\\_PTSDdischargeUpgradeSupplement.pdf](http://www.law.yale.edu/documents/pdf/Clinics/wirac_PTSDdischargeUpgradeSupplement.pdf)
7. Michael Ettlinger & David F. Addlestone, Military Discharge Upgrading (1990), [http://ctveteranslegal.org/wp-content/uploads/2012/12/MilitaryDischargeUpgrading\\_lr.pdf](http://ctveteranslegal.org/wp-content/uploads/2012/12/MilitaryDischargeUpgrading_lr.pdf)
8. American Legion, Guide to Filing Military Discharge Review Board and Board for Correction of Military Records Applications (2001), <http://wearevirginia.veterans.org/images/About-Us--Exec-Leadership/Resources--clinicians/dodguide.aspx>
9. Vietnam Veterans of America, Guide to Understanding an Applicant's DD-214 for VVA Membership Eligibility (2010) (explaining DD-214), <http://www.vva.org/Membership/Guide-to-Understanding-an-Applicant1.pdf>
10. Barton F. Stichman and Ronald B. Abrams, Veterans Benefits Manual (LexisNexis)
11. Center for Deployment Psychology, <http://deploymentpsych.org/Military-Culture> (resources about military culture)

RESEARCH ARTICLE

Open Access

# Psychiatric diagnoses and punishment for misconduct: the effects of PTSD in combat-deployed Marines

Robyn M Highfill-McRoy<sup>1\*†</sup>, Gerald E Larson<sup>1†</sup>, Stephanie Booth-Kewley<sup>1†</sup>, Cedric F Garland<sup>1,2‡</sup>

## Abstract

**Background:** Research on Vietnam veterans suggests an association between psychological problems, including posttraumatic stress disorder (PTSD), and misconduct; however, this has rarely been studied in veterans of Operation Iraqi Freedom or Operation Enduring Freedom. The objective of this study was to investigate whether psychological problems were associated with three types of misconduct outcomes (demotions, drug-related discharges, and punitive discharges.)

**Methods:** A population-based study was conducted on all U.S. Marines who entered the military between October 1, 2001, and September 30, 2006, and deployed outside of the United States before the end of the study period, September 30, 2007. Demographic, psychiatric, deployment, and personnel information was collected from military records. Cox proportional hazards regression analysis was conducted to investigate associations between the independent variables and the three types of misconduct in war-deployed ( $n = 77\,998$ ) and non-war-deployed ( $n = 13\,944$ ) Marines.

**Results:** Marines in both the war-deployed and non-war-deployed cohorts with a non-PTSD psychiatric diagnosis had an elevated risk for all three misconduct outcomes (hazard ratios ranged from 3.93 to 5.65). PTSD was a significant predictor of drug-related discharges in both the war-deployed and non-war-deployed cohorts. In the war-deployed cohort only, a specific diagnosis of PTSD was associated with an increased risk for both demotions (hazard ratio, 8.60; 95% confidence interval, 6.95 to 10.64) and punitive discharges (HR, 11.06; 95% CI, 8.06 to 15.16).

**Conclusions:** These results provide evidence of an association between PTSD and behavior problems in Marines deployed to war. Moreover, because misconduct can lead to disqualification for some Veterans Administration benefits, personnel with the most serious manifestations of PTSD may face additional barriers to care.

## Background

Numerous studies have demonstrated that exposure to combat or other traumatic events is associated with an increase in psychiatric problems, including depression, substance abuse, anxiety disorders, and posttraumatic stress disorder (PTSD) [1-3]. Another area of concern is the relationship between combat exposure and antisocial behavior. The media have keenly focused on this topic, as evidenced by the publicity surrounding military misconduct both during and after deployment [4-7].

Research on Vietnam War veterans strongly suggests an association between combat exposure and antisocial and high-risk behaviour [8-11]. Boscarino (1981) found that Vietnam veterans and Vietnam-era veterans had higher levels of drug abuse than non-veterans, after adjusting for demographic factors [8]. Yager, Laufer, and Gallops (1984) found that participation in violence during the Vietnam War was associated with a heightened risk of arrests and convictions, after controlling for pre-service factors [9]. Beckham *et al* (1997) reported that exposure to atrocities during the Vietnam War heightened the risk of engaging in interpersonal violence post-war [10]. Another study found that combat exposure level in Vietnam veterans was associated with post war antisocial behavior, including illegal activities,

\* Correspondence: Robyn.McRoy@med.navy.mil

† Contributed equally

<sup>1</sup>Behavioral Science and Epidemiology Program, Naval Health Research Center, San Diego, California, USA

Full list of author information is available at the end of the article

relationship problems, relationship problems, and reckless driving [11].

Other studies examining the relationship between combat and antisocial behavior have focused on more recent military conflicts [12-15]. Rothberg *et al* (1994) found that U.S. Army units that deployed during the Persian Gulf War had higher rates of drug and alcohol service use than did non-deployed units [12]. The 2005 Department of Defense Survey of Health Related Behaviors found that approximately 16-18% of Marines who served in Operation Iraqi Freedom, Operation Enduring Freedom, or other operations reported illegal drug use during the past year, compared with 9% of those who did not serve in any operation [13]. Killgore *et al* (2008) found that Operation Iraqi Freedom soldiers exposed to violent combat reported more aggressive behaviors following deployment, including angry outbursts, destroying property, and threatening others with violence [14].

It has been proposed that PTSD could mediate the relationship between combat and subsequent antisocial behaviour [16-19]. However, research on this topic has produced conflicting findings. Some studies have found that veterans with combat-related PTSD report higher rates of interpersonal violence, incarcerations, and drug use/dependence, compared with veterans without PTSD [10,20-22]. However, not all studies have identified an association between combat-related PTSD and these outcomes [23-25].

The inconsistent findings may be due to methodological differences in the research. For example, studies have relied on retrospective [10,19,25] and cross-sectional [3,26] study designs, most likely due to the uncommon occurrence of both the risk factor (trauma resulting in a PTSD diagnosis) and the outcome (misconduct). As a result, the temporal order of events usually was not examined. Case definitions were not consistent across studies and were based on a variety of methods, including a positive result on a symptom-based checklist or survey [11,18], an interview-based diagnosis [16,25], or hospitalization for PTSD [19,23]. Combat veterans were often compared with dissimilar control groups, such as non-deployable personnel or non-veterans, who may have different rates of misconduct outcomes. Outcomes differed substantially across studies making it difficult to make comparisons between studies. Lastly, research in this area has generally focused on veterans of the Vietnam and Gulf wars, and only a few studies have examined psychiatric disorders and misconduct in contemporary combatants.

## Objectives

The goal of this study was to use a population-based approach to examine the relationships between combat deployment, psychiatric problems including PTSD, and

misconduct outcomes. The objectives of this study were to ascertain and compare incidence rates of three types of misconduct outcomes (demotions, drug-related discharges, and non-drug-related punitive discharges) among two military cohorts (war-deployed and non-war-deployed Marines), and to determine if having a psychiatric diagnosis, including PTSD, was associated with misconduct.

## Methods

### Subjects

A population-based cohort study was conducted among all active-duty, enlisted Marine Corps personnel who first entered the military between October 1, 2001, and September 30, 2006. To be eligible for this study, Marines had to have been enlisted for longer than 6 months and deployed to either Iraq, Afghanistan, or Kuwait (war deployed Marines) or to another location outside of the United States without receiving hazardous duty pay (non-war-deployed Marines) before the end of the study period, September 30, 2007. The analyses were limited to active-duty Marines because medical data were not consistently available for reservists.

Excluded from the study were individuals who served less than 6 months of service, did not deploy before the end of the study period, changed military branches during the study time frame, or received hazardous duty pay but did not deploy to Iraq, Afghanistan, or Kuwait. Officers and warrant officers were excluded because they constituted an extremely small portion of personnel who received a misconduct outcome during this time frame.

This research was conducted in compliance with all applicable federal regulations governing the protection of human subjects in research. The Naval Health Research Center Institutional Review Board approved this study (protocol NHRC.2005.0003).

### Data sources and variables

Personnel, demographic, and deployment information collected from the Defense Manpower Data Center (DMDC) and medical information collected from the TRICARE Management Activity were used to construct the longitudinal database for this study. Demographic and personnel predictors included sex, race (Caucasian, African American, Hispanic, or other), date of military entry, accession age (age at military entry,) and Armed Forces Qualification Test (AFQT) cognitive ability score. AFQT was divided into tertiles based on the distribution of scores (low: 0-50, medium: 51-70, and high: 71-100). Age at military entry was dichotomized based on the mean of the distribution (<19, ≥19 years).

Deployment information included dates and country of deployment. Individuals were categorized as being

war deployed if they received a combat zone tax exclusion or hazardous duty/imminent danger pay and were deployed to Iraq, Kuwait, or Afghanistan before the end of the study period ( $n = 77\,998$ .) Personnel whose duty station was outside of the United States and who did not receive hazardous duty pay were classified in the deployed, non-war-deployed cohort ( $n = 13\,944$ .)

The three outcomes of the study (demotions, drug-related discharges, and non-drug-related punitive discharges) and the dates of their occurrence were obtained from DMDC. Individuals were classified as demoted if official records indicated a lowering of their paygrade. Individuals were classified as having a drug discharge if they were discharged and their separation code description included drug use or abuse. Individuals were classified as having a non-drug-related punitive discharge if they were discharged and their separation code description included frequent involvement with civil or military authorities, court martial or action in lieu of court martial, or a civil or military conviction. This last outcome measure reflects the most severe instances of blatant criminal conduct. In order to classify individuals into the appropriate deployment cohort, all outcomes included in the analyses had to have occurred after a deployment.

Information on inpatient and outpatient medical visits were obtained from Tricare Management Activity, the Department of Defense's health care system. This database includes treatment dates and clinical diagnoses by credentialed providers (including psychiatrists, psychologists, and medical doctors) at both military treatment facilities and government-reimbursed private providers. These direct care records are generated for military personnel on every medical encounter, with the exception of medical encounters that occurred in a war zone or via civilian providers who were not reimbursed through TRICARE.

Individuals were defined as having a PTSD diagnosis if medical records included an *International Classification of Diseases*, Ninth Revision, Clinical Modification (ICD-9-CM) diagnosis code of 309.81. This definition is based on meeting the criteria stipulated in the Diagnostic and Statistical Manual of Mental Disorders IV (Text Revision) (DSM-IV-TR), and is consistent irrespective of individual combat experiences [27].

Individuals were defined as having a psychiatric diagnosis (excluding PTSD) if their medical records included an ICD-9-CM diagnosis code in the range of 290 and 316, with the exception of 305.1 (tobacco use disorders), 309.81 (PTSD), and 292 and 305.2 to 305.9 (drug-induced mental disorders and drug abuse). Psychiatric diagnoses were made using standard DSM-IV criteria. Psychiatric diagnoses (including PTSD) that occurred after the misconduct outcome event were not included.

### Statistical analyses

Frequency distributions for each risk factor and outcome were obtained and stratified by deployment cohort. Categorical variables were analyzed using the chi-square test and continuous variables were analyzed using *t*-tests.

Three separate Cox proportional hazards regression models were used to determine associations between the independent variables (deployment cohort, psychiatric diagnosis status, AFQT score, sex, race/ethnicity, and accession age) on time to each misconduct outcome (demotions, drug-related discharges, and non-drug-related punitive discharges). Cox regression is a type of survival analysis that is used for modeling the effects of several independent variables upon the time to a specific event [28]. In our study, the advantage of using Cox regression is that it allows data from all participants to be included in the calculation of the three misconduct models, even though subjects entered and discharged from the military at different time points during the study period. For each service member in the study, the observation period started at time of entry into boot camp and continued until he or she had a misconduct outcome, was discharged from the military, or died. In each analysis, Marines who did not have the outcome before the end of the observation period were right censored (meaning that outcomes occurring after the end of the observation period were considered missing.)

Regression diagnostics were performed, and no substantial collinearities were detected among model variables (all correlations were  $\leq 0.20$ ). With the exception of psychological diagnosis status, all risk factors met the proportional hazards assumption. Because the time interval between entering the Marine Corps and receiving a psychiatric or PTSD diagnosis (if applicable) was different for each participant, psychiatric diagnosis status was treated as a segmented time-dependent covariate in the Cox regression. All individuals were classified as having "no diagnosis" at the start of the study and changed to either "psychiatric diagnosis" or "PTSD diagnosis" at the month of their first diagnosis. Once classified as having PTSD, that classification became final until the end of study.

Univariate analyses were performed using Cox proportional hazards regression. All variables that were significant in the univariate analysis ( $p < 0.05$ ) were entered into a general adjusted Cox regression model. From the general model, a reduced and final model was obtained for each misconduct outcome using a manual, backward, stepwise elimination approach using an alpha cut-off level of  $\leq 0.05$ .

Analyses included testing for interaction among psychiatric status and deployment cohort using the likelihood ratio test. Because effect modification between

deployment cohort and psychiatric status was statistically confirmed in all misconduct models, the three Cox regression models were stratified by deployment cohort. For all analyses, a two-tailed alpha cutoff level of  $\leq 0.05$  was considered statistically significant. All analyses were performed using SPSS, version 16.0 (SPSS Inc., Chicago, Illinois, USA).

## Results

Of the 164 764 Marines who first enlisted during the study period, 91 825 fulfilled the study inclusion criteria (table 1). The study population for both the drug-related discharge and punitive discharge models each included 13 944 non-war-deployed and 77 881 war-deployed personnel. The demotions model consisted of 13 721 non-war-deployed and 74 998 war-deployed personnel. The study population for the demotions model was smaller than for the two discharge models because 3106 Marines were demoted before ever deploying, making them ineligible for inclusion in either cohort in the demotions model.

Personnel in the war-deployed cohort were significantly more likely to be male, Caucasian, and have a low AFQT score (table 1). Individuals in the war-deployed cohort were significantly more likely to have either no psychiatric diagnosis, or a PTSD diagnosis, while individuals in the non-war-deployed cohort were significantly more likely to have a non-PTSD psychiatric diagnosis (table 2). The incidence of the three

**Table 2 Psychiatric and Misconduct Outcomes in War-Deployed and Non-War-Deployed Enlisted Marines Corps Personnel, 2001-2007<sup>†</sup>**

Characteristic	Non-war-deployed	War deployed
	N (%) n = 13 944	N (%) n = 77 881
Psychiatric diagnosis status		
No diagnosis	11 289 (81.0)	66 577 (85.5)**
Psychiatric diagnosis without PTSD	2584 (18.5)	8979 (11.6)**
PTSD diagnosis	73 (0.5)	2325 (3.0)**
Length of service at first diagnosis		
Mean	20.6	25.6**
SD	12.7	14.9
Misconduct outcomes		
Demotion	1300 (9.7)	4692 (6.5)**
Drug-related discharge	250 (1.8)	1148 (1.5)**
Punitive discharge	184 (1.4)	358 (0.5)**

PTSD, posttraumatic stress disorder.

\*Statistically different from the non-war-deployed reference group ( $p < 0.05$ ).

\*\*Statistically different from the non-war-deployed reference group ( $p < 0.01$ ).

misconduct outcomes were higher in Marines deployed outside combat zones than in those deployed to combat zones (table 2).

All independent variables were significant in the univariate analyses ( $p < 0.05$ ) and were entered into the multivariate models. High AFQT score and female sex were inversely associated with all three misconduct

**Table 1 Demographic Characteristics in Three Groups of Marines Corps Personnel, 2001-2007**

Characteristic	Non-war deployed	War deployed	Excluded from study sample <sup>†</sup>
	N (%) n = 13 944	N (%) n = 77 881	N (%) n = 72 939
Accession age			
<19 years	6795 (48.7)	37 698 (48.4)	32 719 (44.9)**
$\geq 19$ years	7149 (51.3)	40 183 (51.6)	40 219 (55.1)**
Sex			
Male	12 296 (88.2)	74 962 (96.3)**	65 780 (90.2)**
Female	1648 (11.8)	2919 (3.7)**	7159 (9.8)**
Race/ethnicity			
Caucasian	9050 (64.9)	55 942 (71.8)**	54 191 (74.3)**
African American	1653 (11.9)	5504 (7.1)**	5554 (7.6)**
Hispanic	2171 (15.6)	11 150 (14.3)**	7524 (10.3)**
Other/mixed/missing	1070 (7.7)	5285 (6.8)**	5670 (7.8)
AFQT score			
Low (0-50)	4047 (29.0)	26 409 (33.9)**	21 276 (29.2)**
Medium (51-70)	5006 (35.9)	26 860 (34.5)**	26 291 (36.0)**
High (71-99)	4891 (35.1)	24 612 (31.6)**	24 992 (34.3)**

AFQT, Armed Forces Qualification Test.

<sup>†</sup>Individuals who served <6 months of service, were an officer or a warrant officer, did not deploy before the end of the study period, changed military branches during the study time frame (such as from the Marines to the Army), or received hazardous duty pay but did not deploy to Iraq, Afghanistan, or Kuwait, were not eligible for the study.

\*Statistically different from the non-war-deployed reference group ( $p < 0.05$ ).

\*\*Statistically different from the non-war-deployed reference group ( $p < 0.01$ ).

**Table 3 Multivariate Cox Proportional Hazards Regression Analysis Examining Associations of Psychiatric Diagnosis Status and Drug-Related Discharges in Two Cohorts of Marine Corps Personnel, 2001-2007**

	Non-war deployed n = 13 944		War deployed n = 77 881	
	HR	95% CI	HR	95% CI
Psychiatric diagnosis status				
No psychiatric diagnosis	1.00		1.00	
Psychiatric diagnosis without PTSD	5.65**	4.37 to 7.29	5.22**	4.59 to 5.94
PTSD diagnosis	5.72**	1.80 to 18.19	8.60**	6.95 to 10.64
AFQT score				
Low (0–50)	1.00		1.00	
Medium (51–70)	0.77	0.59 to 1.02	0.79**	0.69 to 0.90
High (71–99)	0.37**	0.26 to 0.52	0.46**	0.39 to 0.54
Sex				
Male	1.00		1.00	
Female	0.51**	0.33 to 0.77	0.40**	0.24 to 0.55
Race/ethnicity				
Caucasian	1.00		1.00	
African American	0.85	0.59 to 1.23	1.73**	1.46 to 2.05
Hispanic	0.41**	0.26 to 0.65	0.63**	0.52 to 0.77
Other/mixed/missing	0.71	0.42 to 1.18	0.75*	0.57 to 0.98
Accession age				
<19 years	1.00		1.00	
≥19 years	1.01	0.79 to 1.30	0.91	0.81 to 1.02

AFQT, Armed Forces Qualification Test; CI, confidence interval; HR, hazard ratio; PTSD, posttraumatic stress disorder.

\*p < 0.05.

\*\*p < 0.01.

**Table 4 Multivariate Cox Proportional Hazards Regression Analysis Examining Associations of Psychiatric Diagnosis Status and Punitive Discharges in Two Cohorts of Marine Corps Personnel, 2001-2007**

	Non-war deployed n = 13 944		War deployed n = 77 881	
	HR	95% CI	HR	95% CI
Psychiatric diagnosis status				
No psychiatric diagnosis	1.00		1.00	
Psychiatric diagnosis without PTSD	5.63**	4.18 to 7.58	5.20**	4.11 to 6.58
PTSD diagnosis	2.88	0.40 to 20.79	11.06**	8.06 to 15.16
AFQT score				
Low (0–50)	1.00*		1.00	
Medium (51–70)	0.76	0.54 to 1.05	0.66**	0.52 to 0.83
High (71–99)	0.48**	0.33 to 0.72	0.45**	0.33 to 0.60
Sex				
Male	1.00		1.00	
Female	0.52**	0.32 to 0.84	0.38**	0.19 to 0.77
Race/ethnicity				
Caucasian	1.00		1.00	
African American	2.29**	1.60 to 3.28	2.45**	1.85 to 3.25
Hispanic	0.99	0.64 to 1.54	1.08	0.80 to 1.45
Other/mixed/missing	1.16	0.66 to 2.02	1.23	0.81 to 1.88
Accession age				
<19 years	1.00		1.00	
≥19 years	1.20	0.90 to 1.61	0.69**	0.56 to 0.85

AFQT, Armed Forces Qualification Test; CI, confidence interval; HR, hazard ratio; PTSD, posttraumatic stress disorder.

\*p < 0.05.

\*\*p < 0.01.

outcomes in both cohorts (tables 3 and 4; see Additional file 1). Compared with personnel with no diagnosis, non-PTSD psychiatric diagnoses were positively associated with all three outcomes. African Americans were at a higher risk for the three misconduct outcomes, with the exception of drug-related discharges among non-war-deployed personnel.

Deployment to war was not associated with an increased risk of a drug-related discharge (table 2). In the non-war-deployed cohort, Marines with PTSD were 5.7 times as likely to have a drug-related discharge compared with Marines without a psychiatric diagnosis, after adjusting for all other covariates in the model ( $p < 0.01$ ; 95% confidence interval [CI], 1.80 to 18.19) (table 3). In the war-deployed cohort, Marines with PTSD were 8.6 times as likely to have a drug-related discharge compared with Marines without a psychiatric diagnosis, after adjusting for other covariates in the model ( $p < 0.01$ ; 95% CI, 6.95 to 10.64) (table 3).

General psychiatric diagnoses increased the risk for a punitive discharge in both cohorts, but PTSD diagnoses only increased the risk for a punitive discharge in the war-deployed cohort (table 4). Marines in the war-deployed cohort who had a PTSD diagnosis were 11.1 times more likely to have a misconduct discharge compared with their peers who did not have a psychiatric diagnosis ( $p < 0.01$ ; 95% CI, 8.06 to 15.16).

In both cohorts, a psychiatric diagnosis was associated with an increased risk of a demotion, after controlling for demographic predictors (in the non-war-deployed cohort hazard ratio, 4.5; 95% CI, 4.03 to 5.03; in the war-deployed cohort HR, 3.9; 95% CI, 3.68 to 4.20; see Additional file 1). However, a PTSD diagnosis was only significantly related to a demotion in the war-deployed cohort; individuals with a PTSD diagnosis were 5.8 times more likely to have a demotion compared with Marines without a psychiatric diagnosis.

## Discussion

The main goal of this study was to examine the associations between psychiatric diagnoses, PTSD, and misconduct outcomes among war-deployed and non-war-deployed Marines. The incidence rate of PTSD diagnoses in the war-deployed cohort was 3.0%, which is comparable with other studies among active duty personnel that use diagnoses as inclusion criteria (as opposed to PTSD symptom checklists.) [29]. This study found that for both cohorts, Marines with a non-PTSD psychiatric diagnosis had an elevated risk for all three misconduct outcomes (demotions, drug-related discharges, and non-drug-related punitive discharges). A specific diagnosis of PTSD was also associated with an increased risk for all three misconduct outcomes, but only in the war-deployed cohort. In the

non-war-deployed cohort, PTSD was a significant predictor in only one of the three misconduct outcomes (drug-related discharges).

The finding that PTSD increased the risk of drug-related discharges for all Marines is consistent with other literature, and a number of theories have been posited to explain the relationship, including the self-medication hypothesis, the sensation-seeking hypothesis, and the susceptibility hypothesis [25,30,31]. Individuals with comorbid PTSD and substance abuse problems are at an increased risk for interpersonal violence, imprisonment, and homelessness [32-34]. Therefore, our results provide more evidence for the importance of drug abuse screening and counseling among service members with PTSD.

Our study also revealed that PTSD increased the risk for demotions and punitive discharges in war deployers only. One possible explanation for this finding is that war deployers may have relatively higher levels of PTSD symptoms. This explanation would be consistent with a recent finding that military veterans with combat-related PTSD reported more severe symptoms on the Trauma Symptom Inventory than did crime victims with PTSD [35]. Data from the National Vietnam Veterans Readjustment Study showed that specific types of combat exposure were associated with higher PTSD scores [36]. For example, PTSD scores were significantly higher for those who said they had killed compared with those who had said they had not killed [36].

Beckham *et al* (1998) also found that exposure to atrocities was associated with higher PTSD symptom levels, even after controlling for combat exposure [26]. Iversen *et al* (2008) found that United Kingdom military personnel deployed to Iraq who felt their life had been threatened were significantly more likely to have high levels of PTSD symptoms compared with personnel who did not feel their life had been threatened [37]. These findings suggest that psychological and behavioral responses to trauma may be specific to the type of trauma experienced. Compared with other types of traumas, the experience of combat has also been shown to be related to both distinct PTSD symptom profiles and increased aggressive behaviour [10,14,36,38,39], both of which could explain the increased behavioral problems in the war-deployed cohort.

The finding of greatest concern in this study is that combat deployed Marines with a PTSD diagnosis were over 11 times more likely to engage in the most serious forms of misconduct than were combat deployed Marines without a psychiatric diagnosis. This finding is similar to results by Noonan and Mumola (2007), who found that compared with other prisoners, military veterans in prison were less likely to report mental health problems but were more likely to be incarcerated

for violent offenses than were other prisoners [40]. In another study of veterans who deployed to the first Gulf War (August 1990 to February 1991), Black *et al* (2005) found that incarcerated veterans were 3.6 times more likely to report PTSD symptoms than were non-incarcerated veterans [20]. Future research should examine the reasons that combat veterans with PTSD are at a higher risk for serious misconduct problems and develop interventions to reduce behavioral problems. Such research is critical, because serious misconduct may lead to disqualification for some Veterans Administration benefits. In addition, personnel with the most serious manifestations of PTSD may face additional barriers to care.

Some military studies examining Navy personnel have found that African Americans have higher rates of involvement in the military's discipline system compared to Caucasians [41-44]. Our study replicated this finding and identified that African Americans in the war-deployed cohort were at an increased risk for all three outcomes compared with Caucasians. In addition, African Americans in the non-war-deployed cohort were also at an increased risk of two types of misconduct: punitive discharges and demotions. More research is required to explore possible factors that moderate this relationship, such as previous trauma exposure, socio-economic status, and military occupation.

The interpretation of these findings is limited by multiple factors. First, cases were identified from service utilization records and were restricted to treatment seeking individuals who had a psychiatric or PTSD diagnosis, and it is likely that additional personnel had symptoms without an official clinical diagnosis. Also, combat deployers are likely made aware of and encouraged to seek psychological care if they are experiencing symptoms at a higher rate than non-deployed personnel. Our study only included misconduct outcomes that were measurable in personnel records, so the relationship between PTSD and undocumented types of misconduct remains unclear. Only Marines were included in the study, so the findings may not generalize to other military populations. Also, subjects only contributed time to our study while they were on active duty. As a result, questions remain about misconduct in veterans who have left the service. Lastly, PTSD was a relatively uncommon event in the non-war-deployed cohort, and this may have made it more difficult to detect significant associations.

## Conclusions

Overall, the results of this study confirm that combat veterans with PTSD and other psychiatric diagnoses have an elevated risk of misconduct outcomes after

diagnosis. In addition to treating psychiatric symptoms, mental health treatment providers should address the effect PTSD has on behavioral problems among military personnel deployed to war.

## Additional material

### Additional file 1: Psychiatric Diagnosis Status and Demotions in Deployed and Non-War Deployed Marines

Multivariate Cox Proportional Hazards Regression Analysis Examining Associations of Psychiatric Diagnosis Status and Demotions in Two Cohorts of Marine Corps Personnel, 2001-2007.

## Acknowledgements

The authors acknowledge Emily Schmied, Thierry Nedellec, Jenny Crain, Suzanne Hurtado, Scott Seggerman, Susan Hilton and CAPT David Service for their assistance in conducting this research. The authors wish to thank Science Applications International Corporation, Inc., for its contributions to this study.

## Author details

<sup>1</sup>Behavioral Science and Epidemiology Program, Naval Health Research Center, San Diego, California, USA. <sup>2</sup>Department of Family and Preventive Medicine and Moores UCSD Cancer Center, University of California, San Diego, California, USA.

## Authors' contributions

RMH assisted in developing study design, performed the data analysis, and drafted the manuscript. GEL conceived of the study, developed the study design, and assisted in drafting the manuscript. SBK participated in the data analysis and interpretation, and helped to draft the manuscript. CFG consulted on the study methodology, interpreted the data, and made extensive revisions to the manuscript. All authors read and approved the final manuscript.

## Competing interests

The authors declare that they have no competing interests.

Received: 11 November 2009 Accepted: 25 October 2010

Published: 25 October 2010

## References

- Smith TC, Ryan MAK, Wingard DL, Kritz-Silverstein D, Slymen DJ, Sallis JF, for the Millennium Cohort Study Team: New onset and persistent symptoms of post-traumatic stress disorder self reported after deployment and combat exposures: prospective population based U.S. military cohort study. *Br Med J* 2008, 336:366-71.
- Hoge CW, Auchterlonie JL, Milliken CS: Mental health problems, use of mental health services, and attrition from military service after returning from deployment to Iraq or Afghanistan. *JAMA* 2006, 295:1023-32.
- Mills KL, Teesson M, Ross J, Peters L: Trauma, PTSD, and substance use disorders: findings from the Australian National Survey of Mental Health and Well-Being. *Am J Psychiatry* 2006, 163(4):652-8.
- Carollo R: Suspect soldiers: Troubled histories follow some troops to Iraq war. *Sacramento Bee* 2008 [<http://www.sacbee.com/101.v-print/story/1077029.html>], (accessed 12 Jan 2009).
- Hersh SM: Torture at Abu Ghraib. American soldiers brutalized Iraqis. How far up does the responsibility go? *New Yorker* 2004 [[http://www.newyorker.com/archive/2004/05/10/040510fa\\_fact](http://www.newyorker.com/archive/2004/05/10/040510fa_fact)], (accessed 12 Jan 2009).
- Rowe P: Military misconduct during international armed operations: 'bad apples' or systematic failure? *J Conflict and Security Law* 2008, 12(2):165-89.
- Sontag D, Alvarez L: Across America, deadly echoes of foreign battles. *New York Times* 2008 [<http://www.nytimes.com/2008/01/13/us/13vets.html>], (accessed 18 Nov 2008).

8. Boscarino J: Current excessive drinking among Vietnam veterans: a comparison with other veterans and non-veterans. *Int J Soc Psychiatry* 1981, 27:204-12.
9. Yager T, Laufer R, Gallops M: Some problems associated with war experience in men of the Vietnam generation. *Arch Gen Psychiatry* 1984, 41:327-33.
10. Beckham JC, Feldman ME, Kirby AC, Hertzberg MA, Moore SD: Interpersonal violence and its correlates in Vietnam veterans with chronic posttraumatic stress disorder. *J Clin Psychol* 1997, 53:859-69.
11. Resnick H, Foy D, Donahoe C, Miller EN: Antisocial behavior and posttraumatic stress disorder in Vietnam veterans. *J Clin Psychol* 1989, 45:860-67.
12. Rothberg JM, Kosches RJ, Shanahan J, Christman K: Desert shield deployment and social problems on a U.S. Army combat support post. *Mil Med* 1994, 159:246-8.
13. Bray RM, Hourani LL, Rae Olmsted KL, Witt M, Brown JM, Pemberton MR, Marsden ME, Marriott B, Scheffler S, Vandermaas-Peeler R: 2005 Department of Defense Survey of Health Related Behaviors Among Active Duty Military Personnel Research Triangle Park, NC: Research Triangle Institute (Report RTI/7841/106-FR); 2006.
14. Killgore WDS, Cotting DL, Thomas JL, Cox AL, McGurk D, Vo AH, Castro CA, Hoge CW: Post-combat invincibility: violent combat experiences are associated with increased risk-taking propensity following deployment. *J Psychiatr Res* 2008, 42:1112-21.
15. Milliken CS, Auchterlonie JL, Hoge CW: Longitudinal assessment of mental health problems among active and reserve component soldiers returning from the Iraq War. *JAMA* 2007, 298(18):2141-8.
16. Collins JJ, Bailey SL: Traumatic stress disorder and violent behavior. *J Trauma Stress* 1990, 3(2):203-20.
17. Fontana A, Rosenheck R: The role of war-zone trauma and PTSD in the etiology of antisocial behavior. *J Nerv Ment Dis* 2005, 193(3):203-9.
18. Hartl TL, Rosen CS, Lee T, Drescher K, Crawford E, Wilson KA: Predicting high risk-behaviors in combat veterans with posttraumatic stress disorder. *J Nerv Ment Dis* 2005, 193:464-72.
19. McFall M, Fontana A, Raskind M, Rosenheck R: Analysis of violent behavior in Vietnam combat veteran psychiatric inpatients with posttraumatic stress disorder. *J Trauma Stress* 1999, 12(3):501-17.
20. Black DW, Carney CP, Peloso PM, Woolson RF, Letuchy E, Doebbeling BN: Incarceration and veterans of the first Gulf War. *Mil Med* 2005, 170:612-8.
21. Kulka RA, Schlenger WE, Fairbank JA, Hough RL, Jordan BK, Marmar CR, Weiss DS, Grady DA, Cranston A: *Trauma and the Vietnam War generation: report of findings of the National Vietnam Readjustment Study* New York: Brunner/Mazel; 1990, 139-86.
22. Reifman A, Windle M: Vietnam combat exposure and recent drug use: a national study. *J Trauma Stress* 1996, 9(3):557-68.
23. Boman B: Combat stress, post-traumatic stress disorder, and associated psychiatric disturbance. *Psychosomatics* 1986, 27:567-73.
24. Erickson SK, Rosenheck RA, Trestman RL, Ford JD, Desai RA: Risk of incarceration between cohorts of veterans with and without mental illness discharged from inpatient units. *Psychiatr Serv* 2008, 59:178-83.
25. Koenen KC, Lyons MJ, Goldberg J, Simpson J, William WM, Toomey R, Eisen SA, True W, Tsuang MT: Co-twin control study of relationships among combat exposures, combat-related PTSD, and other mental disorders. *J Trauma Stress* 2003, 16(5):433-8.
26. Beckham JC, Feldman ME, Kirby AC: Atrocities exposure in Vietnam combat veterans with chronic posttraumatic stress disorder: relationship to combat exposure, symptom severity, guilt and interpersonal violence. *J Trauma Stress* 1998, 11(4):777-85.
27. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders. Washington, DC: American Psychiatric Association; Fourth 2000, Text Revision.
28. Therneau TM, Grambsch PM: Modeling survival data: Extending the Cox Model. New York: Springer-Verlag; 2000.
29. Armed Forces Health Surveillance Center: Relationships between the nature and timing of mental disorders before and after deploying to Iraq/Afghanistan, active component, U.S. Armed Forces, 2002-2008. *Medical Surveillance Monthly Report (MSMR)* 2009, 16(2):2-6.
30. Brady KT, Back SE, Coffey SF: Substance abuse and posttraumatic stress disorder. *Curr Dir Psychol Sci* 2004, 13(5):206-9.
31. McFarlane A: The contribution of epidemiology to the study of traumatic stress. *Soc Psychiatry Psychiatr Epidemiol* 2004, 39(11):874-82.
32. Cuffel BJ, Shumway M, Chouljian TL, Macdonald T: A longitudinal study of substance use and community violence in schizophrenia. *J Nerv Ment Dis* 1994, 182(12):704-8.
33. Swanson JW, Holzer CE III, Ganju VK, Jono RT: Violence and psychiatric disorder in the community: evidence from the Epidemiologic Catchment Area surveys. *Hosp Community Psychiatry* 1990, 41(7):761-70.
34. Tessler R, Dennis D: A synthesis of NIMH-funded research concerning persons who are homeless and mentally ill. Washington, DC: US Department of Health and Human Services; 1989.
35. Naifeh JA, North TC, Davis JL, Reyes G, Logan CA, Elhai JD: Clinical profile differences between PTSD-diagnosed military veterans and crime victims. *J Trauma Dissociation* 2008, 9(3):321.
36. MacNair RM: Perpetration-induced traumatic stress in combat veterans. *Peace and Conflict: Journal of Peace Psychology* 2002, 8:63-72.
37. Iversen AC, Fear NT, Ehlers A, Hacker Hughes J, Hull L, Earnshaw M, Greenburg N, Rona R, Wessely S, Hotopf : Risk factors for post-traumatic stress disorder among UK Armed Forces personnel. *Psychol Med* 2008, 38:511-22.
38. Orth U, Wiland E: Anger, hostility, and posttraumatic stress disorder in trauma-exposed adults: a meta-analysis. *J Consult Clin Psychol* 2006, 74(4):698-706.
39. Laufer RS, Brett E, Gallops M: Symptom patterns associated with post-traumatic stress disorder among Vietnam veterans exposed to war trauma. *Am J Psychiatry* 1985, 142:1304-11.
40. Noonan ME, Mumola CJ: Veterans in state and federal prison, 2004. *Bureau of Justice Statistics: Special Report* Rockville, MD: U.S. Department of Justice (NCJ217199); 2007.
41. CNO Study Group: CNO study group's report on equal opportunity in the Navy. Washington, DC: Department of the Navy; 1998.
42. Culbertson AL, Magnusson P: An Investigation into Equity in Navy Discipline (NPRDC-TR-92-17). San Diego, CA: Navy personnel Research and Development Center; 1992.
43. Edwards JE, Knouse SB: Racial- and ethnic-group differences in character-of-separation and disciplinary rates among first-term enlistees who are ineligible to reenlist (NPRDC-TN-91-1). San Diego, CA: Navy personnel Research and Development Center; 1991.
44. Edwards JE, Newell CE: Navy pattern-of-misconduct discharges: A study of potential racial effects (NPRDC-TR-94-11). San Diego, CA: Navy personnel Research and Development Center; 1994.

#### Pre-publication history

The pre-publication history for this paper can be accessed here:  
<http://www.biomedcentral.com/1471-244X/10/88/prepub>

doi:10.1186/1471-244X-10-88

**Cite this article as:** Highfill-McRoy et al.: Psychiatric diagnoses and punishment for misconduct: the effects of PTSD in combat-deployed Marines. *BMC Psychiatry* 2010 10:88.

**Submit your next manuscript to BioMed Central and take full advantage of:**

- Convenient online submission
- Thorough peer review
- No space constraints or color figure charges
- Immediate publication on acceptance
- Inclusion in PubMed, CAS, Scopus and Google Scholar
- Research which is freely available for redistribution

Submit your manuscript at  
[www.biomedcentral.com/submit](http://www.biomedcentral.com/submit)



BioMed Central publishes under the Creative Commons Attribution License (CCAL). Under the CCAL, authors retain copyright to the article but users are allowed to download, reprint, distribute and /or copy articles in BioMed Central journals, as long as the original work is properly cited.



# THE YALE LAW JOURNAL

## COMMENT

### In Need of Correction: How the Army Board for Correction of Military Records Is Failing Veterans with PTSD

After completing two honorable tours of duty, fighting in four separate campaigns in Vietnam, and earning an Air Medal with Valor Device for heroism, John Doe<sup>1</sup> was given an Undesirable Discharge after he began threatening and striking other soldiers in 1973.<sup>2</sup> He was later diagnosed with Post-Traumatic Stress Disorder (PTSD). As a result of his Undesirable Discharge, he can be denied government employment and cut off from benefits, such as disability compensation, health benefits, education benefits, a military burial, and benefits for surviving family members.<sup>3</sup> Veterans like Mr.

- 
1. The record does not identify the veteran by name.
  2. *In re [Redacted]*, No. AR20090005061 (Army Bd. for Corr. of Military Records Aug. 11, 2009), <http://boards.law.af.mil/ARMY/BCMR/CY2009/20090005061.txt>.
  3. See GERALD NICOSIA, HOME TO WAR: A HISTORY OF THE VIETNAM VETERANS' MOVEMENT 300 (2001); *Veterans Discharge Upgrade Manual*, CONN. VETERANS LEGAL CTR. 8-9 (2011), <http://ctveteranslegal.org/wp-content/uploads/2012/12/Connecticut-Veterans-Legal-Center-Discharge-Upgrade-Manual-November-2011.pdf>. Undesirable Discharges, also termed Other than Honorable Discharges, and Bad Conduct Discharges issued by special courts-martial are, with limited exceptions, bars to benefits if the Department of Veterans Affairs (VA) determines that the conduct falls into certain broad categories, including “[a]cceptance of an undesirable discharge to escape trial by general-court martial” and “[w]illful and persistent misconduct.” 38 C.F.R. § 3.12(d) (2013). One important exception is for healthcare, specifically for issues that the VA deems service-connected. See *Other than Honorable Discharges: Impact on Eligibility for VA Health Care Benefits*, U.S. DEP'T VETERANS AFF. (June 18, 2013), [http://www.va.gov/healthbenefits/resources/publications/IB10-448\\_other\\_than\\_honorable\\_discharges\\_0613.pdf](http://www.va.gov/healthbenefits/resources/publications/IB10-448_other_than_honorable_discharges_0613.pdf). Both Dishonorable Discharges and Bad Conduct Discharges issued by general courts-martial are, also with limited exceptions,

Doe have struggled to cope not only with their war wounds but also with the shame of a bad discharge. As one journalist observed, “Bad paper” vets will not be honored on Veterans Day . . . [They] have been largely forgotten and ignored by the military and veterans organizations.”<sup>4</sup>

In 2009, Mr. Doe applied to the Army Board for Correction of Military Records (ABCMR) for a discharge upgrade.<sup>5</sup> He argued that his sudden violence had been caused by undiagnosed PTSD, the symptoms of which include “[i]rritable behavior and angry outbursts” and an “[e]xaggerated startle response.”<sup>6</sup> Mr. Doe’s VA clinical records from 1968 show that upon returning from his first tour of duty in Vietnam, he was admitted to a hospital for “transient stress reaction . . . manifested by anxiety, insomnia and fear of death” and that a cause of these symptoms was “severe, combat duty in Vietnam.”<sup>7</sup> Despite the fact that Mr. Doe had served honorably during two other tours, had been hospitalized for a stress reaction, and had a sudden change in behavior consistent with the symptoms of PTSD, the ABCMR denied his application for a discharge upgrade.<sup>8</sup>

Mr. Doe is not alone. At least 560,000 Vietnam veterans were given discharges under conditions that were less than Honorable.<sup>9</sup> Three hundred thousand of these were General Discharges, which have no effect on most benefits but carry a grave stigma and often have adverse effects on employment.<sup>10</sup> The remaining 260,000 were “bad paper” discharges—either Other than Honorable (also sometimes termed Undesirable), Bad Conduct, or Dishonorable Discharges.<sup>11</sup> These veterans “were simply cut off from any government help at all, and not even eligible for a civil service job.”<sup>12</sup>

---

automatic bars to all benefits, including service-connected healthcare benefits. See 38 U.S.C. § 5303(a) (2006); 38 C.F.R. § 3.12(c)(2).

4. L.P. Harvey, ‘Bad Paper’ Vets—America’s Discarded Warriors, CHRISTIAN SCI. MONITOR, Nov. 10, 1986, <http://www.csmonitor.com/1986/1110/evets.html>.
5. *In re [Redacted]*, No. AR20090005061, *supra* note 2.
6. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 309.81(E) (5th ed. 2013) [hereinafter DSM-5].
7. *In re [Redacted]*, No. AR20090005061, *supra* note 2.
8. *Id.*
9. NICOSIA, *supra* note 3, at 299–300.
10. *Id.* at 300; *Veterans Discharge Upgrade Manual*, *supra* note 3, at 9.
11. See *Veterans Discharge Upgrade Manual*, *supra* note 3, at 7.
12. NICOSIA, *supra* note 3, at 300.

Many of these “bad paper” veterans suffer from PTSD. The 1990 National Vietnam Veterans Readjustment Study (NVVRS) found that “30.6 percent . . . of male Vietnam theater veterans (over 960,000 men) and over one-fourth (26.9 percent) of women serving in the Vietnam theater (over 1,900 women) had the full-blown disorder [PTSD] at some time during their lives.”<sup>13</sup> NVVRS reported that 15.2 percent of male veterans and 8.5 percent of female veterans were “current cases of PTSD,”<sup>14</sup> but a later study found that in most cases, veterans’ PTSD is chronic: “Among Vietnam veterans who had ever developed full or partial PTSD, only one in five reported no symptoms in the prior 3 months when assessed 20-25 years after their Vietnam service.”<sup>15</sup>

Statistically, this would suggest that tens of thousands of veterans with bad discharges have suffered from PTSD. As Jonathan Shay, a psychiatrist with extensive experience working with Vietnam veterans with PTSD, wrote in a *New York Times* op-ed with Congresswoman Maxine Waters:

Many bad-paper veterans are among the 250,000 ex-combat soldiers who suffer from post-traumatic stress disorder. They have a higher incidence of unemployment, violent behavior, alcohol and drug abuse, family problems and homelessness than other veterans. Yet we won’t give them the treatment that could help them heal. They served their country and deserve treatment for their war wounds, physical and mental. . . . These ex-soldiers fill prisons and homeless shelters in disproportionate numbers around the country. The New England Shelter for Homeless Veterans, a 225-bed treatment center in Boston, is typical: 25 percent of . . . those who use it are bad-paper combat veterans.<sup>16</sup>

- <sup>13.</sup> Richard A. Kulka et al., *Contractual Report of Findings from the National Vietnam Veterans Readjustment Study, Volume 1: Executive Summary, Description of Findings, and Technical Appendices*, RES. TRIANGLE INST. 2 (Nov. 7, 1988), [http://www.ptsd.va.gov/professional/articles/article-pdf/nvvrs\\_voli.pdf](http://www.ptsd.va.gov/professional/articles/article-pdf/nvvrs_voli.pdf).
- <sup>14.</sup> *Id.*
- <sup>15.</sup> Paula P. Schnurr et al., *A Descriptive Analysis of PTSD Chronicity in Vietnam Veterans*, 16 J. TRAUMATIC STRESS 545, 551 (2003).
- <sup>16.</sup> Maxine Waters & Jonathan Shay, Op-Ed, *Heal the ‘Bad Paper’ Veterans*, N.Y. TIMES, July 30, 1994, <http://www.nytimes.com/1994/07/30/opinion/heal-the-bad-paper-veterans.html>. For a comprehensive study of the challenges facing veterans with PTSD upon returning to society, see JONATHAN SHAY, *ODYSSEUS IN AMERICA: COMBAT TRAUMA AND THE TRIALS OF HOMECOMING* (2002).

Waters was the sponsor of a bill to “establish a procedure for combat veterans to automatically upgrade their bad-paper discharges,” which she argued would be “a major step toward insuring that those who risked their lives in battle are not abandoned to the streets, prisons and margins of our society.”<sup>17</sup> Almost twenty years later, the proposed bill has faded into history and nothing has changed.<sup>18</sup>

Over the last several decades, medical research has illuminated the causes and severe consequences of PTSD. In 1980, PTSD was for the first time recognized by the *Diagnostic & Statistical Manual of Mental Disorders*.<sup>19</sup> Today, before being given a discharge that is not Honorable, “[a] Service member must receive a medical examination to assess whether the effects of post-traumatic stress disorder . . . or traumatic brain injury (TBI) constitute matters in extenuation that relate to the basis for administrative separation” if he or she “reasonably alleges the influence of PTSD or TBI based on deployed service to a contingency operation during the previous 24 months.”<sup>20</sup>

Yet there is evidence that the military is still not appropriately diagnosing PTSD. In 2009, there were reports of thousands of veterans with PTSD getting bad discharges based on abuse of alcohol, which they used to self-medicate.<sup>21</sup> Around the same time, *Salon* published an article revealing that an Army psychologist had been recorded saying to a sergeant who came in for an evaluation: “Not only myself, but all the clinicians up here are being pressured to not diagnose PTSD and diagnose [A]nxiety [D]isorder [Not Otherwise

---

17. Waters & Shay, *supra* note 16.

18. See e.g., Phillip Carter, *The Vets We Reject and Ignore*, N.Y. TIMES, Nov. 10, 2013, <http://www.nytimes.com/2013/11/11/opinion/the-vets-we-reject-and-ignore.html>. (“Their discharges, which include overly broad categories encompassing everything from administrative discharges for minor misconduct to dishonorable discharges following a court-martial, nevertheless make them ineligible for the health care, employment, housing and education benefits offered by the Department of Veterans Affairs.”).

19. JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 27-28 (1st ed. 1992).

20. *Instruction Number 1332.14: Enlisted Administrative Separations*, U.S. DEP’T DEF. 8-9 (Sept. 30, 2011), [www.dtic.mil/whs/directives/corres/pdf/133214p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf).

21. Gordon Duff, *Army Gives Bad Discharges to Thousands of PTSD Vets*, SALEM-NEWS.COM (Sept. 19, 2009), [http://www.salem-news.com/articles/september192009/ptsd\\_discharges\\_gd\\_9-19-09.php](http://www.salem-news.com/articles/september192009/ptsd_discharges_gd_9-19-09.php); see also Jeremy Schwartz, ‘Bad Paper’ Discharges Can Stymie Veterans’ Health Care, AUSTIN AMERICAN-STATESMAN (Oct. 3, 2010), <http://www.statesman.com/news/news/state-regional-govt-politics/bad-paper-discharges-can-stymie-veterans-health--1/nRyPr> (describing one veteran’s story).

Specified]" instead.<sup>22</sup> Similarly, a recently retired Army psychiatrist told *Salon* that "commanders at another Army hospital instructed him to misdiagnose soldiers suffering from war-related PTSD, recommending instead that he diagnose them with other disorders that would reduce their benefits."<sup>23</sup> Additionally, there have been numerous recent reports of the military wrongly diagnosing veterans with Personality Disorder rather than PTSD, preventing them from receiving benefits.<sup>24</sup>

The ABCMR's failure to take meaningful account of PTSD in applications by Vietnam veterans is the subject of recent litigation.<sup>25</sup> Army veteran and Bronze Star with Valor Device recipient John Shepherd, Jr., together with a proposed class of Vietnam veterans with Other than Honorable Discharges and PTSD, filed suit in 2012. The lawsuit claimed that "[t]he United States military has failed to correct the wrongful discharges of thousands of Vietnam War Era veterans suffering from Post-Traumatic Stress Disorder . . . undiagnosed while they were in service."<sup>26</sup> Moreover, the lawsuit contends that "[s]ince 2003, of approximately 145 applications for upgrades of other-than-honorable

- <sup>22</sup>. Michael de Yoanna & Mark Benjamin, "*I Am Under a Lot of Pressure to Not Diagnose PTSD*," SALON (Apr. 8, 2009), <http://www.salon.com/2009/04/08/tape>.
- <sup>23</sup>. *Id.* Note that even if a veteran gets an Honorable Discharge, he or she still cannot get retirement disability benefits for PTSD without a diagnosis at the time of discharge. See Thomas J. Reed, *Parallel Lines Never Meet: Why the Military Disability Retirement System and Veterans Affairs Department Claim Adjudication Systems Are a Failure*, 19 WIDENER L.J. 57, 111-23 (2009) (critiquing the disconnect between the VA system and the disability retirement system and noting that veterans later diagnosed with conditions, including PTSD, who were not diagnosed at the time of discharge have trouble getting disability retirement pay).
- <sup>24</sup>. See, e.g., James Dao, *Branding a Soldier with 'Personality Disorder'*, N.Y. TIMES, Feb. 24, 2012, <http://www.nytimes.com/2012/02/25/us/a-military-diagnosis-personality-disorder-is-challenged.html>; Joshua Kors, *Disposable Soldiers: How the Pentagon Is Cheating Wounded Vets*, NATION, Apr. 26, 2010, <http://www.thenation.com/article/disposable-soldiers>; Joshua Kors, *How Specialist Town Lost His Benefits*, NATION, Apr. 9, 2007, <http://www.thenation.com/article/how-specialist-town-lost-his-benefits>; Melissa Ader et al., *Casting Troops Aside: The United States Military's Illegal Personality Disorder Discharge Problem*, VIET. VETERANS AM. (2012), <http://www.vva.org/PPD-Documents/WhitePaper.pdf> (summarizing evidence that the military has been wrongfully diagnosing Personality Disorder).
- <sup>25</sup>. See Plaintiff's Proposed Second Amended Complaint, *Shepherd v. McHugh*, No. 3:11-cv-00641 (D. Conn. Dec. 3, 2012) (proposed class action suit by Vietnam veterans with Other than Honorable Discharges and PTSD); see also James Dao, *Vietnam Veterans, Discharged Under Cloud, File Suit Saying Trauma Was Cause*, N.Y. TIMES, Dec. 3, 2012, <http://www.nytimes.com/2012/12/03/us/vietnam-veterans-claiming-ptsd-sue-for-better-discharges.html>. The author of this Comment worked on this case as a member of Yale Law School's Veterans Legal Services Clinic.
- <sup>26</sup>. Plaintiff's Proposed Second Amended Complaint, *supra* note 25, at 1.

discharges submitted by Vietnam veterans claiming PTSD, the ABCMR has approved two—a 1.4 percent approval rate,”<sup>27</sup> a significantly lower rate than the 46% of all discharge upgrade applications granted by the ABCMR.<sup>28</sup> In November 2013, the Army agreed to upgrade Mr. Shepherd’s discharge status and pay \$37,000 in attorney’s fees in exchange for the dismissal of the case.<sup>29</sup> “Good thing I’m a fighter,” Mr. Shepherd said, “because it took years of fighting to receive recognition of my sacrifices and service in Vietnam. But there are thousands of guys like me who also deserve better from the DoD. Their fight is still going.”<sup>30</sup>

The ABCMR has the power to change any Army record when it is “necessary to correct an error or remove an injustice.”<sup>31</sup> However, the ABCMR’s policies make it nearly impossible for a veteran with a bad discharge caused by undiagnosed PTSD to obtain a discharge upgrade.<sup>32</sup> The Board refuses to accept any evidence that a diagnosis or lack thereof at the time of discharge was incorrect, even when applicants present substantial later medical evidence.

This Comment will first explain the history and diagnostic criteria of PTSD. It will then detail the failures of the ABCMR in adjudicating the applications of veterans claiming PTSD as the reason for a discharge upgrade. Finally, it will offer suggestions for policy changes that would make it possible for applicants whose discharge was due to PTSD to attain discharge upgrades without opening the floodgates to fraudulent claims.

---

27. *Id.* at 12.

28. BARTON F. STICHMAN ET AL., VETERANS BENEFITS MANUAL § 21.4.8 & n.40 (2012).

29. *Veterans Clinic Settles Federal Lawsuit on Behalf of Vietnam Veteran*, YALE L. SCH. (Nov. 4, 2013), <http://www.law.yale.edu/news/17619.htm>.

30. *Id.*

31. 10 U.S.C. § 1552(a)(1) (2012) (This decision is based on whether or not “the Secretary considers it necessary.”).

32. The other branches of service also have correction boards, which are an excellent topic for further research. Additionally, each service has a Discharge Review Board (DRB) that specifically reviews discharges, but only within fifteen years of discharge. The DRB’s treatment of PTSD claims would also be a good topic for further research. This Comment will focus solely on the Army’s BCMR because it is the largest service branch. The ABCMR rather than the Army’s DRB is the focus for several reasons. First, most Vietnam veterans must now apply to the ABCMR because discharge review boards have non-waivable fifteen year statutes of limitations. Second, all veterans whose discharge was based on a general court-martial must apply to the ABCMR rather than the ADRB.

## I. BACKGROUND ON PTSD

### A. History of PTSD

The formal diagnosis of PTSD has only existed for a few decades, but the idea of combat stress is nothing new. Over time, there have been a number of different conceptions of the condition, and public and military support for those suffering from the condition has waxed and waned.<sup>33</sup> While traumatic stress from combat is as old as war itself,<sup>34</sup> the concept of combat neurosis or “shell shock” first came into focus during World War I.<sup>35</sup> One source estimates that forty percent of British casualties during the First World War were psychiatric.<sup>36</sup> Similarly, it is estimated that one-third of all World War II casualties were psychiatric.<sup>37</sup> However, when the first edition of the *Diagnostic & Statistical Manual of Mental Disorders (DSM-I)* was published in 1952, it did not include combat neurosis.<sup>38</sup> PTSD did not become an official diagnosis until the publication of the third edition (*DSM-III*) in 1980.<sup>39</sup>

In contrast to those reported in the First and Second World Wars, less than five percent of Vietnam War casualties were officially deemed psychiatric.<sup>40</sup> However, as psychiatrist Jonathan Shay explains, “[w]e now know that this low rate did not reflect the true incidence of major psychological injury, but instead reflected a multilayered institutional illusion, denial, and fiat.”<sup>41</sup> The military assumed that “[s]omeone who broke down was damaged goods to begin with and should be discharged as unfit or undesirable.”<sup>42</sup> Because of this attitude, many veterans who broke down in battle were given bad discharges

<sup>33.</sup> HERMAN, *supra* note 19, at 20-28.

<sup>34.</sup> See JONATHAN SHAY, ACHILLES IN VIETNAM: COMBAT TRAUMA AND THE UNDOING OF CHARACTER, at xiii (1994) (noting “the similarity of [Vietnam combat veterans’] experiences to Homer’s account of Achilles in the *Iliad*” and arguing that “Homer has seen things that we in psychiatry and psychology have more or less missed”).

<sup>35.</sup> HERMAN, *supra* note 19, at 20.

<sup>36.</sup> *Id.*

<sup>37.</sup> SHAY, *supra* note 34, at 203.

<sup>38.</sup> AM. PSYCHIATRIC ASS’N, DIAGNOSTIC & STATISTICAL MANUAL: MENTAL DISORDERS (1st ed. 1952).

<sup>39.</sup> HERMAN, *supra* note 19, at 27-28.

<sup>40.</sup> SHAY, *supra* note 34, at 203.

<sup>41.</sup> *Id.*

<sup>42.</sup> *Id.* at 204.

rather than being considered psychiatric casualties. The striking difference between the rates of recorded psychiatric casualties in Vietnam compared with World Wars I and II, as well as the subsequent research on PTSD in Vietnam veterans, also suggests that the military was not recognizing combat stress and treating it appropriately.

In recent years, there has been considerable debate over the diagnostic criteria of PTSD and whether it is being over- or under-diagnosed. Harvard psychiatrist Richard McNally argues that “PTSD has become so flabby and overstretched, so much a part of the culture, that we are almost certainly mistaking other problems for PTSD, and thus mistreating them.”<sup>43</sup> Still, McNally acknowledges that “PTSD is a real thing, without a doubt.”<sup>44</sup> Even PTSD’s harshest critics generally recognize that the disorder exists; the debate instead centers around the specific criteria used to diagnose it. In May 2013, the much-anticipated fifth edition of the *Diagnostic & Statistical Manual of Mental Disorders* (*DSM-5*) made several changes to the diagnostic criteria, which will be discussed in the next Section.

### B. Diagnostic Criteria of PTSD

According to the *DSM-5*, PTSD is a psychiatric disorder caused by “[e]xposure to actual or threatened death, serious injury, or sexual violence.”<sup>45</sup> The symptoms of PTSD are intrusive thoughts or nightmares, avoidance of triggers of the trauma, negative changes in cognitions and mood, and heightened arousal and reactivity.<sup>46</sup> The symptoms must last for more than one month and must cause “significant distress or impairment in social, occupational, or other important areas of functioning.”<sup>47</sup>

The *DSM-5* eliminated the *DSM-IV*’s subjective requirement that the person experience “intense fear, helplessness, or horror” associated with the traumatic event.<sup>48</sup> Instead, the *DSM-5* more specifically describes what

---

43. David Dobbs, *The Post-Traumatic Stress Trap*, SCI. AM., Apr. 13, 2009, at 64, 65, <http://www.nature.com/scientificamerican/journal/v300/n4/pdf/scientificamericano409-64.pdf>.

44. *Id.*

45. *DSM-5*, *supra* note 6, § 309.81(A).

46. *Id.* § 309.81(B)-(E).

47. *Id.* § 309.81(G).

48. Compare *id.* § 309.81, with AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 309.81(A)(2) (4th ed. 2000) [hereinafter *DSM-IV*].

objectively qualifies as exposure to a traumatic event.<sup>49</sup> Additionally, the *DSM-5* separates the *DSM-IV*'s symptom of "avoidance of stimuli associated with the trauma and numbing of general responsiveness"<sup>50</sup> into two separate symptoms of "avoidance" and "negative alterations in cognitions and mood," now requiring that a person exhibit both types of symptoms in order to be diagnosed with PTSD.<sup>51</sup>

Former Army psychiatrist Elspeth Cameron Ritchie predicts that the elimination of the "fear and helplessness" requirement will make it easier to diagnose PTSD in soldiers.<sup>52</sup> Ritchie explains that "[w]hen the bomb goes off or they are shot at, most well-trained service members do not experience helplessness or horror. They are well-trained; they drag their wounded buddies to safety, lay down suppressing fire, and continue with the mission."<sup>53</sup> This reaction at the time of an incident, however, does not make them immune to effects after they get to safety: "[T]hey still may have intrusive memories," Ritchie explains, "seeing their friend's head[] blown off, or the dead children in the vicinity of the bomb blast."<sup>54</sup>

The symptoms of "avoidance" and "alterations in arousal and reactivity" are of particular importance for veterans given bad discharges who were later diagnosed with PTSD. To be diagnosed with PTSD, one must show "[p]ersistent avoidance of stimuli associated with the traumatic event(s)."<sup>55</sup> For soldiers, this can mean an effort to avoid battle by refusing orders, which will surely lead to a bad discharge. Similarly, two of the ways alterations in arousal and reactivity can manifest are "[i]rritable behavior and angry outbursts" and an "[e]xaggerated startle response."<sup>56</sup> These symptoms can cause a soldier with PTSD to overreact to noises or "instinctively strike[] or throw[] [someone] to the ground" when startled,<sup>57</sup> actions that could easily result in a bad discharge.

<sup>49.</sup> DSM-5, *supra* note 6, § 309.81(A).

<sup>50.</sup> DSM-IV, *supra* note 48, § 309.81(C).

<sup>51.</sup> DSM-5, *supra* note 6, § 309.81(C)-(D).

<sup>52.</sup> Elspeth Cameron Ritchie, *An Easier PTSD Diagnosis*, TIME, May 14, 2013, <http://nation.time.com/2013/05/14/an-easier-ptsd-diagnosis>.

<sup>53.</sup> *Id.*

<sup>54.</sup> *Id.*

<sup>55.</sup> DSM-5, *supra* note 6, § 309.81(C).

<sup>56.</sup> *Id.* § 309.81(E).

<sup>57.</sup> SHAY, *supra* note 34, at 178.

## II. THE FAILINGS OF THE ABCMR

Congress has authorized the Secretary of the Army, acting through the ABCMR, to make changes to any Army record when doing so is “necessary to correct an error or remove an injustice.”<sup>58</sup> The Board regularly exercises this power to upgrade the discharge status of former service members. It has “the power, and the duty, to remove injustices and correct errors in servicemen’s records.”<sup>59</sup> Yet the ABCMR has refused to accept any evidence that a diagnosis or lack thereof at the time of discharge was incorrect, even when applicants present substantial later medical evidence. This policy makes it virtually impossible for a veteran whose bad discharge was due to undiagnosed PTSD to secure a discharge upgrade. These practices do not accord with the Board’s “abiding moral sanction to determine, insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief.”<sup>60</sup>

### A. *The ABCMR’s Failure to Recognize the Medical Impossibility of a Pre-1980 PTSD Diagnosis*

In its recent decisions, the ABCMR has repeatedly explained the denial of Vietnam veterans’ applications by noting that their records did not show that they were *diagnosed* with PTSD before discharge. Such statements in Vietnam veterans’ cases fail to recognize, however, that it was medically impossible to have a PTSD diagnosis before 1980. Consider, for example, these recent explanations for denials of discharge upgrades:

1. “No evidence shows” that the applicant, who had honorably completed two previous tours of duty, “was diagnosed with PTSD or any mental condition prior to his discharge on 17 February 1976.”<sup>61</sup>
2. “Although the applicant,” who previously served an honorable tour of duty and was later treated for PTSD at a VA facility, “contends he suffers from PTSD, his record contains insufficient military

---

58. 10 U.S.C. § 1552(a)(1) (2012).

59. *Yee v. United States*, 512 F.2d 1383, 1387 (Ct. Cl. 1975).

60. *Id.* at 1387-88 (quoting *Duhon v. United States*, 461 F.2d 1278, 1281 (Ct. Cl. 1972)).

61. *In re [Redacted]*, No. AR20100026173 (Army Bd. for Corr. of Military Records May 19, 2011), <http://boards.law.af.mil/ARMY/BCMR/CY2010/20100026173.txt>.

treatment records showing a diagnosis of PTSD or any other mental condition while in the Army.”<sup>62</sup>

3. “[T]here is no evidence the applicant,” who previously served an honorable tour of duty and was ordered to be hospitalized for mental illness between tours of duty, “was diagnosed as having PTSD while he served on active duty.”<sup>63</sup>

Even when there is significant evidence that the veteran was suffering from PTSD at the time of discharge, the Board refuses to accept it unless the evidence itself also dates back to the discharge. One applicant, who had previously served one honorable tour of duty, was discharged for going absent without leave (AWOL) and for dereliction of duty in 1967.<sup>64</sup> He submitted six letters from VA medical personnel to the ABCMR in support of his claim for a discharge upgrade based on PTSD.<sup>65</sup> The ABCMR concluded that

[a]lthough a medical official at the [VA] contends the applicant’s second military discharge was likely in part due to his PTSD related issues, *no evidence* shows the applicant was having mental problems in 1967 that interfered with his ability to perform his military duties or that were the underlying cause for the misconduct that led to his discharge.<sup>66</sup>

In another case, the Board conceded that “[t]he applicant’s military records indicate he did suffer some type of traumatic event while in Vietnam which required a full psychiatric evaluation on 25 September 1969 and a two-day hospital stay,” but concluded that the fact that the veteran was then “returned to duty, albeit without a weapon,” “directly conflicts with the November 2009 statement that the applicant had an acute stress disorder or PTSD.”<sup>67</sup> The Board took the fact that the psychiatric evaluation done in 1969 did not

---

62. *In re* [Redacted], No. AR20110019371 (Army Bd. for Corr. of Military Records Apr. 17, 2012), <http://boards.law.af.mil/ARMY/BCMR/CY2011/20110019371.txt>.

63. *In re* [Redacted], No. AR20070008956 (Army Bd. for Corr. of Military Records Nov. 15, 2007), <http://boards.law.af.mil/ARMY/BCMR/CY2007/20070008956.txt>.

64. *In re* [Redacted], No. AR20110013885 (Army Bd. for Corr. of Military Records Jan. 24, 2012), <http://boards.law.af.mil/ARMY/BCMR/CY2011/20110013885.txt>.

65. *Id.*

66. *Id.* (emphasis added).

67. *In re* [Redacted], No. AR20100011237 (Army Bd. for Corr. of Military Records Oct. 20, 2010), <http://boards.law.af.mil/ARMY/BCMR/CY2010/20100011237.txt>.

diagnose PTSD and allowed the veteran to return to duty as conclusive evidence that he did not have PTSD at that time. Further, the Board acknowledged that the veteran returned to duty without a weapon, but did not consider that as indicative of a mental disorder at the time. Also troubling in this case was the fact that the Board initially stated that partial relief should be granted “as a matter of justice,” but then voted to deny relief stating that “[n]otwithstanding the staff discussions and conclusions above to grant partial relief . . . the Board determined that there was insufficient evidence to show the applicant suffered from a mental disorder significant enough to excuse his misconduct.”<sup>68</sup>

Throughout these cases, the fact that the Board repeatedly states that there is a lack of a PTSD diagnosis in the record pre-1980 shows its complete disregard for the history of the diagnosis. Moreover, while the Board also sometimes notes the absence of a contemporary diagnosis for an “other mental condition,” the lack of such a diagnosis does not prove that the veteran was not suffering from PTSD. PTSD has a specific cluster of symptoms that need to be seen together for a correct diagnosis. Taken alone, symptoms such as nightmares, avoidance of situations reminiscent of the trauma, sudden impulsive actions, and reclusive behavior could be ignored or, worse yet, easily attributed to simply being a “bad soldier.” Indeed, Mr. Doe was hospitalized for “transient stress reaction . . . manifested by anxiety, insomnia and fear of death” as a result of “severe, combat duty in Vietnam”—and that was still not enough to prove a sufficient mental condition at the time of discharge.<sup>69</sup> As explained in Section I.A, the prevailing attitude at the time was that “[s]omeone who broke down was damaged goods to begin with and should be discharged as unfit or undesirable.”<sup>70</sup>

### B. *The ABCMR’s Refusal to Consider Evidence of an Incorrect Initial Diagnosis*

In addition to its failure to recognize that the lack of a PTSD diagnosis at the time of discharge is not dispositive—particularly before 1980, when such a

---

68. *Id.* (capitalization altered). Staff analysts at the ABCMR prepare cases for review and draft opinions for the Board’s consideration. *Army Board for Correction of Military Records*, ARMY REVIEW BOARDS AGENCY, <http://arpa.army.pentagon.mil/abcmr-overview.cfm> (last visited Jan. 28, 2014) (“If the application cannot be resolve[d] administratively, the Board staff will prepare a brief for the Board’s consideration. The Board will render a decision which is final and binding on all Army officials and government organizations.”).

69. *In re [Redacted]*, No. AR20090005061, *supra* note 2.

70. SHAY, *supra* note 34, at 204.

diagnosis was medically impossible—the ABCMR also refuses to consider the possibility that a different psychiatric diagnosis made at discharge was incorrect, even if the weight of the evidence suggests that it was. As explained in Section I.B, PTSD cannot be diagnosed until at least a month has passed since the traumatic event. Everyone has a stress reaction; it becomes a disorder when it does not go away. Therefore, if a veteran's discharge proceeding was less than a month after he or she began showing symptoms, the doctor could not definitively diagnose PTSD.

Further, some of the symptoms of PTSD are similar to those of other psychiatric disorders, such as Adjustment Disorder (AD). PTSD and AD have overlapping symptoms: the *DSM-IV* criteria for AD include “marked distress that is in excess of what would be expected given the nature of the stressor or . . . significant impairment in social or occupational (academic) functioning.”<sup>71</sup> However, one distinguishing factor is that “[b]y definition, an Adjustment Disorder must resolve within 6 months of the termination of the stressor (or its consequences).”<sup>72</sup> Therefore, if a patient’s symptoms last longer than six months after the stressor is taken away, the AD diagnosis is not accurate.

For example, in one recent case, a veteran was diagnosed with AD at the time of his discharge because “[h]e had severe difficulties adjusting to the stress associated with deployment.”<sup>73</sup> During his deployment, he experienced “multiple instances of killing.”<sup>74</sup> After his discharge, the VA diagnosed him with PTSD and awarded him service-connected disability compensation. The ABCMR decision in this case notes that “an award of a rating by another agency does not establish error by the Army” and that “the VA does not have the authority or the responsibility for determining medical unfitness for military service.”<sup>75</sup> It is true that a VA diagnosis should not bind the Board. However, it should be considered as evidence, and in this case, if the Board’s decision reflected even a basic understanding of how these diagnoses worked, it would have concluded that the first diagnosis was incorrect. The problem is that the Board refuses to consider medical opinions that the diagnosis at the time of discharge was incorrect. The ABCMR’s refusal to accept evidence of a

---

<sup>71</sup>. DSM-IV, *supra* note 48. The DSM-IV was the governing manual at the time of the case discussed immediately below.

<sup>72</sup>. *Id.*

<sup>73</sup>. *In re [Redacted]*, No. AR20120011895 (Army Bd. for Corr. of Military Records Nov. 1, 2012), <http://boards.law.af.mil/ARMY/BCMR/CY2012/20120011895.txt>.

<sup>74</sup>. *Id.*

<sup>75</sup>. *Id.*

later diagnosis is particularly troubling given the evidence that some military doctors have failed to properly diagnose PTSD.<sup>76</sup>

### C. *The ABCMR's Dereliction in Discrediting Veterans' Narratives of Wartime Events*

John Shepherd, Jr.'s discharge upgrade application stated that he had witnessed the death of his lieutenant from Connecticut.<sup>77</sup> The ABCMR was not able to find a record of the death of a lieutenant from Connecticut in Mr. Shepherd's unit during that time period and concluded that "the event to which [Mr. Shepherd] alludes as being most stressful and disturbing, and which led directly to his refusal to participate in combat, is not supported by the facts."<sup>78</sup> Not only did the ABCMR "rel[y] on records and evidence to which Mr. Shepherd and his counsel did not have access, denying Mr. Shepherd notice of critical evidence and any opportunity to be heard as to that evidence,"<sup>79</sup> but the Complaint alleged that there had in fact been an officer holding the rank of second lieutenant in Mr. Shepherd's company who had been killed during the timeframe he was in combat.<sup>80</sup> Also troubling was the fact that the ABCMR initially sent Mr. Shepherd a decision with a page missing, and later sent him a different version, claiming that the one Mr. Shepherd had received was only a draft.<sup>81</sup>

The ABCMR gave no indication of having considered that Mr. Shepherd might have been credible, even if mistaken on one minor detail: where the officer was from. Nor did the Board consider that because people mean different things when they say where they are "from," they may state places other than those reflected in their records. This inattentive practice is particularly damaging for trauma survivors, who "often tell their stories in a highly emotional, contradictory, and fragmented manner which undermines their credibility."<sup>82</sup> After an interview with Joanne Archambault, who was in charge of the special victims unit at the San Diego Police Department for ten

---

76. See *supra* notes 21-24 and accompanying text.

77. *In re [Redacted]*, No. AR20120006241 (Army Bd. for Corr. of Military Records June 7, 2012), <http://boards.law.af.mil/ARMY/BCMR/CY2012/20120006241.txt>.

78. *Id.*

79. Plaintiff's Proposed Second Amended Complaint, *supra* note 25, ¶ 28.

80. *Id.* ¶ 15.

81. *Id.* ¶¶ 23-25.

82. HERMAN, *supra* note 19, at 1.

years and who trains police officers nationwide, journalist Melinda Henneberger explained that “because of the way the brain processes information in traumatic situations, victims almost always get some details wrong. Only the phony reports are perfect.”<sup>83</sup>

Similarly, another applicant described an event in which “a rocket exploded in a tent next to his and killed numerous Soldiers.”<sup>84</sup> The applicant stated that “he was unable to get any substantial sleep for the next 3 months which made him unable to do his job.”<sup>85</sup> He was discharged in 1971 after he refused to go back into the field. Before his discharge he stated, “I get flashbacks and I am not going to endanger anyone’s life because of it.”<sup>86</sup> The ABCMR denied his application, stating that “[h]is record is void of any evidence and he has not provided any evidence showing that he was ever in the vicinity of an exploding rocket which resulted in the loss of numerous Soldiers or that he experienced any other traumatic event while serving in the Army.”<sup>87</sup> It is unfair for the ABCMR to put the burden on the veteran to produce evidence of particular war events.

### III. SUGGESTED CHANGES

The challenge for the ABCMR in reforming the way it treats PTSD cases will be developing a system that understands and accommodates veterans with PTSD without giving them a blanket excuse. This Part will provide several concrete suggestions that address this delicate balance.

#### A. *Later Expert Medical Opinions Should Rebut the ABCMR’s Presumption that the Medical Assessment at Discharge Was Correct*

The first major challenge for veterans who were not diagnosed with PTSD at the time of discharge—whether because they were discharged before the diagnosis existed or because they were erroneously diagnosed with the wrong

---

<sup>83.</sup> Melinda Henneberger, *Why I Won’t Be Cheering for Old Notre Dame*, WASH. POST: SHE THE PEOPLE (Dec. 4, 2012, 11:02 PM), <http://www.washingtonpost.com/blogs/she-the-people/wp/2012/12/04/why-i-wont-be-cheering-for-old-notre-dame>.

<sup>84.</sup> *In re [Redacted]*, No. AR20100015023 (Army Bd. for Corr. of Military Records Jan. 4, 2011), <http://boards.law.af.mil/ARMY/BCMR/CY2010/20100015023.txt>.

<sup>85.</sup> *Id.*

<sup>86.</sup> *Id.*

<sup>87.</sup> *Id.*

mental disorder—is proving that they in fact had PTSD at that time. If an Army doctor misdiagnoses a veteran at discharge or fails to make any psychiatric diagnosis, most of the time the only way the veteran can prove that conclusion was incorrect is with later medical evidence. The Board has a sensible presumption that the medical assessment at discharge is correct, but a later doctor's expert opinion should rebut this presumption and flip the burden. Unless there is strong evidence that the discharge at the time was correct, the new opinion should control.

There are several reasons why the later doctor's diagnosis should be given more weight. First, as time goes by, there is the benefit of additional development of information from which to draw conclusions. For example, the amount of time that the symptoms persist might be relevant to distinguishing PTSD from AD. Second, diagnostic methods and criteria change and become more precise over time. As described in Section I.B, the advent of the new *DSM-5* diagnostic criteria may make it easier for some soldiers to get an appropriate diagnosis as “fear and helplessness” is no longer required. If a soldier is diagnosed based on this new set of criteria, it does not mean that he or she just developed PTSD, just that it was not recognized until now. Therefore, it is important that the ABCMR accept the new diagnosis as powerful evidence.

#### *B. In Appropriate Circumstances, the ABCMR Should Presume Causation*

Another challenge for veterans with PTSD applying to the ABCMR is that it is impossible to prove the nexus between an action leading to discharge and PTSD. Veterans who have submitted expert medical opinions saying that their conduct was likely caused by PTSD have been rebuffed by the Board for lack of evidence.<sup>88</sup> The ABCMR should adopt a procedure by which a veteran can establish a presumption that actions leading to discharge were caused by PTSD by showing that (1) he or she has been diagnosed with PTSD caused by his or her military service, (2) he or she was discharged based on actions that correspond to symptoms of PTSD, and (3) the actions leading to discharge represent a change in behavior. For example, a veteran with PTSD who earned service awards for heroism in combat and then suddenly refused to go back out

---

<sup>88</sup>. See, e.g., *In re [Redacted]*, No. AR20110013885, *supra* note 64; *In re [Redacted]* AR20120006241 (Army Bd. for Corr. of Military Records date unavailable), <http://boards.law.af.mil/ARMY/BCMR/CY2012/20120006241.txt>.

into the field should get the benefit of the doubt that this action was a result of PTSD.

C. *The ABCMR Should Accept the Veteran's Testimony of Combat Events*

In 2010, VA changed its regulations so that if a veteran has served in a war zone and has PTSD, the agency will presume that the veteran's account of the events leading to his or her PTSD is accurate.<sup>89</sup> As President Obama stated in his Weekly Address announcing the change, "for years, many veterans with PTSD who have tried to seek benefits—veterans of today's wars and earlier wars—have often found themselves stymied. They've been required to produce evidence proving that a specific event caused their PTSD."<sup>90</sup> He added, "I don't think our troops on the battlefield should have to take notes to keep for a claims application."<sup>91</sup> The VA regulation now provides that

[i]f the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.<sup>92</sup>

This change recognizes both the reality of war—during the chaos of combat, soldiers are not able to, nor should they attempt to, spend effort trying to record particular details to help in a later claim—and the reality of the way PTSD affects memory. The ABCMR should adopt this same approach. If a veteran offers medical evidence that he or she has PTSD and that it was caused by an event to which he or she has testified, the ABCMR should not require additional proof of the event and should certainly not seek out minor details to discredit the veteran.

---

89. 38 C.F.R. § 3.304(f) (2013).

90. Office of the Press Sec'y, *Weekly Address: President Obama Announces Changes to Help Veterans with PTSD Receive the Benefits They Need*, WHITE HOUSE (July 10, 2010), <http://www.whitehouse.gov/the-press-office/weekly-address-president-obama-announces-changes-help-veterans-with-ptsd-receive-be>.

91. *Id.*

92. 38 C.F.R. § 3.304(f)(2).

*D. These Proposed Changes Would Not Open the Floodgates for Fraudulent Discharge Upgrade Claims*

As discussed in Section I.A, there is considerable debate about the prevalence and diagnostic criteria of PTSD. While some might argue that this debate counsels against adopting more liberal standards for awarding discharge upgrades on the basis of PTSD, this argument is misguided.

First, the debate is far from settled. Many people argue that PTSD is actually under-diagnosed, particularly in the military where many have shown that doctors have failed to diagnose the disorder.<sup>93</sup> Second, the debate does not revolve around whether or not PTSD is a real condition or whether or not it exists, but rather around how it is diagnosed. That debate will continue to occur in the medical community, and the experts who design the *DSM* will make changes as they see fit. Meanwhile, the legal community should respond in its area of expertise.

This Comment does not suggest that every veteran with PTSD and a bad discharge deserves an upgrade. However, under current practice, the ABCMR consistently disregards later evidence of PTSD, making it nearly impossible for veterans with bad discharges arising from conduct due to undiagnosed PTSD to get discharge upgrades. That is unacceptable, and the ABCMR should adopt the procedures outlined in this Part to more fairly adjudicate these claims.

## CONCLUSION

The ABCMR is often Army veterans' last stop for a discharge upgrade,<sup>94</sup> which affects their benefits, employment prospects, educational opportunities, burial rights, and societal recognition. The ABCMR is authorized not only to "correct an error," but also to make changes necessary to "remove an injustice."<sup>95</sup> In order to do justice to the veterans who fought for this country, the ABCMR should reform its procedures. Its current practice of disregarding evidence of an incorrect diagnosis at the time of discharge makes it virtually impossible for a veteran with PTSD to contest his or her discharge on that basis, denying countless veterans the honor and benefits they deserve. This

---

<sup>93.</sup> See *supra* notes 21-24 and accompanying text.

<sup>94.</sup> See *supra* note 32.

<sup>95.</sup> 10 U.S.C. § 1552(a)(1) (2012).

cannot accord with the Board’s “abiding moral sanction”<sup>96</sup> to serve the interest of justice.

REBECCA IZZO\*

---

<sup>96</sup>. Yee v. United States, 512 F.2d 1383, 1387 (Ct. Cl. 1975).

\* This Comment is dedicated to John Shepherd, Jr. I am deeply grateful to Michael Wishnie, who advised the paper that became this Comment, as well as Fiona Doherty, Dana Montalto, and everyone else with whom I worked in the Veterans Legal Services Clinic. I would like to thank the editors of the *Yale Law Journal*, especially Andrew Hammond, for superb editing and thoughtful feedback. Finally, to Jarret Izzo for his constant love and support.



## Most Popular Benefits Available for Former Servicemembers Based on Character of Service\*

### BENEFITS FOR A DISCHARGE UNDER HONORABLE CONDITIONS (GENERAL DISCHARGE)

#### DoD Benefits:

- Payments for Unused Accrued Leave
- Right to Wear the Uniform
- Armed Forces Retirement Home
- Pre-Separation Counseling
- Dependent Travel and Household Goods Shipment (HHG)
- Member Travel Home and HHG
- Death Gratuity
- DOD Military Funeral Honors
- Retired Pay for Non-Regular service
- Remission of Indebtedness
- Post-service Maternity Care
- Transitional Housing
- Transitional Assistance Management Program (TRICARE)
- Continued Health Care Benefit Program
- Excess Leave/Permissive TDY

#### Non-DoD Benefits:

- Naturalization through Armed Forces Service
- Civil Service Retirement Credit
- Federal Civil Service Hiring Preference
- Post-secondary Education Readmission
- Department of Education Upward Bound
- Rural Housing Loan preference
- Unemployment Compensation for Ex-Servicemembers
- DOL Priority of Service employment and training
- USERRA Reemployment Rights
- Patriot Express Small Business Loans

#### VA Benefits:

### HONORABLE DISCHARGE ONLY: ALL BENEFITS LISTED ELSEWHERE, PLUS:

- Education Benefits Transfer (DoD)
- Montgomery GI Bill (VA)
- Post-9/11 GI Bill (VA)
- Troops to Teachers (Non-VA)

### BENEFITS FOR A DISCHARGE UNDER OTHER THAN HONORABLE CONDITIONS (Entitled to SGLI/VGLI conversion; Other VA Benefits Eligibility to be Adjudicated by VA)

- Pre-Separation Counseling
- Member Travel Home and OCONUS HHG
- Dependent Travel and HHG (w/ approval)
- Retired Pay for Non-Regular Service
- Department of Education Upward Bound
- Higher Education Readmission

**OTH and BCD (SPCM):**  
Is discharge considered  
dishonorable based on a  
bar to VA benefits?

**OTHER THAN HONORABLE OR BCD (SCM) SERVICE  
ADJUDICATED AS "OTHER THAN DISHONORABLE"  
OR AN HONORABLE OR GENERAL DISCHARGE**

### VA BENEFITS:

- Service-Connected Disability Compensation
- Dependency and Indemnity Compensation
- Survivors' and Dependents' Educational Assistance
- Vocational Rehabilitation
- Automobile Allowance
- Clothing Allowance
- Service-Disabled Veterans Life Insurance
- Specially Adapted Housing Grants
- Veterans Mortgage Life Insurance
- Home Loan Guaranty
- Veterans Group Life Insurance (VGLI)
- Non-Service Connected Disability Pension
- Veterans Retraining Assistance Program
- Educational and Vocational Counseling
- Burial in VA National Cemeteries
- Health Care\*

(\* Also entitled to limited care with a § 3.12(d) benefits bar;  
No health care is authorized following any BCD)

### Non-VA Benefits:

- DoD Death Gratuity
- Patriot Express Small Business Loans
- Rural Housing Loan Preference
- DOL Priority of Service for Employment and Training

### BAD CONDUCT DISCHARGE (SPCM)

- (Entitled to SGLI/VGLI conversion; Other VA Benefits Eligibility to be Adjudicated by VA)
- Pre-Separation Counseling
- Member Travel Home and OCONUS HHG
- Dependent Travel and HHG (w/ approval)
- Department of Education Upward Bound

### STATUTORY BARS TO VA BENEFITS 38 U.S.C. 5103(a) AND 38 C.F.R. 3.12(c)

- Discharge by sentence of a GCM;
- Discharge as conscientious objector who refused to perform duty, wear uniform, or comply with authority;
- A deserter;
- Officer resignation for good of service;
- Discharged as alien during hostilities;
- AWOL in excess of 180 days unless VA determines compelling circumstances.

### REGULATORY BARS TO VA BENEFITS 38 C.F.R. 3.12(d)

- Discharge to evade trial by GCM;
- Mutiny or spying;
- Moral turpitude;
- Willful and persistent misconduct;
- Homosexual acts involving aggravating circumstances or affecting duty.

### BAD CONDUCT DISCHARGE (GCM)

- Pre-Separation Counseling
- Member Travel Home and OCONUS HHG
- Dependent Travel Home and HHG (w/ approval)
- Department of Education Upward Bound

### NO VA BENEFITS (except for SGLI/VGLI conversion)

### DISHONORABLE DISCHARGE

- Pre-Separation Counseling
- Member Travel Home and OCONUS HHG
- Dependent Travel and HHG (w/ approval)

\*Minimum active service requirements may apply.



# RANK INSIGNIA OF THE U.S. ARMED FORCES

## ENLISTED

E-1	E-2	E-3	E-4	E-5	E-6	E-7	E-8	E-9	SENIOR ENLISTED ADVISORS
<b>ARMY</b>									
no insignia									
Private E-1 (PV1)	Private E-2 (PV2)	Private First Class (PFC)	Specialist (SPC)	Sergeant (SGT)	Staff Sergeant (SSG)	Sergeant First Class (SFC)	Master Sergeant (MSG)	First Sergeant (1SG)	Sergeant Major (SGM)
<b>MARINES</b>									
no insignia									
Private (Pvt)	Private First (PFC)	Lance Corporal (LCpl)	Corporal (Cpl)	Sergeant (Sgt)	Staff Sergeant (SSgt)	Gunnery Sergeant (GySgt)	Master Sergeant (MSgt)	First Sergeant (1stSgt)	Master Gunnery Sergeant (MGySgt)
<b>AIR FORCE</b>									
no insignia									
Airman Basic (AB)	Airman (Amn)	Airman First Class (A1C)	Senior Airman (SrA)	Staff Sergeant (SSgt)	Technical Sergeant (TSgt)	Master Sergeant (MSgt)	First Sergeant (E-7)	Senior Master Sergeant (SMSgt)	First Sergeant (E-8)
Chief Master Sergeant of the Air Force (CMSAF)	First Sergeant (E-9)	Command Chief Master Sergeant (CCM)	Command Master Sergeant (CMC)	Chief Master Sergeant of the Air Force (CMSAF)					
<b>NAVY</b>									
no insignia									
Seaman Recruit (SR)	Seaman Apprentice (SA)	Seaman (SN)	Petty Officer Third Class (PO3)	Petty Officer Second Class (PO2)	Petty Officer First Class (PO1)	Chief Petty Officer (CPO)	Senior Chief Petty Officer (SCPO)	Master Chief Petty Officer (MCPO)	Force or Fleet Command Master Chief Petty Officer (FLTMC)
Master Chief Petty Officer of the Navy (MCPON)									
<b>COAST GUARD</b>									
Seaman Recruit (SR)	Seaman Apprentice (SA)	Seaman (SN)	Petty Officer Third Class (PO3)	Petty Officer Second Class (PO2)	Petty Officer First Class (PO1)	Chief Petty Officer (CPO)	Senior Chief Petty Officer (SCPO)	Master Chief Petty Officer (MCPO)	Command Master Chief (CMC)
Master Chief Petty Officer of the Coast Guard (MCPOCG)									



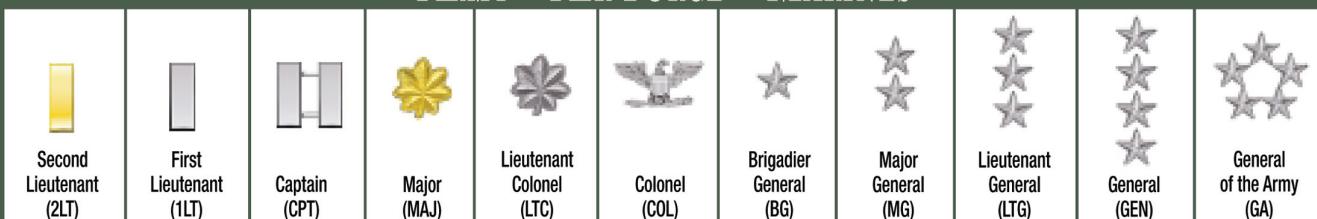
[www.army.mil/symbols](http://www.army.mil/symbols)

# RANK INSIGNIA OF THE U.S. ARMED FORCES

## OFFICERS

**0-1      0-2      0-3      0-4      0-5      0-6      0-7      0-8      0-9      0-10      SPECIAL**

ARMY - AIR FORCE - MARINES



NAVY - COAST GUARD



**W-1**

**W-2**

**W-3**

**W-4**

**W-5**

ARMY



NAVY - COAST GUARD



MARINES



AIR FORCE



[www.army.mil/symbols](http://www.army.mil/symbols)

## **PRIVACY ACT WAIVER**

For the purpose of waiving my rights under the Privacy Act, 5 U.S.C. 552a(b), and under any other federal or state law or regulation which controls access to my records, I give my prior written consent to the Department of Defense/(Branch) \_\_\_\_\_, the National Personnel Records Center (Military Personnel Records), the U.S. Department of Veterans Affairs, the Social Security Administration, and any other public or private custodian of (including, but not limited to, hospitals, clinics, and current and former treating physicians), or agency that possesses or controls, my military, personnel, veteran, medical, psychiatric, drug, or alcohol treatment, Discharge Review Board, or Correction Board records and files, to disclose fully and promptly to Attorney(s) \_\_\_\_\_ of \_\_\_\_\_, and any agents, legal interns, or law clerks working under their supervision or any other person designated by them, any and all records, documents, or files that pertain to me which they may request.

I further understand that I am entitled to obtain one (1) copy of my official VA claim file at no expense to me. I hereby authorize the VA to provide that free copy in response to the request accompanying this Privacy Act Waiver.

If these records include information protected under 38 U.S.C. § 7332 about drug abuse, infection with human immunodeficiency virus (HIV), alcoholism or alcohol abuse or sickle cell anemia, I specifically consent to that disclosure as well.

This authorization does not constitute a Power of Attorney or Retainer or any form of agreement which would require Attorney(s) \_\_\_\_\_ to represent me.

Name: \_\_\_\_\_  
(Last, First, Middle Initial)

Date of Birth: \_\_\_\_\_ SSN/Agency File No.: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# Military Law & Culture

*“The Prelude to Discharges”*

## Overview

*Objective: To provide an overview of military law and policy relating to discharges impacting veterans eligibility to certain benefits*

- ❖ References
- ❖ Authorities
- ❖ Military Command Structure
- ❖ Punitive vs. Administrative
- ❖ Types of Separations
- ❖ Characterization of Discharges
- ❖ Grasping the Process
- ❖ Trends/Context
- ❖ Impact of Deployments
- ❖ Readiness Response
- ❖ Misconduct vs. Medical
- ❖ Administrative Boards
- ❖ Legislative Response

# References

- ❖ Statutes
  - ❖ 10 U.S.C. § 1177, Medical exam before separation (PTSD/TBI)
  - ❖ 10 U.S.C. § 15543 Review of discharge or dismissal
  - ❖ 10 U.S.C. § 1552, Correction of military records
- ❖ Department of Defense Instruction (*DoDI*) 1332.14, “Enlisted Administrative Separations,” January 28, 1982 *August 28, 2008 (Incorporating Changes 1, Effective December 4, 2014. Implements 518, 572(a)(2), and 578 of Public Law 112-239*
- ❖ Secretary of Defense Memorandum, subject: *Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post-Traumatic Stress Disorder*, 3 Sep 14
- ❖ DoDI 1332.30, “Separation of Regular and Reserve Commissioned Officers for Cause,” February 12, 1986 *December 11, 2008*
- ❖ Army Regulation (AR) 635-200 & AR 135-178, Active Duty Enlisted Separations, 6 September 2011; AR 135-178, Enlisted Administrative Separations (RC/NG)
- ❖ Major John Brooker, et al, “*Beyond “T.B.D.”: Understanding VA’s Evaluation of A Former Servicemember’s Benefits Eligibility Following Involvement or Punitive Discharge from the Armed Forces*, 214 Military Law Review (2012)

# Authorities

- ❖ Separation Authority, 10 U.S.C. §1169, Limitation on Discharges (Regular Enlisted)
- ❖ Secretary of the Army, 10 U.S.C. §3013
  - ❖ Delegate authority
  - ❖ Prescribe regulation
- ❖ General Courts-Martial Convening Authority/Separation Authority (GCMCA), 10 U.S.C. §822, Art. 22
  - ❖ Commanding officer
  - ❖ Army Group, Corp, division, brigade

# Command Structure

Commanding General

General Courts-Martial Convening Authority

Brigade Commander

Special Courts-Martial Convening Authority

Battalion Commander

Summary Courts-Martial Convening Authority

Company Commander

## Punitive vs. Administrative Separation

- ❖ Punitive discharge only by courts-martial by proper authority
  - ❖ General or Special Courts-Martial/Character of service
    - ❖ Dishonorable
    - ❖ Bad Conduct
- ❖ Administrative Separation/Character of Service
  - ❖ Honorable
  - ❖ General (under honorable conditions)
  - ❖ Other than honorable (OTH)

# Types of Separations

- ❖ Misconduct
  - ❖ Serious (Drug use, DUI, AWOL, etc)
  - ❖ Pattern (series of minor infractions)
    - ❖ Article 15s
    - ❖ Letters of Reprimand
    - ❖ Counseling Statements
    - ❖ In lieu of courts-martial
- ❖ Civil Confinement
- ❖ Unsatisfactory Performance
- ❖ Medical

## Characterization of Service

- ❖ Based upon a pattern of behavior other than an isolated incident.
- ❖ Single incidents may be the basis for characterization.
- ❖ Consider age, length of service, grade, aptitude, physical and mental conditions, and the standards of acceptable conduct and performance of duty.
- ❖ Solely on military record (Behavior/Performance)

# Honorable Discharge

- ❖ Separation with honor
- ❖ Quality of the Soldier's service
  - ❖ Generally meets standards of acceptable conduct and performance of duty; or
  - ❖ Otherwise so meritorious that any other characterization would be clearly inappropriate

## General (Under honorable conditions)

- ❖ Military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
- ❖ Reason for separation specifically allows such characterization

# Other Than Honorable (OTH)

- ❖ Authorized
  - ❖ Misconduct
  - ❖ Fraudulent entry
  - ❖ Security reasons
  - ❖ Lieu of trial by court martial (*VA considers undesirable*)
- ❖ Directed by
  - ❖ Commander with general courts-martial authority
  - ❖ General officer in command w/Judge Advocate
  - ❖ Higher authority
  - ❖ Special Courts-martial convening authority for Chapter 10, with delegation

# Punitive Discharges

- ❖ Bad Conduct (special or general court-martial)
  - ❖ Enlisted
  - ❖ Bad conduct not punishment for serious offenses
- ❖ Dishonorable Discharge (general court-martial)
  - ❖ Enlisted only (warrant officers not commissioned)
  - ❖ Adjudged for any offense found guilty
  - ❖ Reserved for Service-members separated “under conditions of dishonor” (civilian felonies or require severe punishment by military standards)
- ❖ Dismissal (general court-martial for any offense)

# Grasping the Process



## Administrative Separation

- ❖ Formal Counseling
- ❖ Notice
- ❖ Notification process/Board Process
  - ❖ 6+ yrs of service or OTH – Board
  - ❖ >6 yrs of service - No Board (unless OTH)
  - ❖ Standard: Preponderance of evidence/Rules of Evidence do not apply
- ❖ Right to Counsel/Advice
- ❖ Board Determinations (Separate or Retain, Suspend, COS, Transfer to Ready Reserve)
- ❖ GCMCA Final Action

## Trends/Context

- ❖ Post 9/11
- ❖ 2.3 million deployed (RC, AC, NG)(730,000 RC)
- ❖ Multiple deployments
- ❖ Units must be 100% ready to deploy
- ❖ Stop loss
- ❖ Limited dwell time
- ❖ Misconduct
- ❖ Medical Conditions = non-deployable

# Impact of Deployments

## Misconduct

- ❖ Drug use
- ❖ DUIs
- ❖ High-risk behavior
- ❖ Domestic abuse
- ❖ Absent without leave (AWOL)
- ❖ Assaults

## Medical Conditions

- 22 Veterans commit suicide a day
- Increase in antipsychotic medications orders increased by 200%.
- Over 300K TBI
- Over 300K PTSD

## UCMJ Violations Explained

- ❖ Self-medication
- ❖ Dissociative episode
- ❖ Shattered assumption of moral order (right/wrong)
- ❖ Thrill or sensation-seeking behavior
- ❖ Self-punishment
- ❖ Moral Injury
- ❖ Revenge
- ❖ Decrease in duty performance
- ❖ Sleep state violent behavior due to nightmares
- ❖ Adverse reaction to psychotropic medication

# Readiness Response

- ❖ Personality Disorder (31,000 from 2001 – 2010)
- ❖ Adjustment Disorder (6,492 from 2008 – 2010)
- ❖ Chronic Adjustment
- ❖ PTSD

## Misconduct vs. Medical

- ❖ Medical takes precedence over misconduct
- ❖ **Standard 1:** Does not meet the medical fitness standards for retention (AR 40-501, Chapter 3) (AR 635-200, para. 1-33)
- ❖ Misconduct separation and medical evaluation board (MEB) concurrently.
- ❖ Final action pending result of MEB.
- ❖ Only applicable if UCMJ not initiated.

# Misconduct vs. Medical

- ❖ Physical Evaluation Board (PEB)
  - ❖ Standard 2:
    - ❖ Nexus between medical condition and misconduct
    - ❖ Other circumstances warranting disability processing
  - ❖ PEB Determination
    - ❖ Fit for Duty - misconduct separation proceeds
    - ❖ Unfit for Duty – medical separation wins

## Admin Board Members

- ❖ Never deployed & no understanding of combat
- ❖ Deployed, understand combat & have the “I was there and I am fine” attitude
- ❖ Boards that have been there, done it & get it
- ❖ Undue Command Influence

# Legislative Reform

- Basis – Discharge of Soldiers under Pre-existing Personality Disorder or Adjustment Disorders deprives soldiers of all benefits
- Pre-Existing Personality Disorder Separations shifted to Adjustment Disorders
- Pre-Existing Personality Disorder Discharges 1,072 in 2006 to 260 in 2009
- Adjustment Disorder Discharges 1,453 in 2006 to 3,844 in 2009
- Chronic Adjustment Disorder

## Impact of Legislation

- ❖ Directed Special Review Board
- ❖ DoD policy change
- ❖ Revision of Army Regulation
- ❖ Implemented MEDCOM policy

# 10 U.S.C. § 1176

- ❖ Requires a medical exam prior to administrative separation of service-members who have been *diagnosed* or *reasonably assert* PTSD or TBI (does not apply to UCMJ actions)
- ❖ Criteria
  - 24 months prior in combat zone
  - OTH contemplated

## Legislation

### 10 U.S.C. §1177

- ❖ Medical Evaluation – is to determine whether PTSD/TBI is a contributing factor to the misconduct
- ❖ Evaluation must be done by:
  - ❖ Physician, clinical psychologist or psychiatrist (no MSW)
  - ❖ TBI (all the above or “other health care professional as appropriate”)

# DD 214

DoDI 1336.01

- Blocks**
- 23 Type
- 24 Character
- 25 Authority
- 26 Code
- 27 Reentry

See AR 635-8

*DoDI 1336.01, August 20, 2009*

CAUTION: NOT TO BE USED FOR THIS IS AN IMPORTANT RECORD. IDENTIFICATION PURPOSES. SAFEGUARD IT.		
CERTIFICATE OF ACTIVE DUTY OR RELEASE FROM ACTIVE DUTY This Document 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
4. GRADE RATE OR RANK	5. PAY GRADE	6. DATE OF BIRTH (YYYYMMDD) <input checked="" type="checkbox"/> 7. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD)
7a. PLACE OF ENTRY INTO ACTIVE DUTY		
7b. HOME OF RECORD AT TIME OF ENTRY (City and state, or country and province)		
8. LAST DUTY ASSIGNMENT AND MAJOR COMMAND		
9. STATION WHERE SEPARATED		
10. COMMAND TO WHICH TRANSFERRED		
11. PRIMARY SPECIALTY (use number, letter and name and rank of specialty. Use numbers only if names and ranks of specialties are not known.)		
A		
12. RECORD OF SERVICE		
YEARS MONTHS DAYS		
a. ACTIVE DUTY		
b. RESERVE DUTY		
c. RESERVE DUTY THIS PERIOD		
d. TOTAL ACTIVE DUTY SERVICE		
e. TOTAL RESERVE DUTY SERVICE		
f. FOREIGN SERVICE		
g. OTHER SERVICE		
h. INITIAL ENTRY TRAINING		
i. CERTIFICATE DATE OF PAY GRADE		
j. PAY GRADE		
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED		
14. PERSONNEL INFORMATION. Indicate the number of weeks and months and pay command		
M		
15a. COMMISSIONED THROUGH SERVICE ACADEMY		
YES NO		
15b. COMMISSIONED THROUGH ROTC SCHOLARSHIP (10 USC Sec. 2127a)		
YES NO		
16. ENROLLED UNDER LEARN & REPAY PROGRAM (10 USC Chap. 361 et seq.)		
YES NO		
17. PAY AS SCORSED LEAVE		
18. RETIREES WAS PROVIDED COMPLIMENTARY EXAMINATION AND ALL APPROPRIATE PAY		
19. REMARKS		
The information contained herein is subject to computer monitoring within the Department of Defense or within any other federal or non-federal agency for verification purposes and is therefore subject to review, retention and disclosure under the provisions of the Freedom of Information Act.		
10. MAILING ADDRESS AFTER SEPARATION (Leave blank if unknown)		
11. NEAREST TELCO LINE (Leave blank if unknown)		
12. MEMBER REQUESTS COPY 2 BE SENT TO (specify address)		
OFFICE OF VETERANS AFFAIRS		
13. MEMBER REQUESTS COPY 2 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS (ADMINISTRATION, DC)		
YES NO		
14. MEMBER SIGNATURE		
15. DATE (YYYYMMDD) 16. OFFICIAL AUTHORIZED TO SIGN (Type name grade) We request 17. DATE (YYYYMMDD)		
E		
18. SPECIAL ADDITIONAL INFORMATION (May be handwritten or typed)		
19. TYPE OF SEPARATION		
20. CHARACTER OF SERVICE (check appropriate)		
21. SEPARATION AUTHORITY		
22. SEPARATION CODE		
23. NARRATIVE REASON FOR SEPARATION		
24. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD)		
25. MEMBER REQUESTS COPY 4 (initials)		
26. DD FORM 214, AUG 2009		
27. PREVIOUS EDITION IS OBSOLETE		
SERVICE - 2		
Change 1, 12/29/2014		
19		
ENCLOSURE 4		

## Army Board for Correction of Military Records (ABCMR)

### 10 USC §1552

- ❖ Army's highest Administrative Review Board
- ❖ New Guidance for Upgrade Requests based on PTSD

# 10 U.S.C. §1553

## Army Discharge Review Board

- ❖ Review discharges of former Soldiers
- ❖ For propriety and equity
- ❖ 15-year statute of limitations
- ❖ Excludes General Court Martial discharges and disability separation
- ❖ Procedures include:
  - ❖ Personal appearance and records review
    - ❖ Priority processing for Army diagnosed PTSD cases with doctor on the Board
  - ❖ Factors commonly considered by the Board:
    - ❖ Propriety: due process, limited use
    - ❖ Equity: characterization too harsh, isolated act, PTSD contributed

**Board of 5 Colonels/Lieutenant Colonels**

**4,044 Cases in FY12**

## Special Review Board

10 U.S.C. 59 § 1553

- ❖ Establish a 5 member review board
- ❖ Expedited review of discharge or dismissal
- ❖ PTSD/TBI
- ❖ Physician with specialized training on review board

# Army Discharge Review Board

10 U.S.C. §1553

- ❖ Comprehensive Review
- ❖ Nexus between discharge and misconduct
- ❖ Medical Guidance
- ❖ Consideration of Mitigation Factors
- ❖ Only OTH

## SSG Jones

- ❖ 3 TOURS
- ❖ PURPLE HEART
- ❖ WALTER REED RECOVER FOR 6 MOS+
- ❖ MENTORED WOUNDED WARRIORS
- ❖ 2 DUIS
- ❖ RESULT - OTH

# SSG Snuffy

- ❖ Active Duty
- ❖ 16 years of service
- ❖ 5 years on the ground
- ❖ 6 tours of duty
- ❖ 5 DUI
- ❖ Reduction in rank
- ❖ GOMOR
- ❖ Chapter 14; OTH recommendation
- ❖ PDHRAs reflect alcohol issue, depression and concussion
- ❖ Diagnosed with PTSD & TBI
- ❖ Dual tracked & PTSD found contributing factor
- ❖ Admin Board (testimony from doctor)
- ❖ Findings and recommendations = General and proceed with MEB
- ❖ Referred to PEB in lieu of General Discharge
- ❖ Chapter 14 General Discharge would have eliminated
- ❖ Concurrent receipt of 75% of retirement tax free and 90% of VA benefits
- ❖ GI Bill

# SPC Smith

- ❖ Deployed to Iraq
- ❖ Laundry specialist to MP
- ❖ 3 time drug use (THC) over 3 months
- ❖ >6 yrs service
- ❖ Suicide watch at the VA
- ❖ Sexually assaulted by platoon sergeant
- ❖ OTH
- ❖ Reconsideration & MEB process



# LAW & PROCEDURES OF DISCHARGE UPGRADES: PART ONE

Dana Montalto, Veterans Legal Clinic

## Discharge: Character of Service

- 1. Honorable
- 2. General/Under Honorable Conditions
- 3. Other Than Honorable/Undesirable
- 4. Bad Conduct Discharge
- 5. Dishonorable
- 6. Uncharacterized

Administrative

Punitive

# Discharge: Narrative Reason

## EXAMPLES:

- Completion of Required Active Service
- Hardship
- Pattern of Misconduct
- Misconduct (Serious)
- Drug Abuse
- In Lieu of Court-Martial/For the Good of the Service
- Secretarial Authority
- Personality Disorder
- Other Physical or Mental Condition
- Weight Control Failure
- Homosexual Act/Conduct/Admission

# Discharge: DD-214

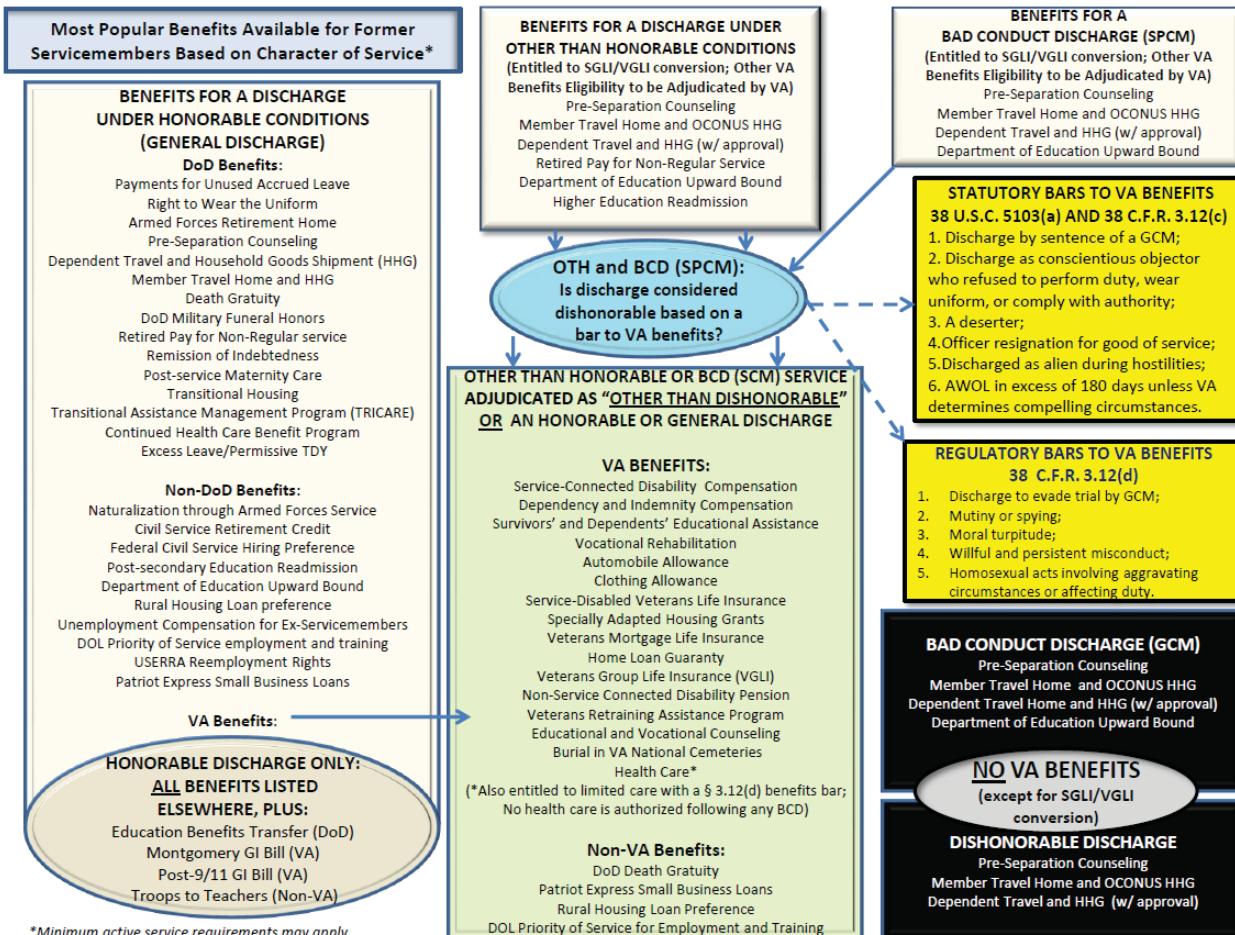
- Department of Defense Form 214 (“DD-214”): document that Post-WWII servicemembers receive upon separation from active service
- NGB Form 22: documents that National Guard servicemembers receive upon separation
- Includes:
  - Date of separation
  - Character of service
  - Narrative Reason
  - Reenlistment code
  - Date of entry into active duty
  - Prior in/active service
  - Medals, awards, training
  - Foreign service

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES.			THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.			ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID.		
<b>CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY</b>								
1. NAME (Last, First, Middle) <b>DOE, JOHN F</b>		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/ARNG			3. SOCIAL SECURITY NO. [REDACTED]			
4.a GRADE, RATE, OR RANK SGT E5		4.b PAY GRADE E5		5. DATE OF BIRTH (YYYYMMDD)		6. RESERVE OBLIG. TERM. DATE Year 0000 Month 00 Day 00		
7.a PLACE OF ENTRY INTO ACTIVE DUTY		7.b HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)						
8.a LAST DUTY ASSIGNMENT AND MAJOR COMMAND HHC 1ST BN		8.b STATION WHERE SEPARATED						
9. COMMAND TO WHICH TRANSFERRED HHC 1ST BN		10. SGU COVERAGE [ ] None Amount: \$ 250,000.00						
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.) 11B20 INFANTRYMAN - 5 IRS-10 MOS//NOTHING FOLLOWS								
12. RECORD OF SERVICE a. Date entered AD This Period b. Separation Date This Period c. Net Active Service This Period 0000 d. Total Prior Active Service 0001 e. Total Prior Inactive Service 0005 f. Foreign Service 0000 g. Sea Service 0000 00 00 h. Effective Date of Pay Grade 2000								
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) ARMY ACHIEVEMENT MEDAL (2ND AWARD) //ARMY RESERVE COMPONENTS ACHIEVEMENT MEDAL//NATIONAL DEFENSE SERVICE MEDAL//NATIONAL DEFENSE SERVICE MEDAL WITH BRONZE SERVICE STAR//ARMED FORCES RESERVE MEDAL WITH 'M' DEVICE//NONCOMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT RIBBON//ARMY SERVICE RIBBON//OVERSEAS SERVICE BAR//ARMY RESERVE COMPONENTS OVERSEAS//CONT IN BLOCK 18.								
14. MILITARY EDUCATION (Course title, number of weeks and month and year completed) NONE//NOTHING FOLLOWS								
15.a MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERAN'S EDUCATIONAL ASSISTANCE PROGRAM		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	15.b HIGH SCHOOL GRADUATE OR EQUIVALENT		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	16. DAYS ACCRUED LEAVE PAID NONE		
17. MEMBER WAS PROVIDED A COMPLETE DENTAL EXAM AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION								
18. REMARKS DATE HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOD OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS//INDIVIDUAL COMPLETED PERIOD FOR WHICH ORDERED TO ACTIVE DUTY FOR PURPOSE OF POST SERVICE BENEFITS AND ENTITLEMENTS //ORDERED TO ACTIVE DUTY IN SUPPORT OF OPERATION ENDURING FREEDOM TITLE 10 IAW 10 USC 12302								
KUWAIT LIBERATION MEDAL (K) // KUWAIT LIBERATION MEDAL (SA) // COMBAT INFANTRYMAN BADGE // PARACHUTIST BADGE//AIR ASSAULT BADGE//NOTHING FOLLOWS								
19.a MAILING ADDRESS AFTER SEPARATION (Include Zip Code)		19.b NEAREST RELATIVE (Name and address - include Zip Code)						
20. MEMBER REQUESTS COPY 5 BESENT TO <input checked="" type="checkbox"/> DIR OF VET. AFFAIRS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		22. OFFICIAL AUTHORIZED TO SIGN <i>[Signature]</i> (typed name, grade, title)						
21. SIGNATURE OF MEMBER BEING SEPARATED								
► SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)								
23. TYPE OF SEPARATION RELEASE FROM ACTIVE DUTY		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE						
25. SEPARATION AUTHORITY AR 635-200, CHAP 4		26. SEPARATION CODE MBK		27. REENTRY CODE NA				
28. NARRATIVE REASON FOR SEPARATION COMPLETION OF REQUIRED ACTIVE SERVICE								
29. DATES OF TIME LOST DURING THIS PERIOD NONE		30. MEMBER REQUESTS COPY 4 Initials MEMBER - 4						
DD Form 214-AUTOMATED, NOV 88 Previous editions are obsolete.								

Photo Credit: IAVA

# Discharge: Why Does It Matter?

- Honor
- Stigma
  - Employment
  - Housing
  - Others who served
- Benefits
  - GI Bill (education)
  - VA Healthcare\*
  - VA Disability Compensation, Pension, etc.\*
  - Federal employment preferences
  - Massachusetts Chapter 115 program\*
- Fairness & Equity
- Social Cost & Public Health



\*Minimum active service requirements may apply.

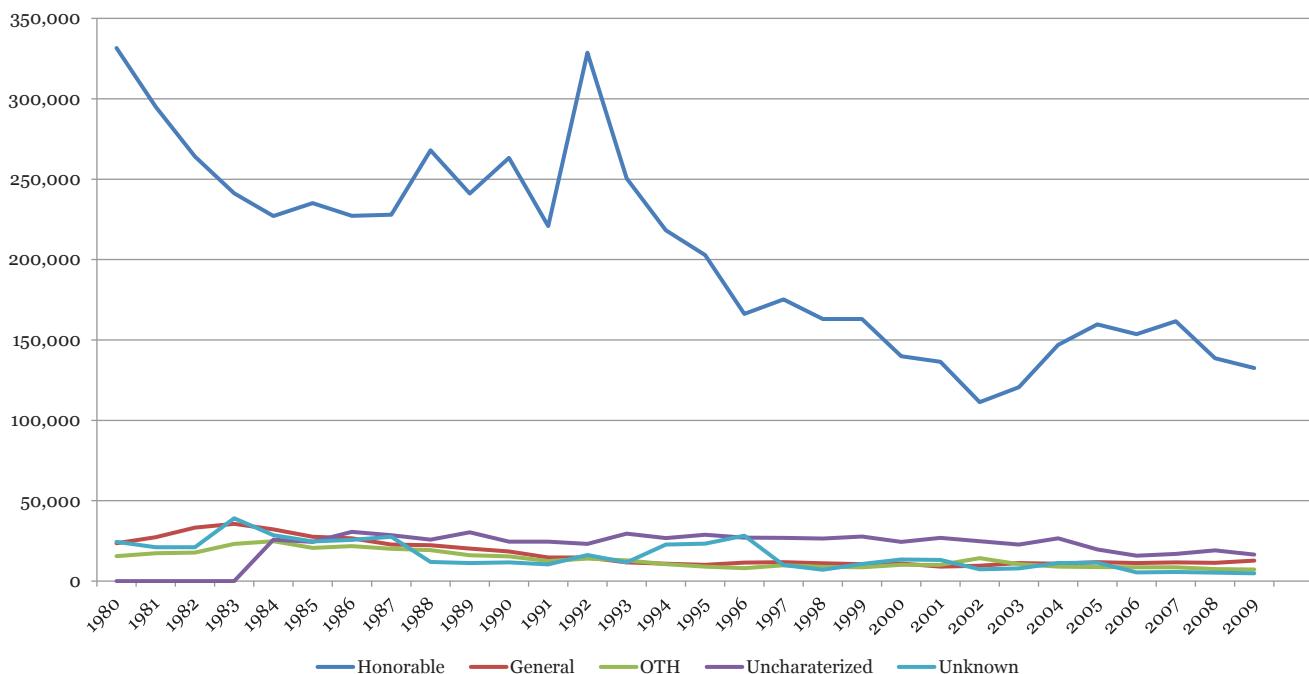
John W. Brooker et al., *Beyond "T.B.D.": Understanding VA's Evaluation of a Former Servicemember's Benefit Eligibility Following Involuntary or Punitive Discharge from the Armed Forces*, 214 Mil. L. Rev. 1, 249 (2012).

## Discharge: The Numbers

- 22 million veterans in the U.S.
    - 7.25 million Vietnam Era veterans
    - 3.9 million Post-9/11 veterans (2.7m deployed)
  - 1.4 million active duty
  - About 7.3% of all living Americans have served at some point
- 
- Vietnam Era: more than 250,000 received less-than-honorable discharges

# Discharge: The Numbers

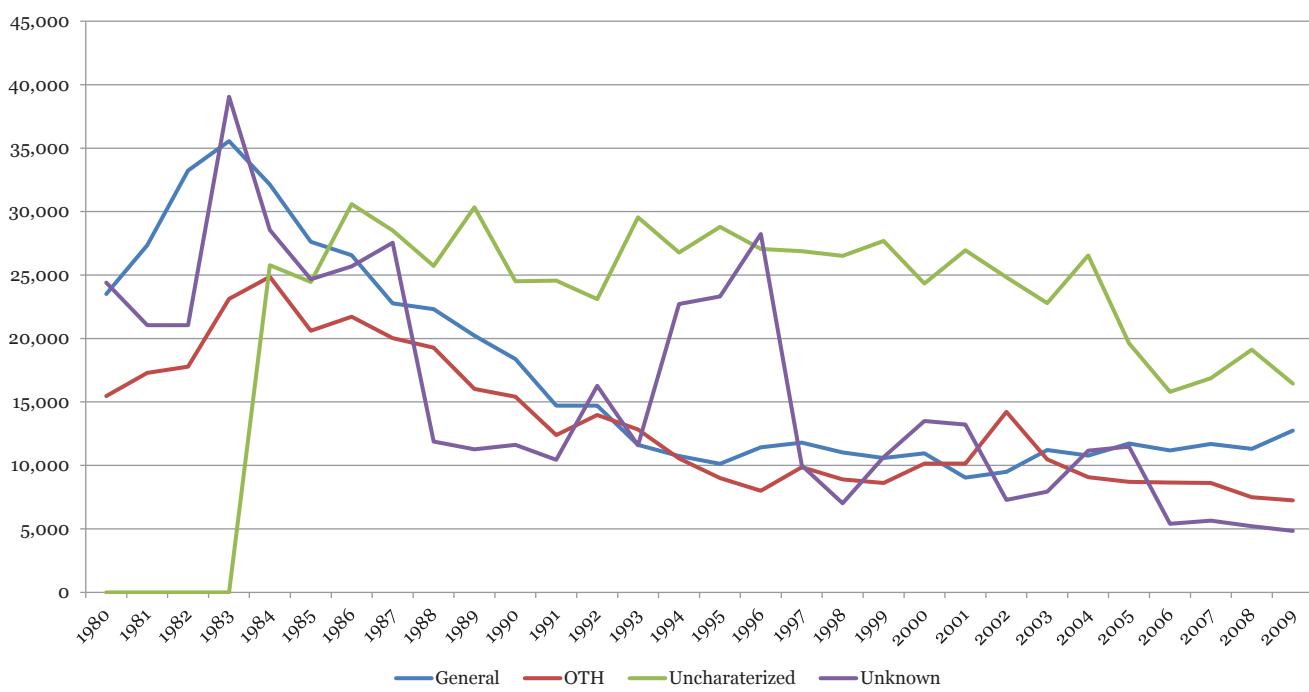
Administrative Separations by Character of Service



Source: Department of Defense.

# Discharge: The Numbers

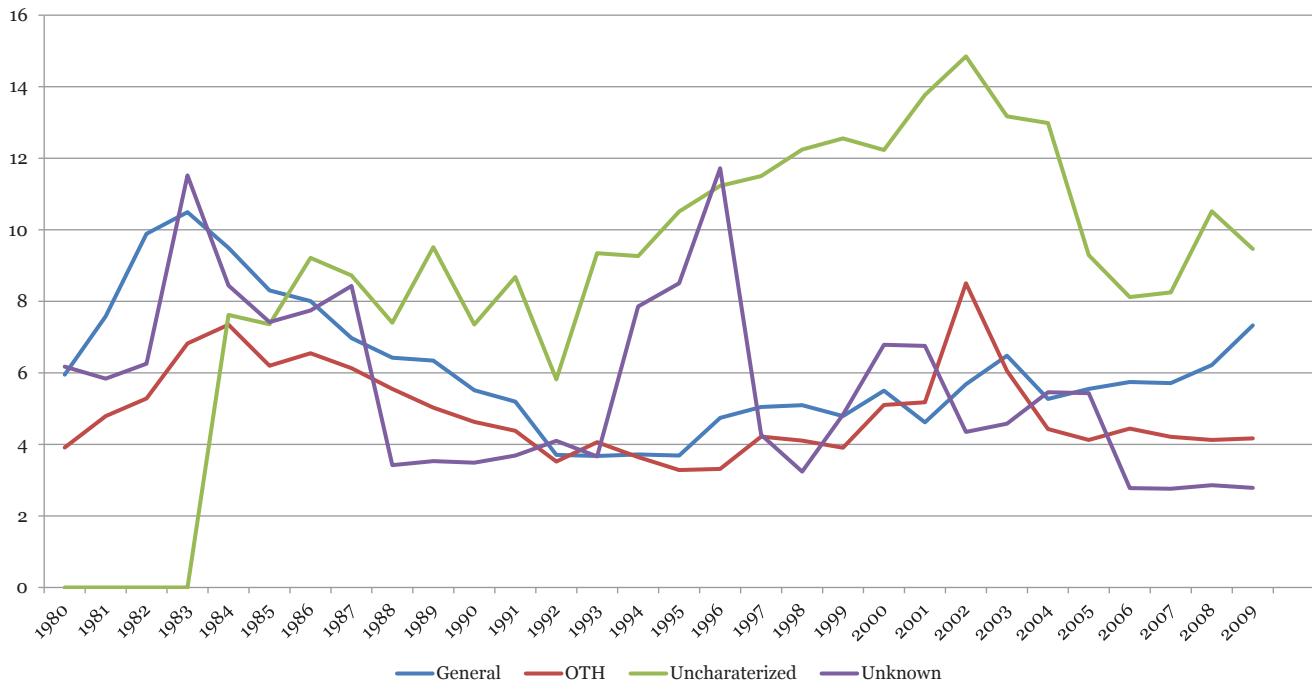
LTH Administrative Separations by COS



Source: Department of Defense.

# Discharge: The Numbers

Percentages of LTH Administrative Separations



Source: Department of Defense.

# Discharge: The Numbers

- Massachusetts: approx. 380,000 veterans
  - 86,000 Gulf War
  - 125,000 Vietnam Era
  - 42,000 Korean Conflict
  - 25,000 World War II
- Assuming an equal distribution of less-than-honorably discharged veterans . . .
  - Conservative estimate of more than 12,000 veterans in Massachusetts who were separated with less-than-f fully-Honorable discharges

# Discharge: COD Alternative

## \*Note:

Under some circumstances, veterans with less-than-honorable discharges can challenge initial ineligibility for VA services and benefits through process known as *character of service determination* (CSD) or *character of discharge determination* (COD). They can also challenge initial ineligibility for benefits under Massachusetts Chapter 115.

## Review Boards: Types

### Discharge Review Boards

- Army Discharge Review Board
- Navy Discharge Review Board
- Air Force Discharge Review Board
- Coast Guard Discharge Review Board

### Records Correction Boards

- Army Board for Correction of Military Records
- Board for Correction of Naval Records
- Air Force Board for Correction of Military Records
- Coast Guard Board for Correction of Military Records

# Review Boards: Venue

## Discharge Review Boards

- Within 15 years of separation
- *Cannot* change to/from medical discharge
- *Cannot* change discharge by general court-martial

## Records Correction Boards

- Within 3 years of discovery of “error or injustice”
  - Discovery = actual knowledge
  - Can be waived in “interest of justice”
- *Can* change to/from medical discharge
- *Can* change discharge by general court-martial
- Note: has many other powers

# Review Boards: Composition

## Discharge Review Boards

- 5 Members
  - Officers
  - If served in contingency operation & PTSD/TBI dx, then 1 member is physician, clinical psychologist, or psychiatrist *and* expedited
  - NDRB: 3 members from applicant’s service branch
- Majority vote

## Records Correction Boards

- 3 Members
  - Chosen from 40-115 civilian staff of service branch
- Majority vote

# Review Boards: Procedures

## Discharge Review Boards

- DD Form 293
- Applicant bears burden of proof
  - Presumption of gov't regularity unless substantial credible evidence rebuts
- First, Records Review
- Second, Personal Hearing (in DC)
- No formal rules of evidence

## Records Correction Boards

- DD Form 149
- Applicant bears burden of proof
  - Presumption of gov't regularity unless substantial credible evidence rebuts
- Records Review
- Hearing *very* rare
- No formal rules of evidence

# Review Boards: Appeals

## Discharge Review Boards

- Reconsideration under 32 CFR 70.8(b)(8), including
  - New & retroactive separation policy
  - Current separation policies substantially more favorable
  - Veteran now has counsel
  - New, substantial, relevant evidence
- Appeal to Records Correction Board
- Federal court complaint (?)

## Records Correction Boards

- Reconsideration
  - Within 1 year if new, material evidence (Army)
- Complaint in federal district court
  - Administrative Procedure Act, 5 U.S.C. 500 *et seq.*
  - Tucker Act, 28 U.S.C. 1334

# Review Boards: Legal Standard

## Discharge Review Boards

- “Propriety”
- “Equity”
- For BCD by special court-martial:*  
“clemency”
- 10 U.S.C. 1553
- 32 C.F.R. 70.9
- DODI 1332.28, E4

## Records Correction Boards

- “Error”
- “Injustice”
- 10 U.S.C. 1552
- DODD 1332.41

## Legal Standard: Propriety/Error

- Violation of constitution, statute, regulation, or other source of law

### 32 CFR 70.9(b)(1):

A discharge shall be deemed proper unless, in the course of discharge review, it is determined that:

- (i) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made); or
- (ii) A change in policy by the Military Service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

# Legal Standard: Equity/Injustice

32 CFR 70.9(c): Equity.

A discharge shall be deemed to be equitable unless:

(1) In the course of a discharge review, it is determined that the *policies and procedures under which the applicant was discharged differ* in material respects from policies and procedures currently applicable on a Service-wide basis to discharges of the type under consideration provided that:

(i) *Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and*

(ii) *There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.*

(2) At the time of issuance, the discharge was *inconsistent with standards of discipline* in the Military Service of which the applicant was a member.

(3) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the DRB viewed in conjunction with the factors listed in this section and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to: (i) quality of service . . . (ii) capability to serve . . .

## Law of Discharge Upgrades

To Be Continued . . .

# Trauma, Mental Health, and Medical Opinions:

Working with Veterans on Discharge Upgrades

Sandra Dixon, Psy.D.

Core Faculty at William James College and psychologist in private practice

## Areas of Focus

- Veterans
  - Impact of military culture
  - Possible experiences during deployment
- Possible aftermath from deployment experiences
  - Working with people who have experienced trauma
  - Traumatic Brain Injury
  - Other diagnoses
- Working with psychologists, therapists, or mental health professionals

# The impact of military culture

- Soldier's Ethos
  - The Mission is greater than yourself
  - Independence and Competence
  - Interdependence and Loyalty
  - Military members see themselves as separate from, and different than, civilians, including family members

## Impact of military culture, cont...

- Hierarchy and a strict chain of command
  - Higher ranking soldiers command lower ranking soldiers
  - Orders are followed without question or complaint
  - Quick, decisive responses may make the difference between saving the lives of you or others
  - Mistakes can have deadly consequences

# Impact of military culture, cont...

- Preparation and expectation to face difficulties, danger, violence, and death
  - You are trained to respond in ways that promote functioning in the face of this
  - To do this, emotions must be carefully compartmentalized
  - Resiliency training to respond to problems and “adapt, improvise, overcome”
- Hypermasculinity
  - An ideal for men to be seen and understood as dominant, powerful, and in control at all times
  - Weakness is not tolerated
  - Action is prized, while emotions are understood as a liability
  - Intimacy and closeness are complicated and do not include vulnerability

## Impact of military culture, cont...

- Focus on competition and organization
  - There is a single, clear procedure for performing each job
  - Planning and organization are essential
  - Violence and force, including killing, are tools used by the military, and soldiers have been trained for this

## Possible Experiences during Deployment

- Combat Trauma
- Military Sexual Trauma (MST)
- Loss
- Betrayal
- Traumatic Brain Injury (TBI)

# Trauma

- A trauma is an experience, or experiences, that overwhelm our current coping capacities
- We just “get through it” in whatever way we can, so that traumas are not integrated into our past, but remain part of our present life
- We were alone and the aloneness was often the most traumatic aspect
- Traumas can be experienced as a victim, perpetrator, or witness to the grotesque

## Combat Trauma

- Trauma associated with war and the military experience
  - Victim: being shot at, ambushed, or in a firefight/explosion
  - Perpetrator: killing other soldiers or civilians, making a decision that resulted in the death of others
  - Witness to the grotesque: working as a medic, seeing a friend killed or mutilated

# Military Sexual Trauma (MST)

- Sexual trauma that occurs while on duty in the military
  - Any sort of sexual activity in which someone is involved against his or her will (physically forced, “command rape”, unwanted touching, unwanted advances, etc.)
- Statistics
  - 20% of women
  - 1% of men
  - But the number of men equals the number of women
  - Estimated 26,000 sexual assaults in 2012

## Possible outcomes following trauma

- PTSD
- Depression and/or suicidal ideation/attempts
- Alcohol or drug abuse
- Dissociation
- Physical health problems (GI symptoms, back pain, headaches, sleep disturbances, chronic fatigue)
- Relational problems and significant difficulty performing tasks and/or keeping a job (and perhaps, a bad conduct discharge)

# Trauma Responses

- Dialectic of Trauma- BOTH are present:
  - Overwhelming re-experiencing
    - Nightmares, intrusive thoughts, flashbacks, distress and/or reactivity when exposed to cues
  - Oscillating with...
    - Extreme avoidance and numbing
      - Avoid recollection, inability to remember, disinterest, detachment, restricted affect
- Disconnection
  - Disruption in the ability to relate well to others

# Trauma and the Body

- Nervous System and its dysregulation
  - Sympathetic (fight, flight, freeze responses)
  - Parasympathetic (rest and digest responses)
  - Both are out of control, leading to regular states of dysregulation
- Classical Conditioning
  - Formerly neutral stimuli are associated with threat, leading to extreme reactions
  - Stimulus discrimination problems
  - Lack of cognitive flexibility
  - Frontal lobe is not online

# Two Aspects of Post-Trauma

- Symptoms
  - How trauma responses are manifested **in the present**
  - Often conceptualized as a **psychological diagnosis**
- The Traumatic Experience
  - Trauma Story, what happened **in the past**

It might seem like it would be easier to ask about what happened in the past, but it is actually less triggering to discuss symptoms. It can be extremely distressing to discuss the trauma itself.

## Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition DSM-5

- Manual developed by the American Psychiatric Association that categorizes and describes mental health disorders
- Widely used for training and diagnostic purposes in the mental health field
- [www.dsm5.org](http://www.dsm5.org)
- Contains diagnostic codes and specific symptom requirements for all mental health disorders
  - However, coding will soon (in upcoming months or years) be replaced with ICD-10 codes, published by the World Health Organization, to comply with HIPPA

# Diagnosis: PTSD

- Symptoms
  - Client must have experienced a trauma
  - And re-experiences this trauma through either intrusive memories, flashbacks, or nightmares
  - And avoids it either consciously or unconsciously
  - And experiences negative changes in thinking and mood
  - And experiences hyperarousal via sleep difficulties, anger outbursts, hypervigilance, startle responses
  - And these symptoms have been present for over a month
- Assessment
  - Often done informally, but symptoms are often not seen as part of a trauma response
  - Can be done through formal psychological assessment

## PTSD Symptoms

- Experience of trauma(s)
- Re-experiencing of trauma(s)
  - Distressing memories
  - Flashbacks
  - Nightmares
  - Significant distress or physical reactions when triggered by reminders of the trauma (sites, smells, sounds)
  - Panic attacks
- Avoidance of trauma(s)
  - Avoid thoughts of traumatic experience
  - Avoid activities, places, or people that are reminders of trauma
  - Drinking or drug abuse

- Negative changes in thinking and mood
  - Negative feelings about self or others
  - Inability to experience positive emotions
  - Feeling emotionally numb
  - Hopeless about the future
  - Memory difficulties about traumatic event
  - Difficulty maintaining close relationships
- Hypervigilance
  - Rage outbursts
  - Always on guard for danger
  - Increased startle response
  - Overwhelming guilt or shame
  - Difficulty sleeping
  - Difficulty concentrating

## The Trauma Narrative

- The trauma happened in the past, but feels as if it is still occurring in the present
  - When a trauma has not been integrated, retelling the narrative can cause re-experiencing symptoms
  - That may be followed by avoidance symptoms
- It is easiest and safest to start by asking for a “thumbnail” version
  - This is the version that feels safe to tell and that the client has probably already told others about

# Trauma Treatment

- Must occur in phases!
  - Essential work occurs in Phase I and has nothing to do with traumatic memories
- Phase I
  - Safety, stabilization, symptom reduction, coping skills, psychoeducation, therapeutic relationship, phobias, affect tolerance, resource development
- Phase II
  - Processing traumatic memories

## Working Therapeutically with a Client Who has Experienced Trauma

- Stay in the present
- Slower is faster. Mindfulness is key.
- The therapeutic relationship is an integral part of treatment
- Provide the client with a sense of regaining their power
- The goal is not to process every traumatic memory

# What does this mean for lawyers?

- It is essential to create a sense of safety
  - This might mean attending to things like where you sit, whether the office door can be shut, who can be in the room
- It is essential to create a trusting relationship
  - Be very mindful of the power dynamic
- Ask about symptoms and assess if a diagnosis was/is warranted
  - Either before discharge or currently
- Slowly focus on the trauma narrative
  - Some parts of the trauma may not be remembered
  - Some parts of the trauma may be too triggering to discuss
- Monitor for symptoms of hyper- and hypo-arousal

## What might not be functioning well?

- Problems sleeping
  - Not sleeping
  - Nightmares
  - Sleeping with a loaded gun
- Difficulty performing important tasks
  - Not able to eat in restaurants or attend children's baseball games
  - Panic attacks when driving
  - Memory difficulties

# What might not be functioning well?

- Problematic behaviors (noted by veteran or others)
  - Some behaviors were appropriate in a war zone but are not at home
  - Substance abuse and/or drinking to excess every night
  - Rage outbursts
- Difficulty relating to loved ones
  - Kids don't follow orders
  - Spouse and veteran have contradictory and impossible expectations of veteran:
    - On the one hand to never have problems
    - And on the other to express emotions

## Traumatic Brain Injury (TBI)

- External force to the head, often from a blast injury, that causes a disruption of brain functioning
- Three categories:
  - Mild: 80% of cases, most improvement is seen within first 3 weeks to 6 months, with an expected return to normal functioning
  - Moderate: Prognosis is not given for 18-24 months. Most improvement seen in first 3 months, but can continue afterwards
  - Severe: Significant loss of functioning

# Diagnosis and Treatment

- A thorough diagnosis includes cognitive and neuropsychological testing
  - Attention, concentration, short-term memory, executive functioning, abstract reasoning, cognitive flexibility
- Many symptoms mimic those of PTSD, and can easily be misdiagnosed
  - Brain damage can impact inhibition, irritability, mood disturbances, fatigue, sleep problems
- Treatment for TBI focuses on restoring cognitive abilities

## What about Anxiety?

- It is often easy to misdiagnose trauma as anxiety or as panic disorder, as re-experiencing symptoms can include panic attacks

# Major Depression

- Can be a result of loss, betrayal, trauma
  - Often co-occurring with PTSD if there has been a trauma
- Symptoms of Major Depression
  - Depressed mood most of the day
  - Markedly diminished interest in activities
  - Significant weight loss or gain
  - Difficulty sleeping (either too much or too little)
  - Psychomotor agitation or retardation
  - Loss of energy
  - Feelings of worthlessness or guilt
  - Difficulty concentrating
  - Recurrent thoughts of death, suicidal ideation, or suicide attempt

## Working with mental health professionals

- PTSD is the only mental health diagnosis that locates the cause of the disorder **outside** the person
  - In other words, it is not because of the vet's personality, character flaws, or pre-existing condition
- This means that the reason for the vet's Post-Traumatic Stress Disorder:
  - Is the occurrence of a trauma during military service...
  - And the veteran has PTSD symptoms following the trauma...
  - And, most importantly, **did not** have these symptoms before the trauma
- TBI is a medical diagnosis that can be seen in the same way
  - The occurrence of an incident that caused a traumatic brain injury...
  - The veteran has cognitive symptoms following this incident...
  - And, most importantly, **did not** have these symptoms before the incident



# WORKING WITH EXPERTS

Betsy Gwin, Veterans Legal Clinic

## Working with Experts

- ❖ Obtaining independent medical opinion can be critical to outcome of case
  
- ❖ We will discuss best practices for:
  1. Securing an expert
  2. Packaging a case for expert review
  3. Obtaining a written expert opinion

# Securing an expert

- ❖ Usually need to review existing records first to determine whether new opinion is needed
- ❖ Identify key question in case that requires medical opinion
  - ❖ Was my client “insane” at time of misconduct?
  - ❖ Was misconduct explainable as a symptom of mental health condition?
  - ❖ Did my client have personality disorder?
- ❖ Consider whether a particular medical specialty is needed to answer the question

# Securing an expert

- ❖ Identify potential experts
  - ❖ Treating provider may be able to opine on key question
  - ❖ VA providers sometimes willing to provide opinion
  - ❖ Medical schools
  - ❖ Private practitioners

# Securing an expert

- ❖ Discuss scope of opinion
  - ❖ Records review only?
  - ❖ In-person evaluation?
  - ❖ Psychological testing?
  - ❖ Will expert be asked to testify?
- ❖ Average cost: \$1000-1500
  - ❖ Depends on complexity of case and whether expert testifies
  - ❖ Some experts willing to provide opinion *pro bono*

# Packaging your case

- ❖ Provide information and records to expert
- ❖ Cover letter should spell out key question and scope of opinion requested
  - ❖ Provide legal context, including standard
    - ❖ Not required to opine to degree of medical certainty
    - ❖ Likely standard is preponderance of evidence
  - ❖ Include biographical information about client, as appropriate

# Packaging your case

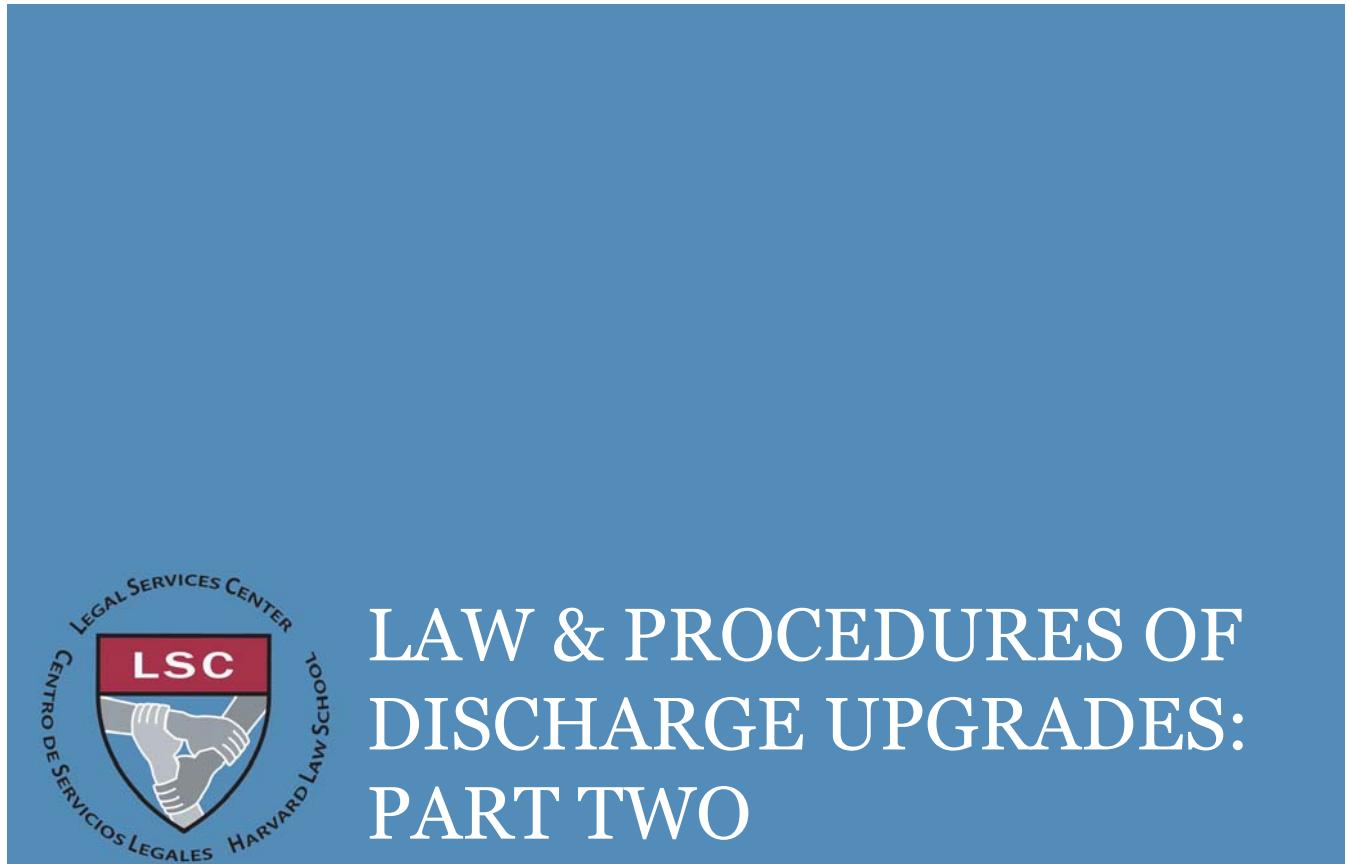
NOT TO BE USED FOR IDENTIFICATION OR DISCHARGE		THIS IS AN IMPORTANT RECORD KEEP IT		PRINT INFORMATION IN BOLD LETTERS AND SIGNATURE	
<b>CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY</b>					
1. NAME, CIVIL, FIRST, MIDDLE		2. DEPARTMENT, COMPANY AND BATTALION		3. SOCIAL SECURITY NO.	
4. GRADE RATE OR RANK		5. DATE OF BIRTH (MM/YY)		6. ADDRESS (CITY, STATE, ZIP)	
7. PLACE OF ENTRY INTO ACTIVE DUTY		8. PLACE OF RELEASE AT TIME OF THIS FORM AND DATE COMPLETED			
9. LAST DUTY ASSIGNMENT AND BATTALION		10. STATION WHERE REMOVED			
<b>11. COMMAND TO WHICH TRANSFERRED</b>  <b>12. PRIMARY SPECIALTY</b> (or number, rate and grade and specialty in order of priority) <b>13. OTHER SPECIALTIES</b> (or number and rates involving periods of one or more years)					
<b>14. DECORATIONS</b> (or number, date and place issued)					
<b>15. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN MEDALS AWARDED OR AUTHORIZED (or periods of service)</b>					
<b>16. MILITARY EDUCATION</b> (List each, number of weeks, and awards and your condition)					
<b>17. CONTRACTS</b> (List each, number of weeks, and awards and your condition)					
<b>18. MEMBERSHIP</b> (List each, name of organization, date joined, date left, and awards)					
<b>19. REMARKS</b>					
20. MAILING ADDRESS AFTER SEPARATION (Include P.O. Box)			21. NEAREST RELATIVE, Relation and address (Include P.O. Box)		
22. NUMBER IDENTIFIED ON THIS FORM			23. AUTHORITY TO NAME (Type last name, given, middle initial and signature)		
<b>24. SIGNATURE OF MEMBER BEING SEPARATED</b>  <b>25. SIGNATURE OF APPROVING OFFICER</b>  <b>26. SIGNATURE OF APPROVING AGENT</b>  <b>27. CHARACTER OF SERVICE (Check appropriate box)</b>  <b>28. DATE OF SEPARATION</b>  <b>29. SEPARATION PAYMENTS</b>  <b>30. SEPARATION CHECK</b>  <b>31. MEMBER CLASS</b>  <b>32. MEMBER REQUESTS COPY OF THIS FORM</b>  <b>33. MEMBER REQUESTS COPY OF THIS FORM</b>					
DD Form 214, NOV 88 Previous editions are obsolete					

- ❖ Provide copies of relevant military and medical records
    - ❖ Highlight key documents or sections of record for expert to review
    - ❖ Provide explanation of military specific documents if expert is not experienced in working with veterans

# Obtaining written opinion

- ❖ Set up phone call to check in after expert completes review of record or evaluation of client, but before they write opinion
    - ❖ Discuss preliminary findings
    - ❖ Don't waste time writing letter or report if opinion unhelpful
    - ❖ Determine whether further questions need to be answered
  - ❖ Decide preferred format for opinion
    - ❖ Letter? Evaluation report? Testing results?

# Questions?



Dana Montaldo, Veterans Legal Clinic

# Application Packet

---

- Cover Letter
- Application for Review (DD 149 or DD 293)
- Copy of DD 214
- Brief
  - Introduction
    - Introductory paragraph(s)
    - List of Contentions/Issues
  - Statement of Facts
  - Analysis/Arguments
  - Conclusion
- Exhibits

## Cover Letter

---

- Include language to the effect of:
  - “We request that you furnish copies of all regulations; case summaries, staff briefs, and memoranda; advisory opinions from any source; military or civilian investigation reports; and any other documents to be considered so that we have an opportunity to respond to those materials prior to the decision process.”
    - DRB: cite DODI 1332.28 E3.2.9.4.1,
- For DRB: if PTSD/TBI & contingency operation, then request expedited treatment and physician/psych., citing 10 USC 1553(d)

APPLICATION FOR CORRECTION OF MILITARY RECORD UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SECTION 1552 (Please read instructions on reverse side BEFORE completing this application.)				OAMC No. 0704-0003 OMB approval expires Oct 31, 2014
<p>The public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, Executive Services Directorate, Information Management Division, 4850 Mark Center Drive, Falls Church, VA 22041-5100, Attention: DOD Form Management Division, or to the Office of Management and Budget, Washington, DC 20585.</p> <p><b>DO NOT RETURN YOUR COMPLETED FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON THE BACK OF THIS PAGE.</b></p> <p><b>PRIVACY ACT STATEMENT</b></p> <p><b>AUTHORITY:</b> 10 U.S.C. 1552 and E.O. 9397, as amended (SSN).</p> <p><b>PRINCIPAL PURPOSE(S):</b> To initiate an application for correction of military record. The form is used by Board members for review of personnel records. Requests for a change in characterization or reason for military discharge issued to an individual. The appropriate Military Service's Discharge Review Board reviews the personnel records and makes recommendations to the Board. Completed forms are covered by the discretion of discharge review board and official military records SORNS maintained by each of the Military Services. The DOD Systems of Records Notices can be located at <a href="http://privacy.defense.gov/blanket_use_shrtm">http://privacy.defense.gov/blanket_use_shrtm</a>.</p> <p><b>DISCLOSURE:</b> Voluntary; however, failure to provide requested information may result in a denial of your application. An applicant's SSN is used to retrieve these records and links to the member's official military personnel file and pay record.</p> <p><b>ROUTINE USES:</b> The DoD Blanket Routine Users found at <a href="http://privacy.defense.gov/blanket_use_shrtm">http://privacy.defense.gov/blanket_use_shrtm</a> apply to this collection.</p> <p><b>DISCLOSURE:</b> Voluntary; however, failure to provide identifying information may impede processing of this application. The SSN is used by the Military Services to ensure the correct individual's official military personnel file is updated.</p> <p><b>1. APPLICANT DATA</b> (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION:</p> <p>a. BRANCH OF SERVICE (x one)      b. NAME      c. GRADE/RANK AT DISCHARGE      d. SOCIAL SECURITY NUMBER</p> <p>b. NAME (Last, First, Middle Initial)</p> <p>c. PRESENT OR LAST PAY GRADE      d. SERVICE NUMBER (If applicable)      e. SSN</p> <p><b>2. PRESENT STATUS WITH RESPECT TO THE ARMED SERVICES</b> (Active Duty, Reserve, National Guard, Retired, Discharged, Deceased)</p> <p><b>3. TYPE OF DISCHARGE</b> (If by court-martial, state the type of court)</p> <p><b>4. DATE OF DISCHARGE OR RELEASE FROM ACTIVE DUTY (YYYY/MM/DD)</b></p> <p><b>5. I REQUEST THE FOLLOWING ERROR OR INJUSTICE IN THE RECORD BE CORRECTED:</b> (Entry required)</p> <p><b>6. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST FOR THE FOLLOWING REASONS:</b> (Entry required)</p> <p><b>7. ORGANIZATION AND APPROXIMATE DATE (YYYY/MM/DD) AT THE TIME THE ALLEGED ERROR OR INJUSTICE IN THE RECORD OCCURRED:</b> (Entry required)</p> <p><b>8. DISCOVERY OF ALLEGED ERROR OR INJUSTICE</b></p> <p>a. DATE OF DISCOVERY (YYYY/MM/DD)</p> <p>b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED, STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THE APPLICATION.</p> <p><b>9. IN SUPPORT OF THIS APPLICATION, I SUBMIT AS EVIDENCE THE FOLLOWING ATTACHED DOCUMENTS:</b> (If military documents or medical records are pertinent to your case, please send copies. If Veterans Affairs records are pertinent, give regional office location and claim number.)</p> <p><b>10. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. (At no expense to the Government) (x one)</b></p> <p><b>YES, THE BOARD WILL DETERMINE MY APPLICATION BASED ON RECORDS AND EVIDENCE.</b></p> <p><b>11.a. COUNSELOR (If any) NAME (Last, First, Middle Initial) and ADDRESS (Include Zip Code)</b></p> <p>b. TELEPHONE (Include Area Code)</p> <p>c. E-MAIL ADDRESS</p> <p>d. FAX NUMBER (Include Area Code)</p> <p><b>12. APPLICANT MUST SIGN IN ITEM 15 BELOW.</b> If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name (print) and relationship by marking one box below.</p> <p><b>SPOUSE      WIDOW      WIDOWER      NEXT OF KIN      LEGAL REPRESENTATIVE      OTHER (Specify)</b></p> <p><b>13.a. COMPLETE CURRENT ADDRESS (Include Zip Code) OF APPLICANT OR PERSON IN ITEM 12 ABOVE.</b> (Forward notification of all changes of address.)</p> <p>b. TELEPHONE (Include Area Code)</p> <p>c. E-MAIL ADDRESS</p> <p>d. FAX NUMBER (Include Area Code)</p> <p><b>14. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)</b></p> <p><b>15. SIGNATURE (Applicant must sign here.)</b></p> <p><b>16. DATE SIGNED (YYYY/MM/DD)</b></p> <p><b>CASE NUMBER</b> (Do not write in this space.)</p>				

APPLICATION FOR THE REVIEW OF DISCHARGE FROM THE ARMED FORCES OF THE UNITED STATES (Please read instructions on Pages 3 and 4 BEFORE completing this application.)				OMB No. 0704-0004 OMB approval expires Oct 31, 2014
<p>The public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, Executive Services Directorate, Information Management Division, 4850 Mark Center Drive, Falls Church, VA 22041-5100, Attention: DOD Form Management Division, or to the Office of Management and Budget, Washington, DC 20585.</p> <p><b>DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.</b></p> <p><b>PRIVACY ACT STATEMENT</b></p> <p><b>AUTHORITY:</b> 10 U.S.C. 1552, DoD Instruction 1332.2B, and E.O. 9397 (SSN), as amended.</p> <p><b>PRINCIPAL PURPOSE(S):</b> To apply for a change in the characterization or reason for military discharge issued to an individual. The appropriate Military Service's Discharge Review Board reviews the personnel records and makes recommendations to the Board. Completed forms are covered by the discretion of discharge review board and official military records SORNS maintained by each of the Military Services. The DOD Systems of Records Notices can be located at <a href="http://privacy.defense.gov/govblanket_use_shrtm">http://privacy.defense.gov/govblanket_use_shrtm</a>.</p> <p><b>DISCLOSURE:</b> Voluntary; however, failure to provide identifying information may impede processing of this application. The SSN is used by the Military Services to ensure the correct individual's official military personnel file is updated.</p> <p><b>1. APPLICANT DATA</b> (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION:</p> <p>a. BRANCH OF SERVICE (x one)      b. NAME      c. GRADE/RANK AT DISCHARGE      d. SOCIAL SECURITY NUMBER</p> <p>b. NAME (Last, First, Middle Initial)</p> <p>c. GRADE/RANK AT DISCHARGE</p> <p>d. SOCIAL SECURITY NUMBER</p> <p><b>2. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11</b> (Forward notification of any change in address.)</p> <p>f. TELEPHONE NUMBER (Include Area Code)</p> <p>g. E-MAIL</p> <p>h. FAX NUMBER (Include Area Code)</p> <p><b>2. DATE OF DISCHARGE OR SEPARATION</b> (YYYY/MM/DD) (If date is more than 15 years ago, submit a DD Form 149)</p> <p><b>4. DISCHARGE CHARACTERIZATION RECEIVED</b> (x one)</p> <p>HONORABLE</p> <p>GENERAL UNDER HONORABLE CONDITIONS</p> <p>UNDER OTHER THAN HONORABLE CONDITIONS</p> <p>BAD CONDUCT (Specify Court-Martial only)</p> <p>UNCHARACTERIZED</p> <p>OTHER (Explain)</p> <p><b>5. BOARD ACTION REQUESTED</b> (x all that apply)</p> <p>CHANGE TO HONORABLE</p> <p>CHANGE TO GENERAL UNDER HONORABLE CONDITIONS</p> <p>CHANGE TO UNCHARACTERIZED (Not applicable to Army or service members with over 6 months of service)</p> <p>CHANGE NARRATIVE REASON FOR SEPARATION</p> <p><b>6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST</b> (Continue in Item 13. See instructions on Page 3.)</p> <p><b>7. (If applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYY/MM/DD)</b> <b>AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.</b></p> <p><b>8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE:</b> (Continue in Item 14. If military documents or medical records are relevant to your case, please send copies.)</p> <p><b>9. TYPE OF REVIEW REQUESTED (x one)</b></p> <p>CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME.</p> <p>I AND/OR (counselor/representative) WILL NOT APPEAR BEFORE THE BOARD.</p> <p>I AND/OR (counselor/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.</p> <p>I AND/OR (counselor/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO (enter city or state).</p> <p><b>10. a. COUNSELOR/REPRESENTATIVE (If any) NAME (Last, First, Middle Initial) and ADDRESS</b> (See Item 10 of the instructions about counsel/representative.)</p> <p>b. TELEPHONE NUMBER (Include Area Code)</p> <p>c. E-MAIL</p> <p>d. FAX NUMBER (Include Area Code)</p> <p><b>11. APPLICANT MUST SIGN IN ITEM 12.a. BELOW.</b> If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name (print) and relationship by marking a box below.</p> <p><b>SPOUSE      WIDOW      WIDOWER      NEXT OF KIN      LEGAL REPRESENTATIVE      OTHER (Specify)</b></p> <p><b>12. CERTIFICATION:</b> I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)</p> <p><b>4. SIGNATURE - REQUIRED (Applicant or person in Item 11 above)</b></p> <p><b>5. DATE SIGNED - REQUIRED (YYYY/MM/DD)</b></p> <p><b>CASE NUMBER</b> (Do not write in this space.)</p>				

DD FORM 149, NOV 2012      PREVIOUS EDITION IS OBSOLETE.      Adobe Designer 6.0

DD FORM 293, NOV 2012      PREVIOUS EDITION IS OBSOLETE.      Page 1 of 4 Pages  
Adobe Professional 6.0

## Statement of Facts

- Include all facts necessary to support contentions, with citations to exhibits
- Tell full narrative, not just about circumstances surrounding discharge

# Arguments

---

- DRBs → contentions
- BCMRs → issues
- Identify contentions/issues as propriety/error, equity/injustice, or both

## Arguments: Research

---

- Prior decisions of the Boards are available at  
<http://boards.law.af.mil/>
- Compare separation regulations applied at discharge with current regulations
  - Marine Corps: <http://www.hqmc.marines.mil/Agencies/USMCFOIA/MARCORSEPMAN.aspx>
  - Army: [http://whs.mil.campusguides.com/AR\\_635](http://whs.mil.campusguides.com/AR_635) (Pentagon Library)
  - Other Branches: Internet Search and/or FOIA

# Arguments: Propriety/Error

- Violation of Constitution, statute, regulation, or other law
- Examples of violations of separation regulations:
  - Discharge not approved by commander with requisite rank/authority
  - Use of record in discharge proceedings that is “limited use information” (AR 600-85)
  - Personality disorder: character is honorable unless entry-level separation or general is warranted
  - Weight control failure: character is honorable unless entry-level separation applies (AR 635-200, ch. 18)

# Arguments: Equity/Injustice

- Separation regulations substantially more favorable now
- Post-service conduct and accomplishments
- Misconduct mitigated by circumstances, including length/quality of service, combat service, deployment, marital/family issues, etc.
- Misconduct mitigated by unrecognized, undiagnosed, and/or untreated mental condition
- Repeal of Don’t Ask, Don’t Tell (and related policies)

→ See 32 CFR 70.9(c) standards for equity

# Arguments: Equity/Injustice

Largely unsuccessful or difficult-to-prove arguments include:

- Discrimination on the basis of race, sex, class, gender, religion, sexual orientation\*
- Command mistreatment/discrimination
- Youth/immaturity\*
- Access to veterans' benefits
- Improvement of employment prospects

\*Despite 32 CFR 70.9(c)(3)(ii) listing among factors possibly warranting equitable relief: age; educational level; and discrimination, including “unauthorized acts as documented by records or other evidence.”

# Arguments: PTSD

## Hagel Memorandum (Sept. 3, 2014)

- Class action by Vietnam veterans with OTH discharges based on misconduct attributable to undiagnosed PTSD
- Provisions include:
  - “liberal consideration” of
    - military records that document symptoms of PTSD
    - PTSD diagnosis by civilian provider
  - “special consideration” of VA service-connected PTSD dx
  - Liberal waiver of time limits for new applications & reconsiderations
  - Timely consideration of applications
- Army Guidance that applies to ABCMR & ADRB

# Arguments: DADT Repeal

- More than 13,000 gay and lesbian servicemembers discharged between 1994 and Sept. 2011 under DADT
- Don't Ask, Don't Tell (DADT), 10 USC 654, repealed Sept. 20, 2011
  - Statements about sexual orientation and homosexual conduct no longer a bar to military service or a factor in promotion or separation
- May apply for change to character of service, narrative reason, and RE Code
- If previously filed for upgrade and denied, can file a new petition
- Army guidance: DADT repeal is “relevant” but not itself an error or injustice that invalidates action that was proper at the time

# Arguments: Personality Disorder

- Between 2001-2010, 31,000+ discharged for Personality Disorder\*
  - Servicemember with psychiatric condition (often PTSD or TBI) discharged with narrative reason of “Personality Disorder”
    - Administrative separation, not medical retirement
    - Personality Disorder not eligible for VA compensation
    - Stigmatizing/Personal information on DD-214
- Separation regulations changed substantially in the aftermath of the reports (DODI 1332.14)

# Arguments: Strategy

- Propriety/Error arguments are likely strongest
- Need “substantial credible evidence” to overcome presumption of gov’t regularity
  - Cannot merely point to absence of document in record
- For mental-health related claim, have strong medical opinion
  - If applicable, medical professional testify at hearing
- Prioritize quality over quantity for arguments
  - Usually 3 – 6 contentions
- Remember that the audience likely does not have formal legal training

# Conclusion

- Short & clearly identifying relief sought
  - “For the foregoing reasons, we respectfully request that . . .”

# DRB Hearing: Preparation

---

- Moot opening/closing statements
- Moot questioning of all witnesses
- Submit brief/exhibits to Board
  - Army guidance requests materials one month before
  - Courtesy to send five copies
- Request permission for telephonic appearance(s) by witness(es)

# DRB Hearing: Procedures

---

- One Board member is the recorder
- Request to review DRB file prior to hearing
- Present opening & closing statements
- Present veteran's testimony
  - Direct examination by attorney
  - Questioning by Board members
  - Attorney may follow up with clarifying questions
- Present witness testimony
  - Can present by telephone

# Procedures: Timing

- Discharge Review Boards
  - Filing of application to determination on records review: 6-12 months
  - Filing of application to personal hearing: 3-6 months
  - Personal hearing to determination: 1-3 months
    - \*PTSD/TBI & contingency operation → expedited
- Records Correction Boards
  - Filing of application to determination: 9-18 months
    - Congress mandates 90% of cases completed by 9 months and 100% of cases by 18 months

# Appeal

- Can request names/votes of members & recording of hearing (if applicable)
- Can sometimes seek reconsideration
- Can file complaint in federal court
  - Administrative Procedure Act, 5 USC 500 *et seq.*
    - 5 USC 706(2)(A): “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”
    - Review is on the administrative record
    - Venue in district court where veteran resides or in DC
  - Tucker Act: waiver of sovereign immunity for breach of contract claims
    - “Big” Tucker Act, 28 USC 1491
    - “Little” Tucker Act, 28 USC 1334
  - Fifth Amendment Due Process (under *Bivens*)

# Questions?



GATHERING &  
DEVELOPING EVIDENCE

Daniel Nagin, Veterans Legal Clinic

# Evidence

---

- Two Categories
  - Pre-existing evidence
  - Developing new evidence
- Types
  - Gov't/military records
  - Statements/affidavits
  - Medical records
  - Expert opinions
  - Studies/newspapers
  - Social media
  - Anything at all that might be helpful!

## Relevant Time Periods

---

- Pre-Military Service Evidence
- In-Service Evidence
- Post-Service Evidence

# Pre-Military Service Evidence

- Potential Relevance – provide context
  - Trauma in early life
  - Personal/Family Hardship
  - Pre-existing medical or mental health issues
  - Achievements
  - Reasons for Enlisting
  - Values
  - Commitment to service

# In-Service Evidence

- Potential Relevance – nexus to misconduct
  - Trauma
  - Injury
  - Stressors
  - Medical/psych. treatment
  - Misconduct as outlier
  - Sacrifice
  - Provide context
  - Hardship
  - Service
  - Irregularities/Due process violations

# Post-Service Evidence

- Potential Relevance – positive trajectory
  - Overcome problems
  - Achievements
  - Commitment to service
  - Stability—financial, familial, and otherwise
  - In-service misconduct as outlier
  - Ongoing harm caused by LTH discharge

## Where to Obtain Evidence

- Client
- Military
- Family
- Friends/Buddies
- Employers
- Clergy
- Schools
- Teachers
- Government—local, state, federal
- Courts
- VA
- Law Enforcement
- Drug test results
- Medical Providers
- Medical Experts
- Anyone and anywhere else that might help you win the case!

# Military Records

- Use Standard Form (SF) - 180 (Request Pertaining to Military Records)
- Available at: <http://www.archives.gov/veterans/military-service-records/standard-form-180.html>
- Check boxes requesting:
  - DD-214
  - All documents in Official Military Personnel File (OMPF)
  - Service Medical Records (specify location, dates, etc.)
  - Other (ask for anything else not covered by above)

## Submitting the SF-180

- Follow instructions on SF-180 for correct mailing address based on branch of service and period of service
  - Send certified mail RRR
- If no response within 1 month or incomplete response, re-send request conspicuously marked as “second request”
- Note: If veteran already has pending petition before a DRB or BCMR/NR, the Board will likely already be in possession of the veteran’s OMPF

# Military Records— Special Considerations

- Outpatient Military Health Records (“the Health Record”)
  - Depending on branch and period of service, may be part of OMPF or may be in custody of VA
  - If in custody of VA, use VA Form 3288
- Inpatient Military Health Records
  - SF-180 should yield these records, but best to be as specific as possible in request on the form
- Court-Martial Records / Transcripts
  - Not part of OMPF
  - Request from designated office for each branch
- Joint Services Records Research Center (JSRRC)
  - Historical info. re individual units / stressors
  - Write directly to the JSRRC with a specific records request

# Military Records--Evaluations

- Look for evaluations at multiple points in time
  - Assessments of veteran’s performance/aptitude
- Each branch has own standards and evaluation rubric
  - Consider whether evaluations show behavior that led to discharge as outlier
  - Note other patterns in evaluations that mitigate behavior in question
- If possible, consult with veteran from that branch of service/era about what evaluation scores indicate

# The Client Interview

- Everything is potentially relevant
  - pre-military service
  - military service
  - post-service
- Sample interview outline in appendix
- Even if client provides his/her service records, still request complete records using SF-180, etc.

# Buddy Statements

- Written statements from fellow servicemembers
- Can be critical pieces of evidence
- Ask client to provide names/contact info.
- Use social media, etc., to track down as needed
- Decide who should make initial contact
- Obtain as many buddy statements as practicable
- Can be letters or sworn statements
- The higher in chain of command, the better
- Can be more difficult to obtain favorable statements from buddies still in service

# Confirm the Obvious/Anticipate Board Members' Skepticism

- If veteran's father committed suicide during client's military service ...
  - Submit the death certificate
- If veteran has had no (or limited) criminal justice involvement post-service ...
  - Submit criminal record report
- If veteran's case implicates substance abuse issues ...
  - Arrange for veteran to undergo regular drug tests

## When to Stop?

- Tracking down evidence and developing evidence are critical elements in cases
- As evidence comes in and your case theory evolves, decide what quantum of evidence and what types of evidence will maximize your persuasiveness
- Independent medical opinion is often lynchpin of case – but by itself such opinions are usually not sufficient to prevail