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“Bad Paper”: How Military Discharge Status Affects VA Benefits Eligibility.

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11.0—Veterans' claims.

Many veterans and even some Department of Veterans Affairs (VA) healthcare professionals assume that “bad paper” (or a less-than-honorable discharge status from the military) automatically disqualifies individuals from accessing VA benefits like healthcare, disability compensation, and educational assistance. Though entitlement to benefits is unlikely if a veteran received a less-than-honorable discharge, VA does make exceptions in certain cases. If the veteran requests medical treatment or submits a disability compensation claim, VA can then evaluate the “character of discharge” on a case-by-case basis, and a favorable outcome may enable access to healthcare and

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other benefits.³ The circumstances of the discharge significantly influence the likelihood of success.

Types of Discharge Status

A military discharge is accompanied by a “characterization of service” that usually falls into one of six categories: honorable, general under honorable conditions, other than honorable (OTH), uncharacterized separations, bad conduct, and dishonorable.⁴

1. **Honorable Discharge:** An honorable discharge grants veterans full entitlement to all VA benefits, including disability compensation, educational support, healthcare, and vocational assistance.⁵
2. **General Discharge Under Honorable Conditions:** A general discharge signifies having met the requirements of service, possibly with minor disciplinary issues or failure to meet some standards.⁶ Veterans with general discharges under honorable conditions may be eligible for all VA benefits except GI Bill education benefits.⁷
3. **Other Than Honorable (OTH) Discharge:** An OTH discharge indicates significant departures from expected conduct, protocol, and performance, such as security violations or serious misconduct endangering others.⁸ (Note that veterans have long reported misuse of OTH characterizations in cases where

³ 38 U.S.C. § 5303; 38 C.F.R. § 3.12 (2023).

⁴ APPLY FOR BENEFITS AND YOUR CHARACTER OF DISCHARGE, https://www.benefits.va.gov/benefits/character_of_discharge.asp (last visited Feb. 16, 2024).

⁵ 10 U.S.C. § 1553; 32 C.F.R. § 724.109 (a)(1) (2023); *see, e.g.*, Army Reg. 635-200, Active Duty Enlisted Administrative Separations, ¶ 3-7(a) (June 28, 2021).

⁶ 10 U.S.C. § 1553; 32 C.F.R. § 724.109 (a)(2); *see* Army Reg. 635-200 ¶ 3-7(a).

⁷ 38 U.S.C. § 3311(c)(1); 38 C.F.R. § 21.9520(a)(2) (2023) (requiring honorable discharge for GI Bill education benefits absent specific circumstances).

⁸ 10 U.S.C. § 1553; 32 C.F.R. § 724.109 (a)(3); *see* Army Reg. 635-200 ¶ 3-7(c).

misconduct was linked to post-traumatic stress disorder, traumatic brain injury, military sexual trauma, or (before 2011) sexual orientation.)⁹ Even though this is an undesirable discharge, VA will consider eligibility for some benefits on a case-by-case basis through the character of discharge process.¹⁰

4. Uncharacterized Separations: A separation from service occurring before the member completed 180 days of military service.¹¹ Veterans with uncharacterized discharges due to entry-level separation are also eligible for VA benefits provided the statutory bar does not otherwise apply.¹²
5. Bad Conduct Discharge: A bad conduct discharge is a punitive discharge resulting from a court-martial, either a special court-martial (the equivalent of a federal misdemeanor court) or a general court-martial (reserved for crimes that would be felonies if committed by civilians).¹³ It is rare but possible for a veteran with a Bad Conduct Discharge to be deemed eligible for any VA benefits.
6. Dishonorable Discharge: The most severe discharge status is dishonorable, typically reserved for serious offenses like desertion, rape, or murder.¹⁴ Individuals with dishonorable discharges are immediately ineligible for all VA benefits.¹⁵

⁹ OUTVETS, *Turned Away: How VA Unlawfully Denies Health Care to Veterans with Bad Paper Discharges*, 1, 4 (2020), <https://legalservicescenter.org/wp-content/uploads/Turn-Away-Report.pdf>.

¹⁰ APPLY FOR BENEFITS AND YOUR CHARACTER OF DISCHARGE, https://www.benefits.va.gov/benefits/character_of_discharge.asp (last visited Feb. 16, 2024).

¹¹ 10 U.S.C. § 1553; 32 C.F.R. § 724.109 (a)(4); see Army Reg. 635-200 ¶ 3-9.

¹² 38 U.S.C. § 101(2); 38 U.S.C. § 5303.

¹³ 10 U.S.C. § 1553; 32 C.F.R. § 724.111(a); see Army Reg. 635-200 ¶ 3-11.

¹⁴ 10 U.S.C. § 1553; 32 C.F.R. § 724.111(b); see Army Reg. 635-200 ¶ 3-10.

¹⁵ 38 U.S.C. § 501; 38 C.F.R. § 3.12(d).

“Other Than Dishonorable”: The Character of Discharge Review Process

Individuals who have received less-than-honorable discharges can ask VA to assess eligibility for benefits on a case-by-case basis. They initiate the process by submitting a request for medical treatment or an application for compensation or pension to their local VA Regional Office.¹⁶ VA then reviews the incidents that led to the discharge, compares the incidents to the statutory and regulatory bars to benefits, considers mitigating circumstances (such as mental illness or service-incurred conditions) and then makes a determination of whether the discharge was “under conditions other than dishonorable.”¹⁷

For veterans with multiple periods of service, VA evaluates eligibility for benefits for each term separately.¹⁸ This means, for example, that conditions incurred during a term ending in an honorable discharge might be eligible for benefits, but VA might deny eligibility for conditions that the individual incurred in another term that ended with a less-than-honorable discharge.

Statutory and Regulatory Bars to VA Benefits

VA is prevented by law from granting entitlement to benefits if the reason for the veteran’s discharge qualifies as one of the statutory bars to benefits:

- Sentence of a general court-martial

¹⁶See 38 U.S.C. § 101; APPLY FOR BENEFITS AND YOUR CHARACTER OF DISCHARGE, https://www.benefits.va.gov/benefits/character_of_discharge.asp (last visited Feb. 16, 2024).

¹⁷ 38 U.S.C. § 101 (defining Veteran in part as “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”).

¹⁸ 38 U.S.C. § 5303(b); 38 C.F.R. § 3.12(b).

- Being a conscientious objector who refused to perform military duty, wear the uniform, or otherwise comply with lawful orders of competent military authority
- Desertion
- Resignation by an officer for the good of the service
- Absence without official leave (AWOL) for a continuous period of 180 days or more, without compelling circumstances to warrant such prolonged unauthorized absence (as determined by VA)
- Requesting release from service as an alien during a period of hostilities¹⁹

There are also regulatory bars to benefits, found under 38 CFR § 3.12(d). An individual's character of discharge is considered to have been issued "under dishonorable conditions" if they were released under any of the following circumstances:

- Acceptance of an undesirable discharge to escape trial by general court-martial²⁰
- Mutiny or spying²¹
- An offense involving moral turpitude (generally including the conviction of a felony)²²
- Willful and persistent misconduct²³
- Homosexual acts involving aggravating circumstances or factors affecting the performance of duty (e.g., child molestation, homosexual prostitution, homosexual acts or conduct)

¹⁹ 38 U.S.C. § 5303.

²⁰ 38 U.S.C. § 5303(a); 38 CFR § 3.12(d).

²¹ *Id.*

²² *Id.*

²³ *Id.*

accompanied by coercion or assault, and homosexual acts or conduct when a service member has taken advantage of his or her superior rank, grade, or status)²⁴

Some exceptions do exist to the statutory and regulatory bars. One example is the insanity exception, with insanity being defined in 38 C.F.R. § 3.354.²⁵ If VA determines an individual to have been insane when committing one of the statutory or regulatory bars to benefits, VA will not dismiss the statutory or regulatory bar, but the veteran may still get benefits.²⁶

Requests to Change Military Discharge Status

Another potential strategy for securing VA benefits with a less-than-honorable discharge status is for veterans to request a change to the discharge status itself. Individuals seeking to change their discharge status can appeal to the Discharge Review Board or the Board for Correction of Military Records.²⁷

- The Discharge Review Board can look at discharge upgrade requests that were within 15 years of discharge from service. It can only look at general, OTH, and special court-martial discharges; it cannot look at dishonorable or general court-martial discharges.²⁸
- The Board of Corrections of Military Records can look at discharge requests that fall beyond that 15-year period. Individuals will need

²⁴ *Id.*

²⁵ 38 U.S.C. § 5303(b); 38 CFR § 3.354 (2023).

²⁶ 38 U.S.C. § 5303(b); 38 CFR § 3.354.

²⁷ 10 U.S.C. § 1553; REQUEST A DISCHARGE UPGRADE OR CORRECTION, <https://www.va.gov/resources/request-a-discharge-upgrade-or-correction/>, (last visited Feb. 16, 2024) (providing an interactive step-by-step questionnaire depending on the claimant's branch of service and other pertinent information). Each Branch has its own "Discharge Review Board."

²⁸ 10 U.S.C. § 1553; ARMY DISCHARGE REVIEW BOARD, <https://arba.army.pentagon.mil/adrb-faq.html>, (last visited Feb. 16, 2024). As indicated previously, each branch has its own review Board.

to explain why the discharge was wrong, either factually or legally.²⁹

Like character of discharge determinations, discharge upgrade determinations are appealable, within the right timeframes.

Conclusion

It is crucial for veterans navigating post-military life to understand military discharge status and its implications for VA benefits eligibility. While less-than-honorable discharge status may initially seem restrictive, veterans should explore their options and seek assistance from veterans' service organizations (VSOs) or legal representatives to ensure fair consideration of their eligibility for benefits.

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²⁹ 10 U.S.C. § 1553(a); THE ARMY BOARD FOR CORRECTION OF MILITARY RECORDS, <https://arba.army.pentagon.mil/abcmr-overview.html>, (last visited Feb. 16, 2024).

³⁰ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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