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UPGRADING YOUR MILITARY DISCHARGE AND CHANGING THE REASON FOR YOUR DISCHARGE

This memorandum deals with two closely-related topics: (1) upgrading your military discharge and (2) changing the reason for your discharge.

A **discharge upgrade** changes the “**character of service**” shown on your DD-214 discharge certificate.

You may have been told that your discharge would automatically be upgraded after six months. That's not true. It has never been true.

Today, most certificates show the “character of service” as either Honorable, General (Under Honorable Conditions), Other Than Honorable, Bad Conduct or Dishonorable. (In the past, Other Than Honorable discharges were called Undesirable discharges or “blue” discharges.)

However, some recruits do receive “uncharacterized” discharges, called Entry-Level Separations, for unsatisfactory performance, unsatisfactory conduct, or both.

Technically, a **change in the reason for your discharge** is a change in the “**narrative reason for separation**” shown on your DD-214.

Among the many possible “narrative reasons for separation” are “misconduct,” “disability,” “personality disorder,” and “homosexual conduct.” These reasons aren’t just words on a piece of paper. They’re labels that can destroy lives.

Before we get started, an important note:

You may be able to get most VA benefits even if your discharge isn’t upgraded, through a process known as a Character of Service Determination (CSD). In addition, if you stayed in the military beyond your original ETS date, there are special rules that help you to get most VA benefits. For more information, review the memos on CSD’s and Back-to-Back and Conditional Discharges at www.stp-sf.org/guides/character and www.stp-sf.org/guides/b2b.

UPGRADING YOUR MILITARY DISCHARGE

You served your country, but your military career ended with “bad paper”—a discharge that was less than fully Honorable.

You may have been told that your discharge would automatically be upgraded after six months. That’s not true. It has never been true.

If you want to upgrade your discharge, you’ll need to take action.

Statistically, the odds are against you. Most upgrade applications are denied.

Why is the success rate so low? Of course, not everyone who applies for an upgrade deserves one. But there are at least two other reasons for the sizeable number of unsuccessful applications:

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1. Each discharge upgrade application is reviewed by a panel of civilians or a panel of military personnel. The panel starts with the **assumption that the discharge was proper**. It’s up to the veteran to persuade a majority of the panel members that the discharge should be upgraded.
2. Most of those who apply have no understanding of how the process works, and no idea of what it takes to win. Preparation is crucial—and all too often lacking.

How much is at stake? “Bad paper” doesn’t affect your right to most government benefits, such as SSI, Social Security Disability Insurance, and welfare. But “bad paper” **can** cost you VA benefits. It can limit your job prospects. It can damage your reputation and destroy your self-esteem.

Discharge upgrading is often a complicated process. Later on, we’ll discuss the possibility of getting expert assistance, which is always a good idea. In any case, we believe the information in this memorandum should help you to prepare an effective application.

1. The Discharge Upgrading Process

Who decides?

The Air Force, Army, and Coast Guard have their own Discharge Review Boards (**DRB’s**). The Navy and Marine Corps have a joint **DRB**.

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military.*

These are panels of commissioned officers, or sometimes a mix of officers and senior NCOs.

The Air Force, Army, and Coast Guard also have their own Boards for Correction of Military Records (**BCMR's**). The Navy and Marine Corps have a joint Board for Correction of Naval Records (**BCNR**).

These are panels of **civilians** working for the military branches.

What powers do the Boards have?

A **DRB** has limited powers. It can upgrade a discharge, **unless** the discharge resulted from a General Court-Martial. It can also change the reason for a discharge, **except** that it can't change the reason to—or from—a disability discharge. And that's all a **DRB** can do.

If you're seeking anything else or anything more, you must apply to a **BCMR** or **BCNR**. Fortunately, these Boards can change or correct almost all of your military records.

A **BCMR** or **BCNR** won't accept your application unless you've used up all of the other possible ways of getting what you're after. (A lawyer would say that you must first “exhaust your other remedies.”) If all you're after is a discharge upgrade, a change in the reason for your discharge, or both, you must first apply to a **DRB**, unless the deadline for applying to the **DRB** has passed.

There are two exceptions to the “exhaustion of remedies” rule: you can bypass the **DRB** and apply directly to a **BCMR** or **BCNR** if your discharge was the result of a General Court-Martial, **or** if you're trying to change your discharge to—or from—a disability discharge. That's because the **DRB** doesn't have the power to act in either of these cases.

What are the deadlines?

You have **15 years** from the date of your discharge to apply to a **DRB**. This is a firm deadline. There are no exceptions.

The deadline for applying to a **BCMR** or **BCNR** is less strict. You're required to apply within **three years** of the date you first discover the “error or injustice” that you're seeking to correct.

But there are **two exceptions** to this rule. **First**, if a **DRB** reviews your application

and denies it, you then have three years from the date of the denial to apply to a **BCMR** or **BCNR**. That's true even if you first discovered the error or injustice much earlier than three years ago.

Second, a BCMR or BCNR has the power to ignore, or “waive,” the three-year deadline “in the interest of justice”—and it often does, especially if you’ve laid out a good case for upgrading your discharge.

If the three-year deadline has passed, you'll need to give the Board a good reason to process your application anyway. For example, the Board may be willing to waive the filing deadline if you can honestly tell it that you didn't know the Board existed until you read this memorandum.

But beware: before you list this reason on your application, you'll need to go through your military records. You may find documents showing that you **were** notified of the three-year deadline. For information about obtaining your records, see Section 2 of this memorandum.

What do the Boards look for?

A **DRB** considers two basic issues: **“equity”** (or fairness) and **“propriety”** (or legality).

If you believe your discharge was unfair, or **“inequitable,”** you'll need to explain why. For example, if you received an Other Than Honorable discharge for a single offense after years of faithful service to your country, you could argue that the discharge was inequitable.

If you're claiming illegality, or **“impropriety,”** you're claiming that the military didn't follow its own rulebook when it discharged you. You'll need to explain how the military ignored or misapplied a specific rule, regulation, law, or procedure that was in effect at the time of your discharge.

The **BCMR** and **BCNR** use different terms for the same two concepts. They talk about correcting an **“error”** or **“injustice.”**

But **“error,”** like the **DRB's** “impropriety,” is about *illegality*. And **“injustice,”** like the **DRB's** “inequity,” is about *unfairness*.

With all of the Boards, your chances for a discharge upgrade will improve if you can point to a positive personal history since you left the military. Of course, your service records will say nothing about what has happened since the time of your

discharge, so you'll need to assemble this information on your own.

The only basis for upgrading a punitive discharge is clemency.

Character references are essential. You'll want to submit at least three to five letters from those who know you well, describing your achievements since your return to civilian life, and attesting to your honesty, integrity, work ethic, commitment to your family, and commitment to your community.

You can ask your employment supervisor, your professor, your spiritual leader, or a co-worker, close friend, relative, or community leader to write on your behalf.

You'll also want to submit **documentary evidence** of your progress. For example, if the use of drugs or alcohol—even just one-time use—played a part in your discharge, you must present evidence that you've been clean and sober. Ideally, you should have a statement from a doctor, or evidence that you successfully completed a treatment program.

If you've married since you left the military, submit your marriage certificate. If you now have children, submit their birth certificates. If you've attended school or college since your discharge, submit a copy of your transcript or diploma, or both.

If possible, submit a statement from your local police department stating that you have no criminal record since your discharge.

Although a positive post-service history is always important, it's especially important if you're trying to upgrade a punitive discharge—a Bad Conduct or Dishonorable discharge after a court-martial. The only basis for upgrading a punitive discharge is **clemency**. In other words, the Board must find good reason for treating you compassionately, and upgrading your discharge despite your court-martial conviction. For that reason, it's essential to present the strongest possible evidence of stellar achievements since your military discharge.

When should you file your application?

Because the Boards usually focus on your post-service history, you'll need to think carefully about **when** to submit your application. Of course, you don't want to miss the deadline, but it's often better to wait until you can point to impressive achievements in civilian life. In many cases, it's best to have **at least five years of positive post-service history** before you apply.

But what if your major argument—or your **only** argument—is that the military didn't follow its own rules and regulations when it discharged you?

In this case, you're making a technical **legal** argument about “**error**” or

“impropriety,” so your post-service history will be mostly beside the point. That means you can probably submit your application much sooner.

Can you get help with your application?

A Veterans Service Organization or legal aid provider may be able to help with your discharge upgrade application.

The Boards won't appoint an attorney to represent you. If you want an attorney or representative, you'll need to find one on your own. Unfortunately, there are very few attorneys with experience in discharge upgrades, and they're usually expensive.

A Veterans Service Organization (VSO) may be able to give you free assistance. For a list of VSO's visit www.stp-sf.org/guides/vsos. In most cases, however, the assistance is limited to filling in the blanks on the application form, and perhaps accompanying you to a hearing. It's likely that you'll still need to do much of the work on your own, or with the help of a friend or relative. Legal aid providers in some communities have recently expanded their services to veterans. You may want to ask providers in your area if they can assist you in applying for an upgrade.

The Board **cannot** order witnesses to appear at the hearing, and it will seldom help you to obtain records that might be important to your case. If there are witnesses or records that you need, you'll need to secure them on your own, or with the assistance of an attorney or representative.

But please note: once you file your application, the Board **will** obtain your service personnel and medical records. **At that point, you won't be able to order your own copies of these records.** That's why it's important to get all of your records before you submit your application, if possible. For information about ordering your records, see Section 2 of this memorandum.

How do the Boards operate?

With a DRB, you have a choice. You can choose between a Documentary Review and a Personal Appearance Review.

In a Documentary Review, the **DRB** considers evidence from your service records, together with any other written evidence or argument that you submit. You tell your story on paper, and explain why you think your discharge should be upgraded.

In a Personal Appearance Review, the **DRB** also considers evidence from your service records, together with any other paperwork you submit, but you're also able to tell your story and make your arguments directly to a panel of military personnel. They'll have a chance to judge your seriousness and sincerity—indeed,

your personality and character. If you make a favorable impression, the panel is more likely to make a favorable decision.

*Know what to expect at
a Personal Appearance
Review hearing.*

You can submit paperwork at the hearing, but it's best to submit it well in advance, if possible. Be sure to submit a complete list of the issues that you want the Board to consider.

If you apply to a **DRB**, it's almost always better to request a Documentary Review first—even though Personal Appearance Reviews do have a higher success rate.

If you choose a Personal Appearance Review first, you'll forfeit the right to a Documentary Review later on.

On the other hand, if the Board turns you down after a Documentary Review, you can then apply for a Personal Appearance Review, as long as you're still within 15 years of your discharge date. That gives you two chances for an upgrade at the **DRB**. And the unfavorable Documentary Review decision will likely give you clues to the evidence and arguments that you should present at the Personal Appearance Review.

All of the **DRB's** hold Personal Appearance Review hearings in or near Washington, D. C. Although the Air Force and Army's **DRB's** occasionally visit other cities to conduct hearings, they visit so seldom that you'll probably need to travel to the D.C. area, unless you're lucky.

Personal Appearance Review hearings are “informal.” Courtroom rules of evidence don't apply. You can give unsworn testimony, testify under oath, or choose not to speak at all. You can have an attorney or representative speak for you. You can present witnesses and offer documentary evidence. You (or your attorney or representative) can make opening and closing statements.

No one from the military will show up at the hearing to argue that your discharge **shouldn't** be upgraded. But the Board members are allowed to question you aggressively, and they will. They're almost always courteous, but it's not unusual for one or more of them to assume the role of an adversary, trying to put you on the defensive.

Although the hearing is “informal,” it's not a free-for-all. The entire proceeding will be recorded. You'll be facing a panel of senior military personnel. They'll expect you to be well-prepared, well-organized, and respectful.

You'll be telling a story—your story. If that story doesn't jibe with the

Let the facts speak for themselves.

documentary record, you'll need to explain why. What does the paper record get wrong? What facts are missing? Is the record misleading?

Make sure you have a timeline of events. The panel is likely to have trouble following your story if you jump around, talking about events out of chronological order.

If you believe you were the victim of an injustice, tell what happened and why. Don't rant. Don't speak ill of the military. Present the facts calmly and logically, and let the facts speak for themselves.

If you don't have an attorney or representative, you may want to hold a "dress rehearsal" for the hearing. You can recruit a friend to play "devil's advocate," asking you the toughest questions that you think the panel may ask. That way, you can prepare the most effective answers well in advance. Remember, you won't get an upgrade unless a majority of the panel votes to grant you one. And the panel will start with the assumption that your discharge was proper. It's up to you to prove otherwise.

Most BCMR and BCNR decisions are based on paperwork only. These Boards look at your military records, together with any other written evidence or arguments you submit. Very rarely will they give you permission to tell your story in person at a hearing. If they do give you that option, you'll need to travel to the Board headquarters, in or near Washington, D. C., at your own expense.

You may still want to **request** a hearing, even though you're unlikely to get one. A number of experienced advocates believe a **BCMR** or **BCNR** will see your request as an indication that you're serious about pursuing a discharge upgrade.

Don't expect to learn the Board's decision at the hearing. **All** of the Boards—**DRB**, **BCMR**, and **BCNR**—are required to issue written decisions analyzing all of the issues you raise. You usually get the decision about six to eight weeks after the hearing.

With a hearing, the entire process, from submitting your application to getting a decision, often takes a year or two. Even without a hearing, the process is likely to take at least a year.

However, the **DRB's** have a special rule for veterans with post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) that should shorten the waiting time.

The first step is to make sure you have all the documents you'll need.

You can ask the **DRB's** for expedited processing of your discharge upgrade application in two circumstances:

- (1) If your application is based, in whole or in part, on matters relating to your PTSD or TBI, the Board **must** expedite a final decision.
- (2) If you were deployed in support of a **“contingency operation”** while on active duty—if you served in Iraq or Afghanistan, for example—and were later diagnosed by a physician, clinical psychologist, or psychiatrist with PTSD or TBI as a result of that deployment, the Board deciding your application **must** include a physician, clinical psychologist, or psychiatrist, and the Board **must** expedite a final decision.

If you move while your application is pending, be sure to notify the Board of your new address. Otherwise, you may not get a copy of its decision. Write to the Board at the address shown at the end of its application form. If you need a copy of the form, see the next paragraph.

2. Preparing Your Application

It's easy to download the forms you'll need. For a **BCMR** or **BCNR** application (DD Form 149), visit www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0149.pdf. For a **DRB** application (DD Form 293), visit www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0293.pdf.

But **before** you begin to fill out the form, you'll need to do some homework. The first step is to make certain you have all the documents you'll need.

Your ***Official Military Personnel File (OMPF)*** is crucial. Play it safe: order a complete copy—even if you think you already have one. A missing document could be the one that makes—or torpedo—your case. For information about ordering your OMPF, review our memorandum about ordering your military records. It's at www.stp-sf.org/guides/records.

Courts-martial transcripts and records of military investigations may also be crucial to your case. For information about ordering these documents, including sample request letters you can use, review our memorandum on this topic at www.stp-sf.org/guides/transcripts.

Members of your former military unit may have first-hand knowledge of the circumstances that led to your less than fully Honorable discharge. If possible, locate them and ask them to write a letter or affidavit describing what happened.

A problematic reason for discharge can harm your job prospects.

You can also ask friends and relatives to write a letter or affidavit, if they have useful information to contribute.

As we discussed in Section 1 above, you'll also need **evidence of positive post-service history**.

If a deadline is near, you may need to file an application before you have all the documents you need. Do your best with what you have. You should be able to supplement your application for at least several months after you submit it. However, it's best to submit all of your paperwork at once, if possible.

3. Information for Current Military Prisoners

Current military prisoners interested in upgrading their discharges will find helpful information at www.stp-sf.org/guides/pris.

CHANGING THE REASON FOR YOUR DISCHARGE

You're applying for work, and the interviewer asks to see your DD-214 discharge certificate. It shows the "narrative reason for separation" as "personality disorder" or "alcohol rehabilitation failure." Or "misconduct," or "homosexual conduct," or many others.

There goes your chance of getting a decent job—not always, but far too often. Even if you do manage to get hired, your employer is likely to see you as somehow "different" from your co-workers. Labels stick.

Even worse, the labels often attest to incompetence or outmoded thinking on the part of the military.

For example, if you've followed the news in the past few years, you probably know that many of the men and women returning from Iraq and Afghanistan have been misdiagnosed with personality disorders, when in fact they're suffering from severe PTSD—sometimes from combat, sometimes from Military Sexual Trauma. Mustering them out of the service for a "personality disorder" literally adds insult to injury.

As long as you're within the 15-year deadline discussed above, a **DRB** has the authority to change the narrative reason for separation shown on your DD-214, unless you're trying to change the reason to—or from—a disability discharge.

If the **DRB** lacks the authority to change the reason, or if it denies your application for a change, you can apply to a **BCMR** or the **BCNR**.

The forms and procedures for applying for a change in the narrative reason are the same as the forms and procedures for applying for a discharge upgrade. You'll find the information you need in the first section of this memorandum, **UPGRADING YOUR MILITARY DISCHARGE**.

However, the evidence you need to submit may be somewhat different. For example, if the military discharged you with a "personality disorder" but a psychiatrist or psychologist later diagnosed you with PTSD, you'll certainly want to submit evidence showing the new diagnosis.

In all cases, you'll need to tell the Board not only why the narrative reason that the military assigned is wrong, but also what the correct reason should be.

Start by reviewing the separation regulations that were in effect at the time of your discharge: What were the stated requirements for the reason that was assigned? Were all of those requirements met? Which ones weren't? In what way(s) weren't they met? Be sure to indicate exactly what regulations you're relying on—for example, AFI 36-3208, Section 5.32.1.2.3.

It's also possible that the separation regulations have changed since the time of your discharge in a way that will help you. Look at the regulations in effect today. You may be able to argue that if they'd been in effect when you were discharged, the military would have assigned a more favorable reason.

The following links provide information on separation regulations for enlisted personnel who served on active duty:

Air Force: AFI 36-3208

www.e-publishing.af.mil/shared/media/epubs/afi36-3208.pdf

Army: AR 635-200

www.adp.army.mil/pdffiles/r635_200.pdf

Coast Guard: COMDTINST M1000.4

www.uscg.mil/directives/cim/1000-1999/CIM_1000_4.pdf

Marines: MCO P1900.16F Ch 2

www.marines.mil/news/publications/Documents/MCO%20P1900.16F%20W%20CH%201-2.pdf

Navy: MILPERSMAN 1900-1999

www.public.navy.mil/bupers-npc/reference/milpersman/1000/1900Separation/Pages/default.aspx

If you served in the Reserves or National Guard, or were an officer, use an Internet search engine to find the applicable regulations.

As with discharge upgrades, it's best to get professional assistance with your application, if you can. If you do proceed on your own, we believe the information in this memorandum should help you to prepare a thoughtful and persuasive argument for changing the "narrative reason for separation" on your DD-214.

Disclaimer

This memorandum provides general information only. It does not constitute legal advice, nor does it substitute for the advice of an expert representative or attorney who knows the particulars of your case. Any use you make of the information in this memorandum is at your own risk. We have made every effort to provide reliable, up-to-date information, but we do not guarantee its accuracy. The information in this memorandum is current as of December 2012.

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