

Veteran Discharge Upgrades

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Introduction

Materials

- Presentation
- Military Cultural Competency Manual for Attorneys: <http://www.indianalegalservices.org/sites/indianalegalservices.org/files/Military%20Cultural%20Compentency%20Manual%20for%20Attorneys%20042014.pdf>
- Veterans Discharge Upgrade Manual: https://www.law.yale.edu/system/files/documents/pdf/Clinics/wirac_CTdischargeUpgradeManual.pdf
- Clarifying Guidance re: metal health conditions, sexual assault, and sexual harassment as mitigating circumstances: <https://www.defense.gov/Portals/1/Documents/pubs/Clarifying-Guidance-to-Military-Discharge-Review-Boards.pdf>
- White Paper: Underserved: <https://www.swords-to-plowshares.org/wp-content/uploads/Underserved.pdf>
- Report: Racial Disparities in Military Justice: http://www.protectourdefenders.com/wp-content/uploads/2017/05/Report_20.pdf

Introduction

- Introduction to the Military Cultural Competency Manual for Attorneys
- Overview
- Venue & Procedures
- Discharge Upgrade Application



Introduction to the Military Cultural Competency Manual for Attorneys

Sections that are applicable to Discharge Upgrades:

- Section 2 – Military Terminology
- Section 6 – Medical Discharge & Retirement
- Section 8 – Military Discharges
- Section 9 – Courts-martial
- Section 10 – Discharge Documents
- Section 11 – Veterans' Benefits



Discharge Upgrade Overview

Administrative Discharges

- Honorable
- General (this was also called Under Honorable Conditions in the past)
- Other Than Honorable (OTH) (during different eras, OTH was called an Undesirable Discharge or a “Blue” Discharge)
- Entry-Level Separation (180 days or less)
- Clemency (Vietnam deserters ONLY).

Punitive Discharges (final outcome of a court-martial)

- Bad Conduct
- Dishonorable
- Dismissal (Officers ONLY).



Discharge Upgrade Overview

Discharge Documents

- DD Form 214 or NGB Form 22
- Identifies:
 - Date of entry and discharge, total time in service, rank, decorations, and military education
 - Characterization of service, reason for discharge, separation code, and re-enlistment code

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES		THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.		ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID	
CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY					
1. NAME (Last, First, Middle)		2. DEPARTMENT, COMPONENT AND BRANCH ARMY / RA / SC		3. SOCIAL SECURITY NO.	
4.a. GRADE, RATE OR RANK MAJOR	4.b. PAY GRADE DA	5. DATE OF BIRTH (YYMMDD)		6. RESERVE OBLIG. TERM. DATE Year 00 Month 00 Day 00	
7.a. PLACE OF ENTRY INTO ACTIVE DUTY FORT GORDON, GEORGIA		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 WHITE HOUSE COMMUNICATIONS AGCY RR		8.b. STATION WHERE SEPARATED FORT MYER, VIRGINIA			
9. COMMAND TO WHICH TRANSFERRED Na		10. SGLI COVERAGE		<input type="checkbox"/> None Amount: \$ 200,000	
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.) 25/SIGNAL CORPS OFFICER/16 YEARS, 06 MONTHS//NOTHING FOLLOWS		12. RECORD OF SERVICE			
		a. Date Entered AD This Period	Year(s)	Month(s)	Day(s)
		b. Separation Date This Period	78	02	24
		c. Net Active Service This Period	94	08	31
		d. Total Prior Active Service	16	06	07
		e. Total Prior Inactive Service	01	09	07
		f. Foreign Service	01	05	28
		g. Sea Service	04	02	00
		h. Effective Date of Pay Grade	00	00	00
			89	11	01
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) Defense Meritorious Service Medal//Meritorious Service Medal(1OLC)//Army Commendation Medal//Joint Meritorious Unit Award(1OLC)//National Defense Service Medal//Armed Forces Reserve Medal//Non-Commissioned Officer Professional Development Ribbon//Army Service					
14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) Radio Repair/75//Communication Electronic Staff/78//Signal Officer Basic/78//Nuclear, Biological, Chemical Officer/79//Signal Officer Advanced/81//Electronic Warfare Officer/81//Combined Arms Service Staff School/83//Company Commander's/84//Joint Command Control Communication Staff/91//NOTHING FOLLOWS					
15.a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS EDUCATIONAL ASSISTANCE PROGRAM		Yes	No	15.b. HIGH SCHOOL GRADUATE OR EQUIVALENT	
			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
				16. DAYS ACCRUED LEAVE PAID 24 5	
17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION <input type="checkbox"/> Yes <input type="checkbox"/> No					
18. REMARKS "Subject to active duty recall by the Secretary of the Army/Item 13 Cont'd- Ribbon//Overseas Service Ribbon//Presidential Service Badge//National Guard Ribbon-Iowa National Guard Recruiting Badge// "Data herein subject to computer matching within DoD or other agencies for verification purposes and determining eligibility and compliance for federal benefits//"Member is retiring as provided by section 4403 of the FY 1993 NDAA (PL 102-484) and may qualify for a recomputation of retired pay at age 62 (Section 4464 of same law)."/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 6 BE SENT TO DIR. OF VET AFFAIRS		Yes	No	22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature)	
		<input type="checkbox"/>	<input type="checkbox"/>	EDWARD C. TROKELL, DAC GS-11, Ch, Trans Point	
21. SIGNATURE OF MEMBER BEING SEPARATED					
SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)					
23. TYPE OF SEPARATION RETIREMENT		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE			
25. SEPARATION AUTHORITY CH 4, AR 635-100		26. SEPARATION CODE RBE		27. REENTRY CODE NONE	
28. NARRATIVE REASON FOR SEPARATION VOLUNTARY EARLY RETIREMENT					
29. DATES OF TIME LOST DURING THIS PERIOD ONE				30. MEMBER REQUESTS COPY 4 Initials	

Discharge Upgrade Overview



Impact of bad paper

- Bars veterans from VA benefits (see Military Cultural Competency Manual, pp 50-51)
 - The VA denies benefits because of statutory and regulatory bars
 - Indianapolis VA Regional Office denies ALL veterans with an Other Than Honorable discharge (administrative discharge, NOT the result of a court-martial)
- Bars veterans from federal, state, or local government employment
- Carries a stigma

Discharge Upgrade Overview

BENEFIT	HON	GEN	OTH	BCD	DD
Admission to Soldier's Home	E	E	NE	NE	NE
Montgomery G.I. Bill	E	NE	NE	NE	NE
Dependency and Indemnity Compensation (Survivor Benefit)	E	E	TBD	TBD	NE
Pension for Non-Service Connected Disability or Death	E	E	TBD	TBD	NE
Vocational Rehabilitation	E	E	TBD	TBD	NE
Home and other Loans	E	E	TBD	TBD	NE
Medical and Dental Services/ Hospitalization & Domiciliary Care	E	E	TBD	TBD	NE
Funeral and Burial Expenses	E	E	TBD	TBD	NE
Burial Flag	E	E	TBD	TBD	NE
Burial in National Cemeteries	E	E	TBD	TBD	NE
Headstone Marker	E	E	TBD	TBD	NE
Civil Service Preference (Office of Personal Management)	E	E	NE	NE	NE
Civil Service Retirement Credit	E	NE	NE	NE	NE
Job Counseling & Employment Placement	E	E	E	E	NE
Unemployment Compensation for Ex-Service Members (Dept. of Labor)	E	E	NE	NE	NE

Discharge Upgrade Venue & Procedures

- VA Character of Discharge Determination
- Discharge Review Board (DRB)
- Board of Corrections of Military Records (BCMR)



Discharge Upgrade Venue & Procedures



VA Character of Discharge Determination

- NOT a discharge upgrade
- The veteran can apply for VA benefits, which can be appealed by filing a Notice of Disagreement
- **MUST** be VA-accredited to assist veterans
- According to white paper titled *Underserved*, Indianapolis Regional Office denies 100% of veterans with OTH discharge of VA benefits (but OTH are eligible for service-connected disability)

Discharge Upgrade Venue & Procedures

VA Character of Discharge Determination

- ***Statutory Bars to VA Benefits (38 U.S.C. 5303):***
 - A conscientious objector who refused to perform duties
 - A discharge that was part of a sentence of a general court-martial
 - Resignation by an officer for the good of the service
 - A deserter
 - An alien who, during a period of hostilities, requested a discharge from the military
 - OTH discharge as a result of an AWOL for a continuous period of 180 days, unless there are compelling circumstances (family emergencies or obligations, or similar types of obligations or duties owed to third parties)

Discharge Upgrade Venue & Procedures

VA Character of Discharge Determination

- *Regulatory Bars to VA Benefits (38 C.F.R. 3.12):*
 - Acceptance of an undesirable discharge to escape trial by general court-martial
 - Mutiny or spying
 - An offense involving moral turpitude. This includes, generally, a conviction of a felony.
 - Willful and persistent misconduct. A discharge because of a minor offense should not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful, and meritorious.



Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- See 32 C.F.R. §70.8 and DoD Instruction 1332.28.
- Every branch has its own DRB – Army, Navy (includes Marines), Air Force, and Coast Guard
- Strict 15-year statute of limitations – if it's been more than 15 years since the veteran's discharge, then apply to the BCMR
- Cannot review if the veteran was discharged or dismissed by General Court-Martial
- Applications are completed on the DD Form 293, "Application for Review of Discharge or Separation from the Armed Forces of the United States"
- Burden is on the veteran



Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- **Jurisdiction**
 - Can change the character of discharge and the reason for discharge, but **NOT** the separation code or the re-enlistment code
 - For discharges by Special Courts-martial, can only upgrade the character of discharge for clemency reasons – **NO** authority to overturn courts-martial
- **Standards of Review**
 - Grounds of propriety or equity
 - See 32 CFR §70.9 & 10 U.S.C. §1553

Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- Propriety
 - An error of fact, law, procedure, or discretion during the discharge process and the error was prejudicial to the veteran
 - Change in policy that is expressly made retroactive



Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- Equity
 - Current discharge policy and procedures are materially different: Is there substantial doubt that the veteran would have received the same discharge under current policies and procedures?
 - Discharge was inconsistent with disciplinary standards at the time
 - Evidence of quality of service or capability to serve (from military records)
 - Prior or post-military conduct if it can help provide a basis for a more thorough understanding of the applicant's performance during service

Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- Equitable relief based on quality of service or capability to serve may take into account:
 - Total capabilities – age, education, and ability to adjust to military
 - Family and personal problems
 - Arbitrary and capricious action
 - Discrimination – must be supported by evidence
 - Mitigating circumstances – i.e., PTSD, family emergencies



Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- **Presumption of Regularity in the Conduct of Governmental Affairs**
 - Presumes that Government officials acted properly, that military records are correct, and that statutes and regulations are Constitutional
 - Veteran carries the burden to overcome the presumption
- Court opinions are binding, but DRB decisions are merely persuasive



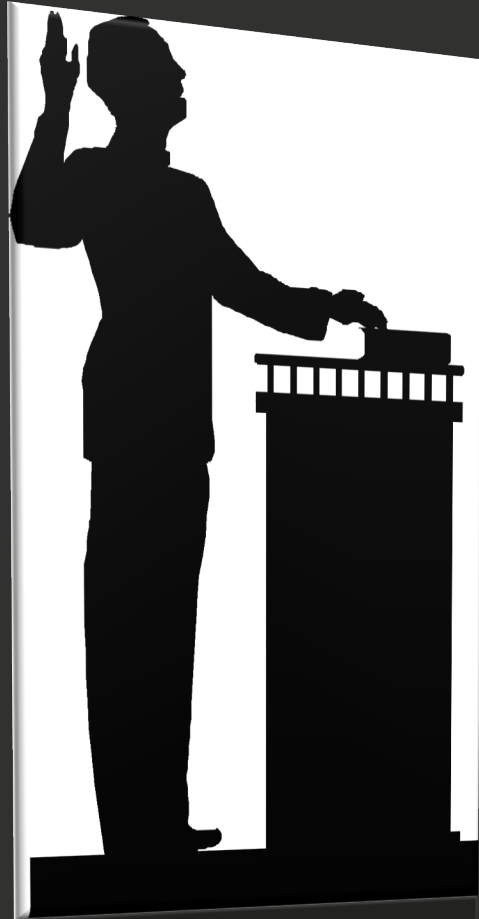
Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- DRB Panels are made up of five military officers
- Three votes are required
- If the veteran served during war, conflict, or contingency operation and was later diagnosed with PTSD:
 - The Board must include a physician, clinical psychologist, or a psychiatrist
 - The case must be expedited



Discharge Upgrade Venue & Procedures



Discharge Review Board (DRB)

- Can request:
 - A records review (NO hearing)
 - A personal hearing in Washington DC
 - A hearing before a traveling board (Army and Air Force ONLY)
- A discharge upgrade is more likely if there is a hearing

Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- Request for Reconsideration – 32 C.F.R. 70.8(8)
 - Previous consideration was initiated by the DRB, NOT the veteran
 - NO hearing for the first application, but the veteran now requests a hearing
 - An expressly retroactive change to the discharge policy
 - Current policies and procedures are substantially more favorable now compared to what was in effect when the veteran was discharged
 - Veteran was not represented by counsel / representative for the first application
 - New, substantial, and relevant evidence that was not available to the veteran previously

Discharge Upgrade Venue & Procedures

Discharge Review Board (DRB)

- DRB decisions can be appealed in federal court under the Administrative Procedure Act
 - Six-year Statute of Limitations
 - Appeals may be brought in the District Court where the:
 - Veteran was discharged
 - Veteran lives
 - Service Department Secretary is located (Washington DC)
 - Check case law – some Circuit Courts require veterans to exhaust administrative remedies (apply with the BCMR)



Discharge Upgrade Venue & Procedures

Board of Corrections of Military Records (BCMR)

- See 10 U.S.C. §1552
- Every branch has its own BCMR – Army, Navy (includes Marines), Air Force, and Coast Guard
- Waivable three-year Statute of Limitations
 - Three years from when the veteran discovered the error or injustice
 - Routinely waived “in the interest of justice”
- Applications are completed on the DD Form 149, “Application for correction of military record under the provisions of title 10. U.S. Code, section 1552 ”
- Burden is on the veteran
- Presumption of Regularity in the Conduct of Governmental Affairs

Discharge Upgrade Venue & Procedures

Board of Corrections of Military Records (BCMR)

- **Jurisdiction**
 - Can change almost anything in military records
 - For discharges by Courts-martial, can only upgrade the character of discharge for clemency reasons – NO authority to overturn courts-martial
 - Cannot lower discharges, compel witness appearances, expunge court-martial convictions, or reimburse veterans for preparing and appearing for their cases
- **Standard of Review**
 - NO clear standards of review – May correct any error or injustice
 - Generally, considers same factors as the DRB

Discharge Upgrade Venue & Procedures

Board of Corrections of Military Records (BCMR)

- Panels of high-ranking civilians in the military branch
- Three members constitute a quorum
- Before rendering a decision, the BCMR will:
 - Obtain / review military records (or if unavailable, they will ask the veteran for pertinent records)
 - Ask for advisory opinions from appropriate staff (i.e., JAG, Medical Officer, etc.) – and send opinion to the veteran for comment
 - Make administrative corrections to military records
 - Review briefs prepared by staff (examiners) and render decision – can request a copy of the examiner's brief in advance and respond



Discharge Upgrade Venue & Procedures

Board of Corrections of Military Records (BCMR)

- Request for Reconsideration
 - A one-year time limit, but the Army allows for the time limit to be waived “if substantial relevant new evidence has been discovered.”
 - **MUST** contain new material evidence and must show that the evidence was not reasonably available at the time of the previous application – be sure to explain this
- Appeal in Federal Court
 - Six-year SOL
 - Jurisdiction is in the district that the veteran was discharged, the district where the veteran lives, or the district where the Secretary of the branch is (DC)

Discharge Upgrade Application

Obtain the veterans military personnel and medical records

- Submit a SF Form 180 to the National Archives in St. Louis
 - Can get records online at <http://www.archives.gov/veterans/military-service-records>
 - Consider a second request – because the military branches provide more complete records in response to a second request
- Submit a SF 180 to the VA Records Center in St. Louis for recent medical care



Discharge Upgrade Application

Complete the appropriate form

- DRB
 - DD Form 293
 - If the 15-yr time limit is near, consider sending this in ahead of preparing the case – can submit additional documents later as long as the DRB hasn't reviewed the application (takes several months)

- BCMR
 - DD Form 149
 - If the 3-year time limit is near, consider sending ahead of preparing case

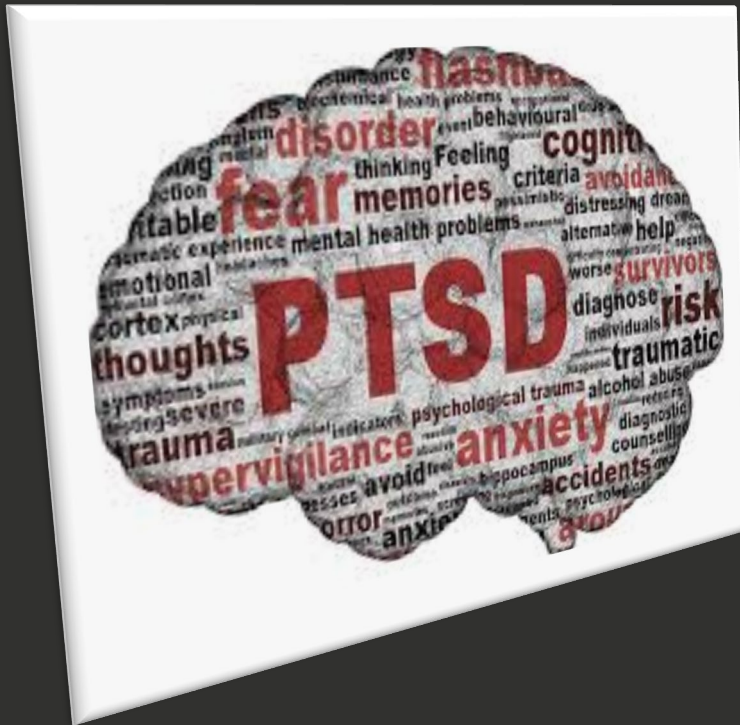
APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES <small>(Please read instructions on Pages 3 and 4 BEFORE completing this application.)</small>		Form Approved OMB No. 0704-0004 Expires Aug 31, 2006
<small>The public reporting burden for this collection of 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 Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. 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 ADDRESS. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.</small>		
PRIVACY ACT STATEMENT AUTHORITY: 10 U.S.C. 1553; E.O. 9397. PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual. ROUTINE USE(S): None. DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.		
1. APPLICANT DATA (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION.		
a. BRANCH OF SERVICE (X one)	ARMY	NAVY
b. NAME (Last, First, Middle Initial)	c. GRADE/RANK AT DISCHARGE	d. SOCIAL SECURITY NUMBER
2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)	4. DISCHARGE CHARACTERIZATION RECEIVED (X one)	5. BOARD ACTION REQUESTED (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 for Air Force)
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION	BAD CONDUCT (Special court-martial only)	CHANGE NARRATIVE REASON FOR SEPARATION TO:
	UNCHARACTERIZED	
	OTHER (Specify)	
6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 4. 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 7. 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 Navy Discharge Review Board does not have a traveling panel.)		
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 13.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 and relationship by marking a box below.		
SPOUSE <input type="checkbox"/> WIDOW <input type="checkbox"/> WIDOWER <input type="checkbox"/> NEXT OF KIN <input type="checkbox"/> LEGAL REPRESENTATIVE <input type="checkbox"/> OTHER (Specify) <input type="checkbox"/>		
12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE (Forward notification of any change in address.)	b. TELEPHONE NUMBER (include Area Code)	
	c. E-MAIL	
	d. FAX NUMBER (include Area Code)	
13. 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 297 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)	

DD FORM 293, AUG 2003 PREVIOUS EDITIONS ARE OBSOLETE. Page 1 of 4 Pages

Discharge Upgrade Application

Additional Materials to Submit

- A brief
 - Favorable aspects of service
 - Factors that mitigate the disciplinary record (i.e., PTSD diagnosis, evidence of discrimination or disparate discipline (toxic command climate), family crisis, etc.)
 - Submit as soon as possible, but no later than one month from hearing date, if applicable
 - Submit enough copies for all of the Board Members (five for DRB and three for BCMR)



Discharge Upgrade Application

Additional Materials to Submit

- **Statement of Material Contentions**
 - Lays out the issues
 - The Board must respond
 - Can be your brief section and sub-section headings and may double as your Table of Contents
 - Clearly separate equity and propriety issues



Discharge Upgrade Application

Additional Materials to Submit

- **Veteran's Statement**
 - **Sworn and notarized if possible**
 - **Explain discrepancies**
 - **Add or reaffirm facts in the record or application**
 - **Dispute errors in the record**
 - **If there was a criminal conviction (court-martial), the veteran should express remorse, explain how they've changed (with additional evidence, if applicable), and ask for clemency**

Discharge Upgrade Application



Additional Materials to Submit

- Evidence of in-service conduct:
 - Statements from other service members
 - Good performance reviews
- Evidence of misinformation that might have caused veteran to waive rights in the proceedings
 - If there was a Administrative Board, be sure to review this against regulations in effect at the time of the board

Discharge Upgrade Application

Additional Materials to Submit

- Evidence of pre- and post-service conduct
 - Character references
 - Employment documents
 - Education documents (diplomas / transcripts / scholarships / awards)
 - Criminal History from each state that the veteran has lived in, ideally showing no crimes (Consider an FBI Criminal Record if the veteran has lived in multiple states)
 - Rehabilitation documents
 - Family Responsibility Documents (birth, marriage, etc.)
 - Awards showing achievement
 - Documents showing involvement in charitable or civic activities

Discharge Upgrade Application

Tips, Techniques, and Things to Consider

- Review decisions in the Boards of Review Reading Rooms
 - <http://boards.law.af.mil> (searchable by “search terms”)
 - More current decisions might be more applicable
 - Persuasive only, NOT binding on the Board
- Review case law
- Review regulations
 - In effect at the time of the veteran’s discharge (many sites have incomplete collections of obsolete collections; google the regulation with the year in question to start)
 - Compare obsolete regulations with the current regulations (to determine if the veteran would have been treated differently under current regs)

Discharge Upgrade Application

Emerging Trends

- **“Personality Disorder” discharge:**
 - **Combat veteran with PTSD or TBI, especially if the discharge does NOT comply with current regs, which require a 2nd opinion and Surgeon General review**
 - **Minimal psychiatric eval or rights violated during involuntary psychiatric eval, if professionals rejected the diagnosis soon after discharge**
- **OTH discharge**
 - **Combat veterans for misconduct if the veteran suffers from PTSD or TBI**
 - **Misconduct if veteran suffered unrecognized HIV neurological problems or dementia**
- **Discharges where medical issues were considered insufficient for disability discharge / retirement, but post-service medical evidence shows disability proceedings were warranted**

Questions?

