



**The Veterans
Consortium**

DISCHARGE UPGRADE PROGRAMSM

Sponsored By:



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

Charitable Service Trust

A Brief Overview of Discharge Upgrades

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**The Veterans
Consortium**

PRO BONO PROGRAM®

We believe
That our veterans
~our nation's defenders~
Deserve the care,
Benefits, and compensation
They were promised
And the best legal services,
Free of charge,
To meet their challenges.

#theyfoughtforus

What We Do

- **Provide pro bono representation worldwide to all qualifying veterans in need and their families, caregivers, and survivors in federal venues**
 - U.S. Court of Appeals for Veterans Claims
 - U.S. Court of Appeals for the Federal Circuit
 - U.S. Supreme Court
- **Provide pro bono legal services to service men and women who received “Other Than Honorable” Discharges**
 - Discharge Review Board cases
 - Board for Correction of Military Records cases
- **Operate the National Veterans & Appellate Law Clinic**
 - Weekly legal information and referral clinic at the VAMC in Washington, DC
 - Monthly legal information and referral clinic at the Washington, DC VAMC Women’s Health Clinic
 - Veterans local legal clinics (TVC Clinic-in-a-Footlocker)
- **Provide pro bono assistance to Veterans seeking U.S. naturalization through military service**



TVC's Discharge Upgrade Program



The Discharge Upgrade Program provides national pro bono legal representation to individuals who received less than honorable discharges for conduct related to Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), Military Sexual Trauma (MST), Don't Ask, Don't Tell or other anti-LGBTQ+ policies, or other mitigating factors.

TVC's Discharge Upgrade Program

We review cases, and provide those accepted with a free lawyer,
if they meet all the following criteria:

- Discharged under conditions Other than Honorable (OTH) or Undesirable or General for MST survivors;
- You have a diagnosis of, or exhibit symptoms of, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), military sexual trauma (MST) or other mental health condition or other mitigating factor; and/or
- We find at least one meritorious argument to present to the Discharge Review Board.

**The Veterans Consortium
Discharge Upgrade Program
2101 L Street NW, Suite 840
Washington, DC 20037
Phone: (202) 733-3324
Fax: (202) 628-8169**

[Apply Online](#)

Types of Discharges

Honorable:

Veterans are eligible for VA healthcare, disability benefits, and GI Bill education benefits

General Under Honorable:

Veterans are eligible for VA healthcare & disability benefits

Other Than Honorable:

Veterans will need to ask for a discharge upgrade (federal) or Character of Service determination (local VA regional office) in order to be eligible for healthcare & disability benefits

Bad Conduct/Dishonorable:

Not eligible for any VA benefits without a discharge upgrade

Uncharacterized:

Neither positive nor negative. Usually means service was not long enough to characterize the type of discharge.

Cultural Competency: “Bad Paper”

Shame

Exclusion

**Civilian
discrimination**

Not a veteran

Hopelessness





Cultural Competency: Women Veterans

Don't Identify as a Veteran

Bad Discharge

Shame

VA Clinics

Military Sexual Trauma (MST)

Caregivers



Race Equity Issues

June 16, 2020

[Hearing about racism in the military justice system](https://www.c-span.org/video/?473044-1/racial-disparities-military-justice-system#)

<https://www.c-span.org/video/?473044-1/racial-disparities-military-justice-system#>

July 8, 2020

[House Veterans Affairs Committee hearing about how the VA's policies prevent veterans with bad paper from accessing benefits](https://veterans.house.gov/events/hearings/stuck-in-red-tape-how-vas-regulatory-policies-prevent-bad-paper-veterans-from-accessing-critical-benefits)

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Christian Science Monitor:

[Why Do Black Troops Face a Harsher Form of Military Justice](https://www.csmonitor.com/USA/Military/2020/0720/Why-do-Black-troops-face-a-harsher-form-of-military-justice)

<https://www.csmonitor.com/USA/Military/2020/0720/Why-do-Black-troops-face-a-harsher-form-of-military-justice>



Healthcare Access

What is supposed to happen when a veteran with an Other Than Honorable discharge goes to a VA clinic or hospital to enroll in healthcare:

Emergency Mental Healthcare

Care for Military Sexual Trauma Survivors

How to Apply for VA Healthcare & Benefits w/Bad Paper

Character of Discharge (aka Character of Service)

Apply at Regional Office Level

File 21-256EZ

Might be best to file for health care only (discuss Turned Away report)

This will not change what is on the veteran's DD-214

File a Discharge Upgrade with the veteran's branch of service

This is a non-VA DoD process through the Discharge Review Board or Board for Correction of Army, Navy, Air Force, or Coast Guard

VA must follow the decision of the Board

Character of Discharge Determination



RO will determine if military service was honorable for purposes of VA health care and compensation.

Veteran will likely be denied compensation if s/he has an Other Than Honorable or worse discharge. With a General Discharge, veteran is generally eligible for all VA benefits except the GI Bill.

It's very important to submit evidence that military service was honorable in order to have the best chance of being granted benefits.

If the VA denies benefits through character of discharge determination...

- Submit evidence of honorable service (good conduct awards, combat tours & medals, length of service) to the VA Regional Office to appeal the Character of Discharge denial. Beware there is a one-year deadline to appeal a denial. Denials can be appealed to the Board of Veterans Appeals.
- Submit a discharge upgrade package to the Discharge Review Board (DRB) or Board of Corrections for Military Records (BCMR). Beware of the 15-year deadline to file at the DRB.
- TIP: You can file both at once!





Tips For Success

- If a veteran has more than one enlistment, s/he may be eligible for VA health care & compensation based on an Honorable term of service.
- [The Veterans Consortium](#) may be able to help veterans with mental health disorders and OTH discharges with filing upgrades
- Submit evidence of honorable service and mitigating factors like Post Traumatic Stress Disorder or Military Sexual Trauma to have the best chance at all stages of review.



Timing Is Everything

- Both a Character of Discharge review at the Regional Office and a discharge upgrade at the Discharge Review Board (DRB) or Board of Correction for Military Records (BCMR) take over a year for a decision to be made: ***file both at once!***
- If veteran receives a discharge upgrade from a DRB or BCMR, that decision is binding on the VA Regional Office and veteran will be eligible for benefits based on new discharge

If the Regional Office finds the veteran eligible for compensation through the Character of Discharge review, veteran will start receiving benefits once disability application is processed even if s/he is still waiting on a discharge upgrade decision from a DRB or BCMR.

Review: Character of Discharge



Hypothetical:

Max was discharged from the Marine Corps with an Other Than Honorable (OTH) discharge.

He served from 2001-2011 (10 years total). He completed his first term of service with an Honorable discharge, then was discharged due to misconduct resulting in the OTH for his final term of service.

His DD-214 states “Other Than Honorable” and “Misconduct.” He goes to the VA clinic to enroll in health care.

Is he eligible for VA health care?

Applying to the Discharge Review Board (DRB)

15-year time limit!

Must apply for a discharge upgrade within 15 years of the date of discharge- no exceptions to this time limit.

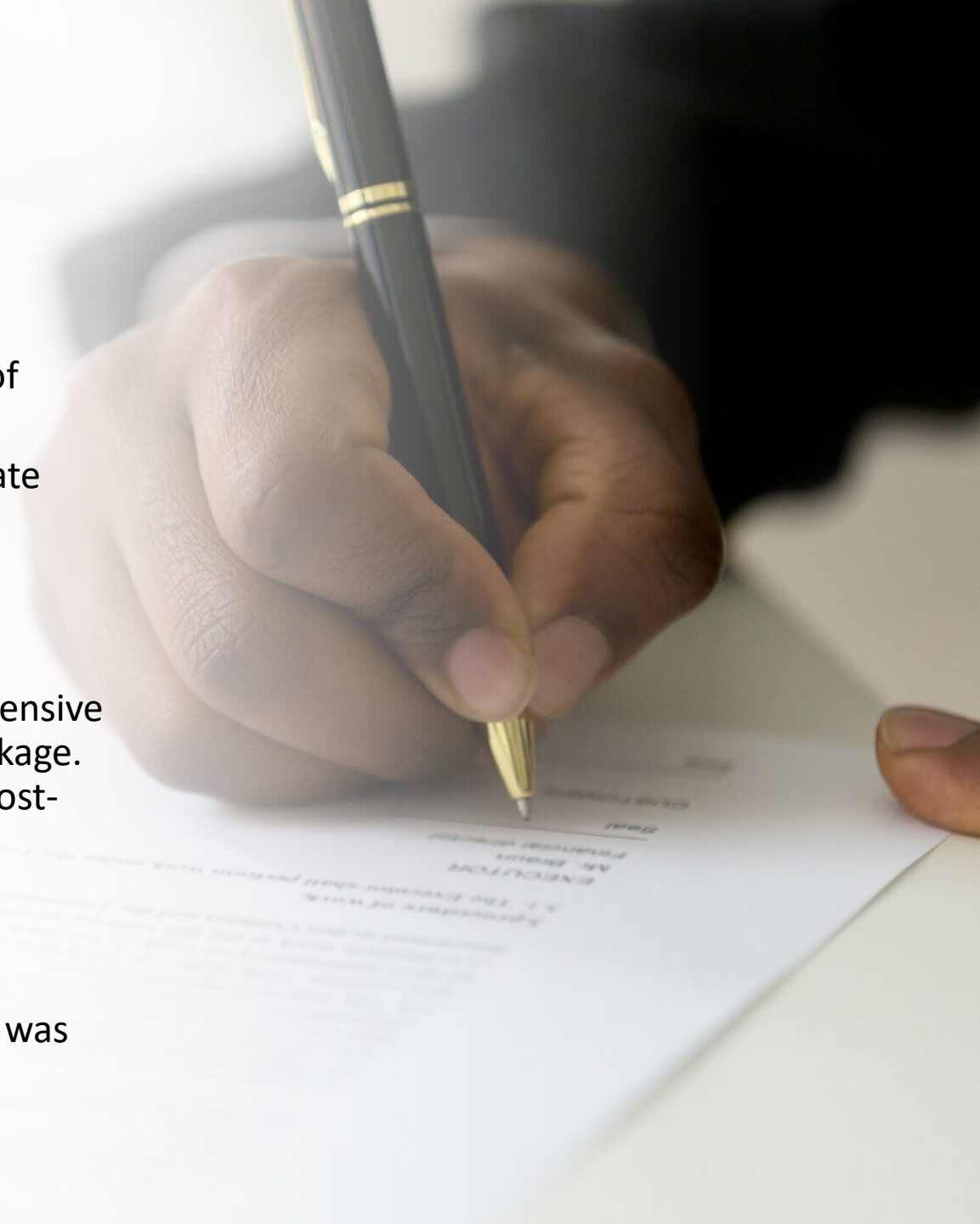
Complete and mail the application form [DD 293](#) to the appropriate address for branch of service

Submit Comprehensive Package

It is very difficult to get a discharge upgrade, so submit comprehensive evidence and/or find an attorney to help submit a complete package. Make sure to request and submit military records and positive post-service history.

Veteran's Burden of Proof

Remember the burden is on the veteran to prove that discharge was improper or inequitable. The DRB will not assist with gathering evidence or subpoenaing witnesses.



DRB Continued...



- Ask for a records review only and have the DRB decide based only on military records and the evidence you submit.
- Ask for a personal hearing in Washington, DC in front of the DRB. Can ask witnesses to testify and present evidence and testimony at the hearing. Veteran must pay all the costs of traveling to the hearing. Members of the DRB can question the veteran.
- Two bites at the apple: can ask for a records review first, then ask for a personal hearing if denied during the records review. However, if you ask for a hearing first, you cannot ask for a records review if you are denied at the hearing.

Types of Evidence to Submit

The background of the slide is a dark, semi-transparent image of a desk. On the desk, there is an open laptop with a person's hands typing on the keyboard. To the right of the laptop, a pair of black-rimmed glasses sits on a piece of paper. Several other papers and a pen are scattered around the laptop. The overall lighting is dim, creating a professional and focused atmosphere.

Military Records

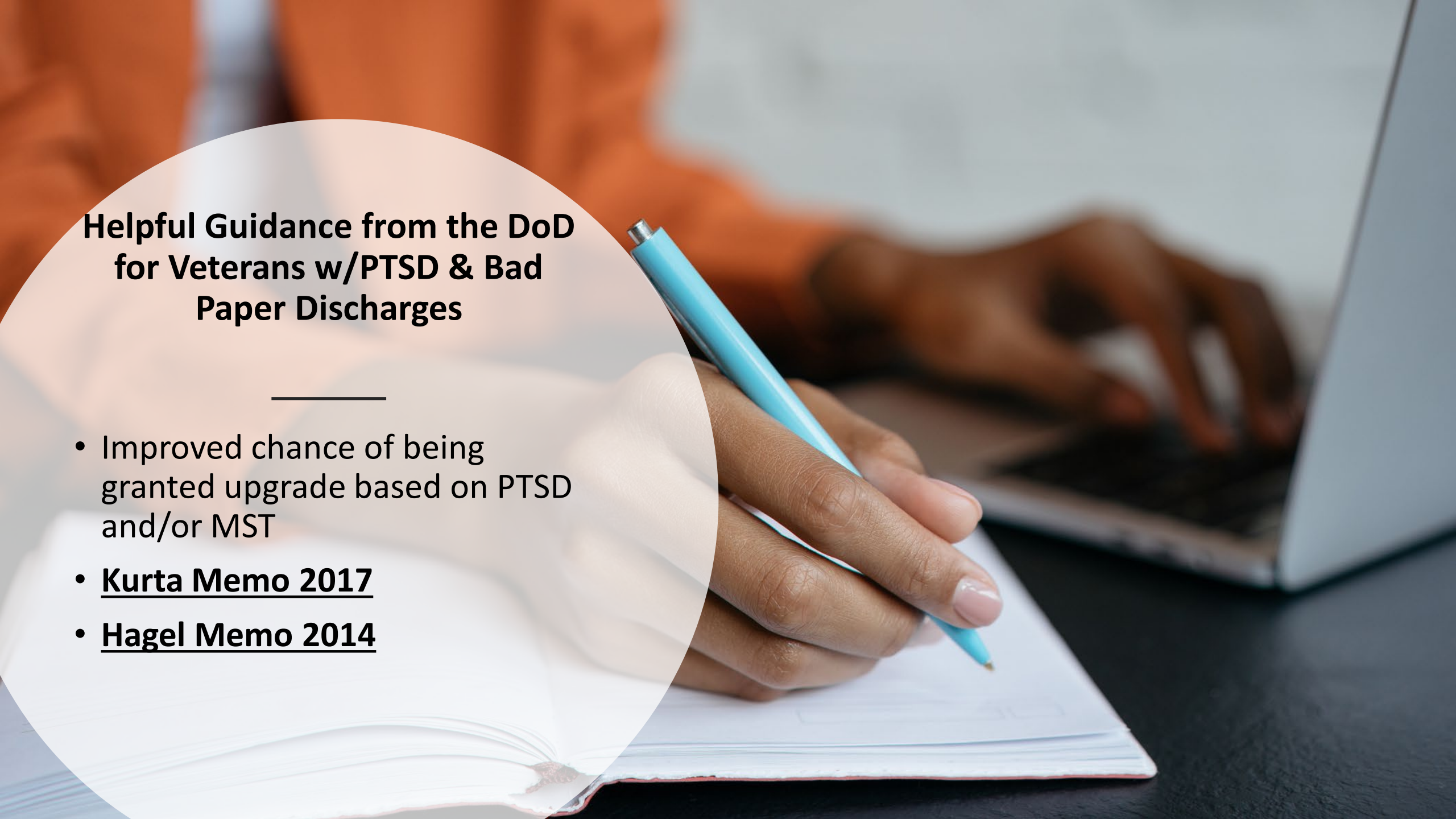
- Combat awards
- Good conduct awards & positive performance evaluations
- Length of service
- Combat tour info
- Treatment records for PTSD or MST

Civilian Records

- 3–5-character references
- Volunteer work & awards
- Employment history
- Clean criminal record
- Education achievements
- Marriage & birth certificates

Medical Records

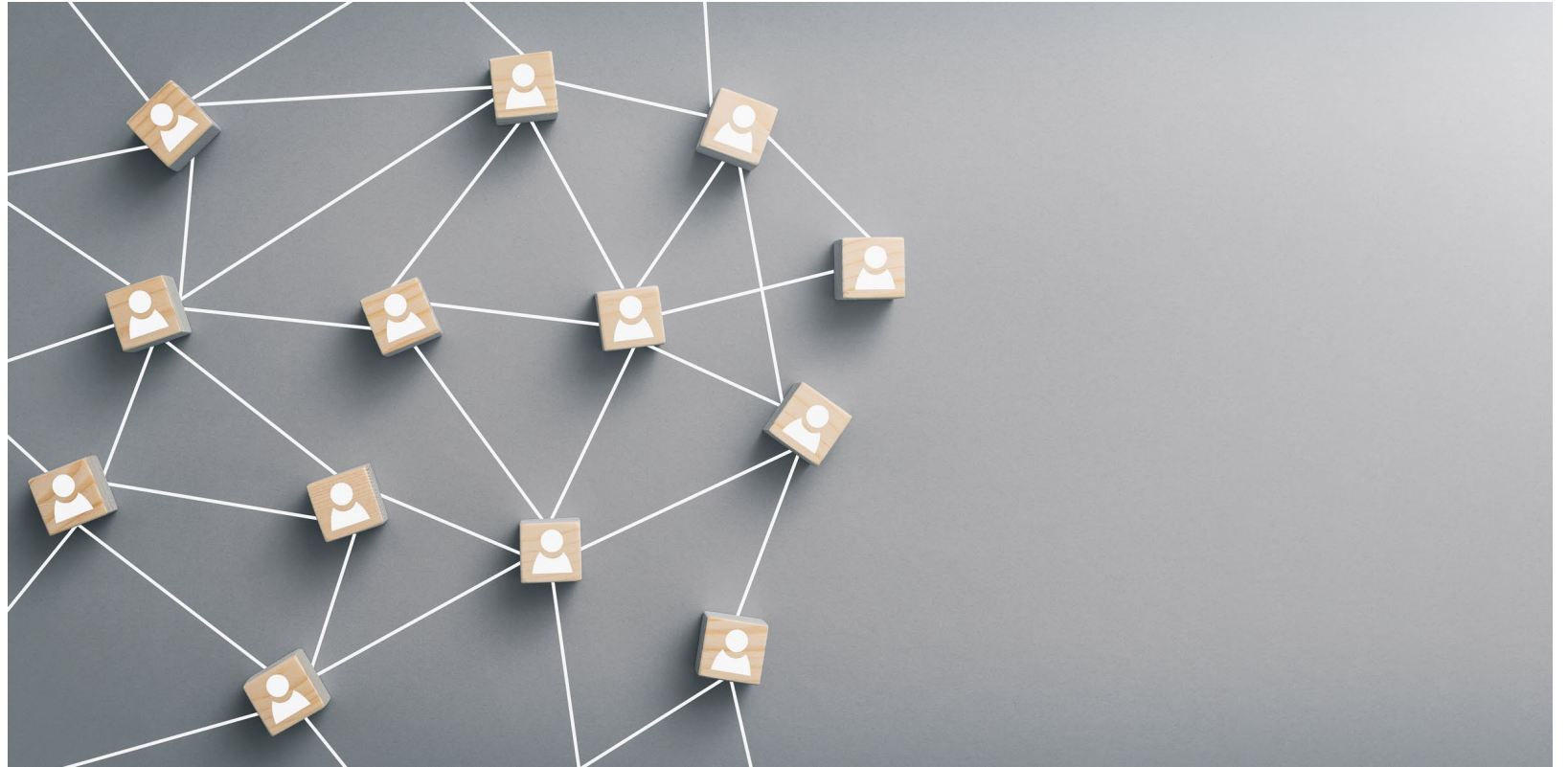
- Mental health treatment
- Vet Center or VA counseling records
- Group therapy records
- VA disability ratings
- Letter from a doctor about PTSD/MST being a mitigating factor in the conduct that led to discharge

A person is writing in a notebook with a blue pen. The notebook is open, and the person's hand is visible. In the background, a laptop is open, and another person's hand is visible typing on the keyboard. The scene is set on a dark desk.

Helpful Guidance from the DoD for Veterans w/PTSD & Bad Paper Discharges

- Improved chance of being granted upgrade based on PTSD and/or MST
- **Kurta Memo 2017**
- **Hagel Memo 2014**

Links To Discharge Review Boards



- Army: [Army Discharge Review Board](#)
- Navy & Marine Corps: [Naval Review Board](#)
- Air Force: [Air Force Discharge Review Board](#)
- Coast Guard: [Coast Guard Discharge Review Board](#)

Applying to the Board of Corrections for Military Records (BCMR)

Appeal DRB Denial

If application is denied at the DRB or it's past the 15 year deadline to apply to the DRB, you may apply to the BCMR using Form [DD 149](#)

Waiver of 3 Year Deadline

There is a 3-year deadline to apply to BCMR from the date of the DRB denial or discovery of the injustice, but you can make a motion to have the time limit waived "in the interest of justice."

Broad Authority

BCMRs have broader authority to change records than DRBs, but you generally must try the DRB avenue first if you are within 15 years of your discharge (some exceptions- i.e., retirement, bad conduct discharges, etc).



THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

CERTIFICATE OF RELEASE OR DISCHARGE

1. NAME (Last, First, Middle Initial)	2. DEPARTMENT, COMPONENT, BRANCH, SERVICE
PAY GRADE	ARMY/RA
3. SOCIAL SECURITY NUMBER	5. DATE OF BIRTH (YYMMDD)
4. GRADE, RATE, OR PAY CATEGORY	19781217
DUTY STATION	b. HOME OF RECORD

BCMR

Continued...

- No option for a personal hearing at the BCMR, so present your best case on paper.
- Be sure to request military records and submit them with the application package, highlighting favorable records or any errors or injustices that occurred during service or discharge.
- If a discharge upgrade is granted, a new DD-214 will be issued and the Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA) must use the upgraded discharge to determine eligibility for benefits.






Links to the BCMRS

- Apply to the BCMR with [DD Form 149](#) and mail to the appropriate address for your branch of service (listed on form DD 149)
- [Army Board for Correction of Military Records](#) (can also apply to Army BCMR online)
- Navy, Marines, Coast Guard: [Board for Correction of Naval Records](#)
- Air Force: [Air Force Board for Correction of Military Records](#)

Discharges Based on LGBTQ Status

Types of discharges
Relevant memorandum
Sample language




A photograph of a person's hands holding a large, rectangular cardboard sign. The sign is made of brown corrugated cardboard and has the words "Don't Ask; Don't Tell." written on it in a large, black, hand-drawn font. The sign is held up against a background that is partially visible, showing what appears to be an American flag with stars and stripes. The lighting is even, and the focus is sharp on the sign and the hands holding it.

Don't Ask;
Don't Tell.

5 Types of Discharge Reasons Related to DADT and Prior Policies

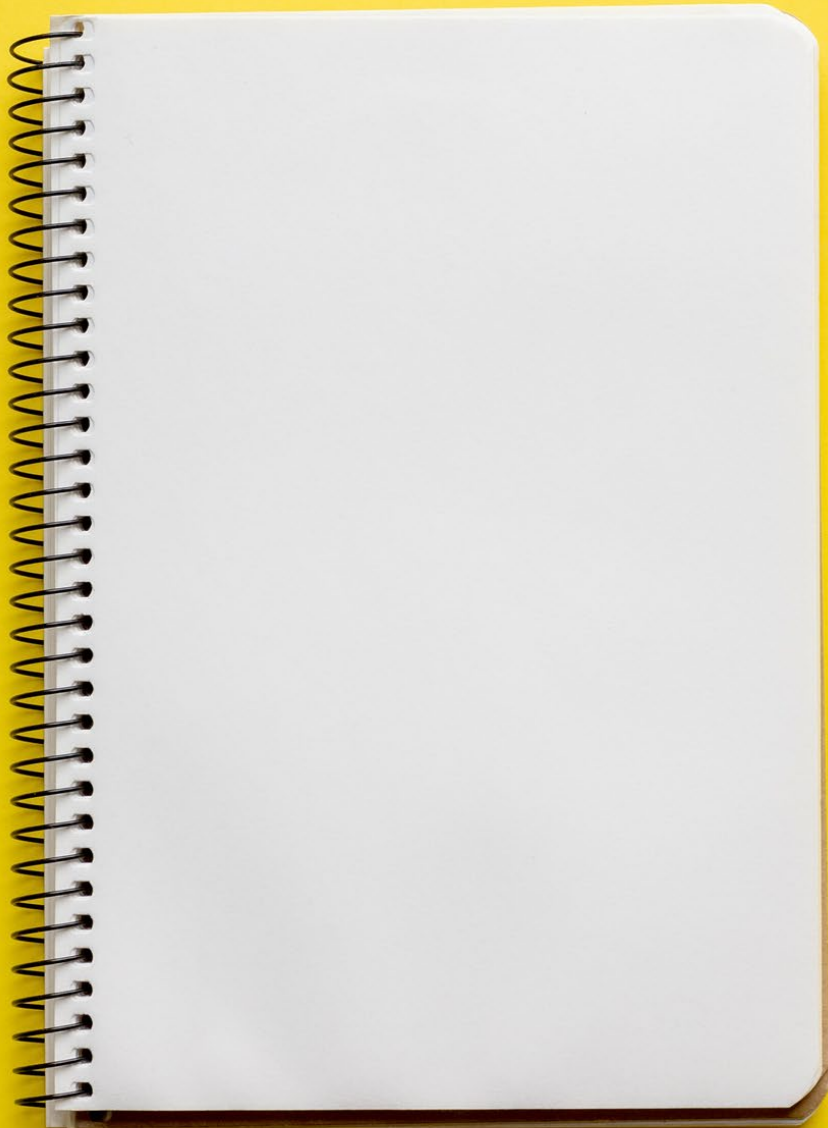
1. Discharge is solely based on LGBTQ+ status (DADT or prior policy)
2. Discharge is based on DADT (or prior policy) AND aggravating factors
3. Discharge is based on substance abuse related to emotional toll of DADT (or prior policy)
4. Pretextual discharge (especially an issue for transgender and gender nonconforming veterans)
5. Constructive discharge



USECDEF for Personnel and Readiness 20 September 2011: Correction of Military Records Following Repeal of Section 654 of Title 10, U.S. Code

Service Discharge Review Boards should normally grant requests to change the:

- Narrative reason for discharge to “Secretarial Authority” with a Separation Program Designator (SPD) code of JFF
- Characterization of service to honorable
- The RE code to immediately eligible to reenter category
- For the above upgrades to be warranted, both of the following must be met:
 - Original discharge based solely on DADT or similar policy in place prior to DADT
 - There were no aggravating factors in the record (e.g. misconduct)



Self-Help Guides

- See the self-help manuals produced by [Swords to Plowshares](#) and [Connecticut Veterans Legal Center](#) for more detailed information about filing Character of Service and discharge upgrades.
- Even if the VA Regional Office finds service honorable for VA benefits purposes, this will not change what is on the DD-214. To change the DD-214 an upgrade must be granted at the DRB or BCMR.
- [VA information](#) about character of service & discharges



Remember that even if veterans are not eligible for VA services, many community programs will help them even if they have an Other Than Honorable discharge.

[Vet Centers](#) for combat veterans/survivors of MST offer free counseling

