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UPGRADING YOUR MILITARY DISCHARGE AND CHANGING THE REASON FOR YOUR DISCHARGE

This guide provides step-by-step advice on how to pursue a discharge upgrade or change in your reason for discharge.

A **discharge upgrade** changes the “**character of service**” shown on your DD-214 discharge certificate. Today, most certificates show the “character of service” as either Honorable, General (Under Honorable Conditions), Other Than Honorable, Bad Conduct or Dishonorable.

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.”

Along with the basics about how to apply for corrections, this guide covers important developments—“Hagel & Kurta Memos”—that might increase your chance of success:

- 1) If the circumstances of your discharge were the result of **Post-Traumatic Disorder (PTSD)**, your request may be eligible for “liberal” consideration under the “*Hagel Memo*” and related laws.
- 2) If the circumstances of your discharge were the result of a **mental health condition (including PTSD), Traumatic Brain Injury (TBI), or sexual assault/harassment**, you may be able to strengthen your application by submitting special types of evidence, in addition to service records, that will also be given “liberal” consideration under the “Kurta Memo.”

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 Discharge Determination (COD)**. 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 COD’s and Back-to-Back and Conditional Discharges at <https://www.swords-to-plowshares.org/guides/va-character-of-service-determination-an-alternative-to-discharge-review/> and <https://www.swords-to-plowshares.org/guides/back-to-back-and-conditional-discharges/>.

UPGRADING YOUR MILITARY DISCHARGE

Though it can be difficult to win a change to your discharge status, with the right evidence and arguments the chances of success increase greatly. To the extent possible, follow the steps below to increase your own likelihood of success.

STEP ONE: Figure out where you need to apply to get an upgrade.

Where you should apply depends on your branch of service, date of discharge, and the type of change(s) you want to be made to your military record.

What are the types of review Boards?

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

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

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, you must apply to a **BCMR** or **BCNR** to correct your military records.

A **BCMR** or **BCNR** won't accept your application unless you've tried the other possible ways of getting what you're after. (A lawyer would say that you must “exhaust your other remedies.”) This means that if you are requesting something that a DRB can do – 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. If you are requesting anything else, you can bypass the **DRB** and apply directly to a **BCMR** or **BCNR**.

What are the deadlines to apply to the Boards?

DRB deadline: You have **15 years** from the date of your discharge to apply to a **DRB**.

BCMR or BCNR deadline: You are 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 **three 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 or give other good reasons, such as honestly explaining that you didn’t know you were eligible to apply.

•**Third**, a **BCMR** or **BCNR** will waive the deadline if you are raising issues that involve PTSD and related conditions such as TBI. This rule is included in the new guidelines covered in **STEP THREE**.

A note about applying again after a denial: If a Board denied an application that raised **PTSD, other mental health conditions, TBI, or sexual assault/harassment** you are entitled to have a DRB or BCMR/BCNR consider those issues again under new the guidelines discussed in **STEP THREE**.

STEP TWO: Explain why you should get an upgrade.

In most cases, the Board won’t be able to see why you should get an upgrade from reviewing your military records alone. It is important that you explain why your request should be granted, using specific legal language and concepts.

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

If you believe your discharge was unfair, or “**inequitable**,” you’ll need to explain why. The Department of Defense Instruction, Discharge Review Board (DRB) Procedures and Standards, has a list of examples for why a discharge might qualify as inequitable that can be helpful guidance for writing an explanation of your circumstances. Some common examples might include:

- You received an Other Than Honorable discharge for a single offense after years of faithful service to your country.
- Your branch’s policies have changed since you were discharged, and if current policies had been in place when you served, you likely would not have been discharged.
- You were experiencing significant personal or family problems or discrimination that affected your ability to serve.

If you’re claiming illegality, or “**impropriety**,” you’re claiming that the military didn’t follow its own rules 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 concepts of fairness and legal error: “**injustice**” and “**error**.”

“**Injustice**,” like the DRBs’ “inequity,” is about *unfairness* and “**error**,” like the DRBs’ “impropriety,” is about illegality. So the types of arguments you should make to the BCMR or BCNR are basically the same as those for DRBs, simply with different terminology.

Including evidence with your request will increase your chance of success. Think creatively about what kinds of evidence might demonstrate unfairness or legal error. For instance, this evidence could include:

- **A detailed statement** from you explaining your experiences and reasons for your upgrade request.
- Copies of **your military records** (see **STEP FIVE** below for information on requesting your records), particularly:
 - Positive evaluations, length of service, and any deployments and awards;
 - Health records showing any medical or mental health issues that may have affected your service and/or demonstrate the hardships you experienced; or
 - Details of discharge, including any evidence that proper rules were not followed or outdated rules were inappropriately applied.
- Copies of **documents that demonstrate events that affected you** during service (such as divorce papers, or a death certificate or hospital records of a family member/loved one).
- **Statements from friends, family members, or service buddies** confirming the reasons why your request should be granted, including in-service events and/or post-service achievements.

For both types of Boards it can be helpful to present information showing a “**positive**” **post-service history** in your application, though this is not a requirement. This could include evidence of educational or professional achievement, dedication to family or religious matters, or volunteer activities in your community.

Although a positive post-service history is not necessary to succeed, it’s important if you’re trying to upgrade a punitive discharge—a Bad Conduct, Dishonorable, or other discharge imposed after a court-martial. The only basis for upgrading a punitive discharge is **clémency**. 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 strong evidence of compelling achievements since your military discharge.

STEP THREE: Look at important new Department of Defense rules that may help you show why you should get an upgrade.

There are special rules the Boards are required follow if your discharge was related to PTSD, other mental health conditions, TBI, and/or sexual assault/harassment. These rules are strongly to your advantage: they require the Boards to expedite your request and also to generously read evidence that you submit. Therefore, it is worthwhile to familiarize yourself with these rules and submit arguments about how they apply to you.

HAGEL MEMO: One rule, known as the “Hagel Memo,” concerns PTSD and related conditions such as TBI. It tells the Boards that they must give “liberal consideration” to upgrade requests based on these conditions. Under this rule, it is helpful to submit evidence of your diagnosis from a clinical psychologist, psychiatrist, or other specialist and to pinpoint any evidence in your service records that you experienced an event that might have caused your condition. You should also include relevant medical and mental health records, if available. If the Board finds sufficient evidence that your PTSD or related condition stems from service, it will consider whether your PTSD excuses the misconduct that led to your discharge. A second memo that clarifies some of these procedures is the “Carson Memo.”

Note that if you applied for an upgrade before the Hagel Memo was issued in 2014 and were denied, you can reapply now with the benefit of these newer liberal rules. Explain this circumstance in your application.

The *Hagel Memo* can be read in full here:

<http://arba.army.pentagon.mil/documents/SECDEF%20Guidance%20to%20BCMRs%20re%20Vets%20Claiming%20PTSD.pdf>

The *Carson Memo* can be read in full here:

https://www.defense.gov/Portals/1/Documents/pubs/Consideration_on_Discharge_Upgrade_Requests.pdf

Several years after the Department of Defense issued the *Hagel Memo*, Congress made many of its provisions law. You can mention this law in your application to emphasize the strength of your arguments. This law, 10 U.S.C. 1553, is available here:

<https://www.law.cornell.edu/uscode/text/10/1553>

KURTA MEMO: Another rule, known as the “Kurta Memo,” expands the favorable provisions in the *Hagel Memo*. It makes clear that the Boards must sympathetically consider applications based on all mental health conditions (including PTSD), TBI, and also those based on sexual assault/harassment.

To guide Boards in giving this generous reading, the *Kurta Memo* sets out **four questions** that you should answer in your application:

- (1) Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- (2) Did that condition exist/experience occur during military service?
- (3) Does that condition or experience actually excuse or mitigate the discharge?
- (4) Does that condition or experience outweigh the discharge?

The *Kurta Memo* also has some helpful rules about discharges resulting from substance use. If your discharge was based on substance use that was actually an attempt to self-treat your mental health condition, explain this in your application. Also, if the substance that led to your discharge was minor, like marijuana, you can point out that such substances are relatively less severe than others. This argument should carry particular weight if you were discharged a long time ago, when marijuana was considered to be a more serious substance than it generally is today.

The Kurta Memo also contains important rules about the types of evidence you can submit, broadening the scope of what the Boards will consider in your favor:

The Memo explains that the Boards must seriously consider evidence relevant to the four listed questions, even if it is not in your service records, so it is particularly important to think about submitting additional evidence in this context. For example, you can submit statements from family members, friends, co-workers, and fellow service-members, as well as current mental health treatment records, to help prove you had a condition or experience in service that excuses your discharge. For tips on how others can write support statements on your behalf, see this guide: <https://www.swords-to-plowshares.org/guides/ptsd-statements-from-friends-and-family-members/>. Although the guide discusses PTSD specifically, the tips apply widely.

The Boards are also required to give a lot of weight to a statement by you explaining your condition in service and its effects on your behavior, so spending time to write a detailed statement is to your advantage.

If you have a mental health diagnosis from the VA, or have been service-connected by the VA for a mental health condition, you should include evidence of this in your application. Under the *Kurta Memo*, the Boards must consider this as persuasive evidence of your condition.

The *Kurta Memo* can be read in full here:

<https://www.defense.gov/Portals/1/Documents/pubs/Clarifying-Guidance-to-Military-Discharge-Review-Boards.pdf>

PRE-DISCHARGE EXAMINATION requirements for PTSD, TBI, and sexual assault: In addition to the rules above, there are other laws related to PTSD, TBI, and sexual assault that might help your case. In some circumstances, the military must give you a pre-discharge examination if there are indications you suffered from PTSD, TBI, or experienced sexual assault in service. If there was some evidence you had one of these conditions or experienced a sexual assault and you did not receive an exam for the military to account for this in your discharge characterization, you may have an argument that your discharge was improper/error. The law, *10 USC 1177*, can be read in full here: <https://www.law.cornell.edu/uscode/text/10/1177>

STEP FOUR: Decide whether it makes sense to request a hearing.

It is important to note up front that though hearings might increase your chance of success, requesting one may delay a decision on your application.

With a DRB, you have a choice. You can choose between a **Documentary Review** and a **Personal Appearance Review** (aka, an in-person hearing).

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 case in person.

If you apply to a **DRB**, it's almost always better to request a Documentary Review first → **If you choose a Personal Appearance Review first, you'll forfeit the right to a Documentary Review later.**

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 the applicable deadlines. That gives you two chances for an upgrade at the **DRB**. And if there is an unfavorable Documentary Review, the decision may give you clues to the evidence and arguments that you should present at the Personal Appearance Review.

All of the **DRBs** hold Personal Appearance Review hearings in or near Washington, D. C. The Air Force and Army **DRBs** occasionally visit other cities to conduct hearings. In some cases, you may be able to get a telephonic hearing.

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.

STEP FIVE: Put together your application forms and supporting materials.

It's easy to download the forms you'll need:

For a **BCMR** or **BCNR** application (DD Form 149), visit

<http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0149.pdf>

For a DRB application (DD Form 293), visit

<http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/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 guide. It's at <https://www.swords-to-plowshares.org/guides/requesting-copies-of-military-records/>.

Court-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 guide on this topic at <https://www.swords-to-plowshares.org/guides/ordering-courts-martial-transcripts-and-military-investigative-records/>.

But please note: You may not be able to obtain copies of your service personnel and medical records once you file your application. The Board may obtain these records to adjudicate your application. **At that point, you may not 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 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 may be able to supplement your application after you submit it. However, it's best to submit all of your paperwork at once, if possible.

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

Check the status of your application and timeline for a decision by contacting the appropriate Board:

Air Force BCMR:

Website: <http://www.afpc.af.mil/board-for-correction-of-military-records>

Phone: 240-612-5379

E-mail: usaf.pentagon.saf-mr.mbx.saf-mrbc@mail.mil

Air Force DRB:

Website: <http://www.afpc.af.mil/board-for-correction-of-military-records>

Phone: 240-612-0995

E-mail: usaf.pentagon.saf-mr.mbx.saf-mrb@mail.mil

Army BCMR:

Website: <http://arba.army.pentagon.mil/>

E-mail: army.arbainquiry@mail.mil

Army DRB:

Website: <http://arba.army.pentagon.mil>

E-mail: army.arbainquiry@mail.mil

Navy BCNR:

Website: <http://www.secnav.navy.mil/mra/bcncr/Pages/home.aspx>

Phone: 703-607-6111

E-mail: BCNR_Application@navy.mil

Navy DRB:

Website: <http://www.secnav.navy.mil/mra/CORB/Pages/NDRB/default.aspx>

Phone: 202-685-6600

E-mail: NDRB@navy.mil

STEP SIX: If you are currently a military prisoner, read our special guide.

Current military prisoners interested in upgrading their discharges will find helpful information at <https://www.swords-to-plowshares.org/guides/discharge-upgrade-information-for-military-prisoners/>

CHANGING THE REASON FOR YOUR DISCHARGE

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.

As long as you're within the deadlines 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**.

Note that the evidence you need to submit may be somewhat different from what you would submit for a discharge upgrade. For example, if the military discharged you with a narrative reason of “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 are to separation regulations for enlisted personnel who served on active duty:

Air Force: AFI 36-3208

http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3208/afi36-3208.pdf

Army: AR 635-200

http://www.apd.army.mil/epubs/DR_pubs/DR_a/pdf/web/AR635-200_Web_FINAL_18JAN2017.pdf

Coast Guard: COMDTINST M1000.4

https://media.defense.gov/2017/Apr/27/2001738816/-1/-1/0/CIM_1000_4.PDF

Marines: MCO P1900.16F

<http://www.dd214.us/reference/MARCORSEPMAN.pdf>

Navy: MILPERSMAN 1900-1999

<https://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.

STEP SEVEN: Figure out if you want or can get help with your 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. Be sure to find an advocate with experience in discharge upgrades.

A Veterans Service Organization (VSO) may be able to give you free assistance. For a list of VSOs visit <https://www.swords-to-plowshares.org/guides/veteran-service-organizations/>. In most cases, however, the assistance may be limited. It's likely you'll still need to do much of the work on your own, or with the help of a friend or relative. Legal aid offices and law school clinics in some communities have recently expanded their services to veterans, so you can search for those resources. You may want to ask private attorneys in your area if they can assist you in applying for an upgrade. Private attorneys will likely charge you, and may be expensive, so make sure that you understand this up front.

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.

If you do proceed on your own, the information in this guide should help you to prepare persuasive evidence and arguments for upgrading your character of discharge or 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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