



VETS HELPING VETS SINCE 1974

VA CHARACTER OF DISCHARGE DETERMINATIONS

An Alternative to Discharge Upgrade

SELF-HELP GUIDE CHECKLIST

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WHAT IS A “CHARACTER OF DISCHARGE” DETERMINATION?

Unfortunately, not everyone who served in the military is able to receive VA benefits. There are different factors that the VA uses to determine if someone is eligible. One of those factors is the veteran’s **discharge status**.

For veterans with Honorable, General under Honorable Conditions, and certain Uncharacterized discharge statuses, their discharge status won’t cause any issues when applying for or accessing most VA benefits.

For veterans with Other than Honorable (OTH), Bad Conduct (BCD), Dishonorable, and some other Uncharacterized discharges, the VA will make a decision whether that individual veteran is eligible for benefits based on a review of the misconduct in service and other factors. A **Character of Discharge (COD)** determination is this process – where the VA decides whether a veteran with a less than honorable discharge is eligible for VA benefits.

If you’re a veteran with a less than honorable discharge, you don’t need to apply for a COD – instead, the VA will automatically conduct a COD determination when you apply for a VA benefit, such as healthcare or service-connection. The COD will be the first step the VA takes in processing your claim.

If you’re successful in the COD process, you will be eligible for most VA benefits including VA healthcare, home loan, service-connection, and wartime pension. You will still need to meet the individual requirements for those benefits – for example, that you served during wartime in order to get wartime pension. But, what’s important is that your discharge status won’t stop you from receiving most VA benefits.

This guide explains how the VA makes a COD determination and what you can do to increase your chances of being found eligible for VA benefits.

WHEN IS COD NECESSARY?

The chart below explains when the VA needs to conduct a COD in order to determine a veteran's eligibility for benefits. You'll see that a COD is needed whenever a veteran with an OTH, BCD, or Dishonorable discharge applies for most VA benefits.

It's important to note though that **VA homeless services**, which provide housing and monetary support to veterans who are unhoused or at risk of losing their housing, are available to many veterans with less than honorable discharges without having to go through the COD process.

| Discharge Status | VA Healthcare and Monetary Benefits (Service-Connection, Wartime Pension, Home Loan) | VA Homeless Services (HUD-VASH vouchers, Grant Per Diem, SSVF Assistance) |
|---|---|--|
| Honorable | Eligible | Eligible |
| Uncharacterized <i>due to Entry Level Separation</i> | Eligible | Eligible |
| General Under Honorable Conditions | Eligible (except for GI Bill) | Eligible |
| Uncharacterized <i>due to Void Enlistment or Dropped from the Rolls</i> | May be Eligible - VA COD is needed | Eligible |
| Other than Honorable | May be Eligible - VA COD is needed | Eligible |
| Bad Conduct <i>from a Special Court Martial Conviction</i> | May be Eligible - VA COD is needed | Eligible |
| Bad Conduct <i>from a General Court Martial conviction</i> | May be Eligible - VA COD is needed | Ineligible |
| Dishonorable | May be Eligible - VA COD is needed | Ineligible |

HOW IS A COD DIFFERENT THAN A DISCHARGE UPGRADE?

There a lot of confusion and misinformation out there about Discharge Upgrades and Character of Discharge (COD) determinations. These are two separate processes with two different outcomes.

A Discharge Upgrade is a request to the **Department of Defense** to have your discharge status changed on your DD214. If you're successful in a Discharge Upgrade, the military will re-issue your DD214 with a better discharge status than the one given to you when you got out of the military. For example, from an Other than Honorable discharge to an Honorable discharge.

On the other hand, a COD is a request to the **Department of Veterans Affairs (VA)** and it does **not** change your discharge status on your DD214. Instead, it just impacts what benefits you can get from the VA.

The VA's COD process can take a few months, whereas the DOD's Discharge Upgrade process can take years. The success rates of CODs are also higher than those seeking Discharge Upgrades.

If your main motivation is to receive VA benefits, a COD might be your best bet. If you want your discharge status on your DD214 changes, then you need to go through the Discharge Upgrade process. But, know that these are two separate processes at two separate government agencies, so there's no harm in going through both and you can apply for both at the same time.

This guide goes over the VA's COD process **only**, but if you want more guidance on the DOD's Discharge Upgrade process, check out Swords' other Self-Help Guide on **Discharge Upgrades**.

HOW DOES THE VA DECIDE A COD?

We've learned that the VA may or may not find you eligible for VA benefits, but how does the VA make this decision? What does the VA consider when they choose to approve or deny a veteran's COD?

First, the VA will determine **the reason you were discharged** from the military. In deciding your COD, the VA can only consider misconduct that was the basis for your discharge. They'll look at your separation paperwork and your DD214, and determine what events or misconduct led to your discharge.

Sometimes, figuring out a veteran's reason for discharge is pretty straightforward. For example, you were discharged after going AWOL for 3 months. Or, you were discharged for a "pattern of misconduct" after receiving multiple non-judicial punishments (NJPs).

Other times, a veteran may have had some minor misconduct in service, but was ultimately discharged for only one serious infraction at the end of service. For example, you got an NJP for underaged drinking, another one for being late to work, but in the end, you were discharged for a positive drug test and there was no mention of the earlier NJPs in your discharge paperwork. In that case, **your reason for discharge** is one positive drug test (not the earlier NJPs).

Next, the VA will determine if any bars to VA benefits apply to your case based on your reason for discharge. The VA is prohibited from giving benefits to veterans discharged for certain reasons, so they'll compare your reason for discharge against that list to see if you're eligible for benefits or not.

You'll see on the next page all the different **reasons for discharge** that are considered to be a "bar" or a barrier to VA benefits.

THE DIFFERENT “BARS” TO VA BENEFITS ELIGIBILITY

If you were discharged for a reason that is **not** listed below, then you will “win” your COD and be found eligible for VA benefits. Your reason for discharge is **not** considered a “bar” to VA benefits.

If you were discharged for a reason that is listed below in **Group A**, then the VA will deny your COD **unless** you were “insane” at the time of the misconduct. There’s more information about the “insanity defense” on **page 13**.

If you were discharged for a reason listed below in **Group B**, then the VA will deny your COD **unless** they find “**compelling circumstances**” that excuse the misconduct. We’ll go into those circumstances in greater detail starting on **page 7**.

| | Group A | Group B |
|---|---|--|
| If your reason for discharge was ... | <ul style="list-style-type: none"> • By general court martial conviction • In lieu of trial by general court martial • Resignation by an officer for the good of the service • As an alien during a period of hostilities • For mutiny, espionage, desertion, or as a conscientious objector | <ul style="list-style-type: none"> • For a continuous period of AWOL for at least 180 days • For an offense involving moral turpitude (generally includes a felony conviction) • “Willful and persistent” misconduct* |
| ... then your COD will be denied unless: | <ul style="list-style-type: none"> • You were “insane” at the time of the misconduct | <ul style="list-style-type: none"> • There are “compelling circumstances” that excuse the misconduct |

***Willful & persistent misconduct** is the most commonly used “bar” to deny a veteran’s COD. It’s defined in more detail on page 7.

WILLFUL & PERSISTENT MISCONDUCT

As mentioned in the chart, a discharge based on “willful and persistent misconduct” is one of the bars to receiving VA benefits. In fact, it’s the most common reason for discharge that the VA uses to deny a veteran’s COD. Given that, we are sharing more information about what misconduct counts as “willful and persistent”.

- **“Willful”**: It’s not clear what the VA means by “willful” in this context, but generally it means you did something **on purpose**. So, if you were dealing with mental health issues that impaired your judgment, or you were in an abusive relationship that left you few options, or another situations that might explain that your behavior wasn’t “willful”, that will be important to explain to the VA.
- **“Persistent”**: On the other hand, persistent is defined clearly in the law as having committed:
 - 2 minor offenses within two years
 - 1 minor offense and one serious offense within two years, or
 - 2 major offenses committed within 5 years

In this context, a **minor offense** is any misconduct that has a maximum sentence under the UCMJ would not include a dishonorable discharge or imprisonment for longer than a year. A **serious offense** is any offense that could be punished for 1+ years, under the UCMJ.

WILLFUL & PERSISTENT MISCONDUCT

(continued)

For the purpose of counting up the number of instances, it's important to note that multiple offenses that stem from a single event or circumstance (e.g., attempted robbery leading to fleeing and then leading to resisting arrest) are thought of as **one instance** of misconduct.

Here are some examples of misconduct that the VA would likely find to be "persistent" :

- Three short UAs that happened within the last year of service
- An NJP for underaged drinking within six months of a positive drug test

And some examples that wouldn't count as "persistent" misconduct:

- One positive drug test
- One AWOL period lasting 3 months

Remember: When deciding if your discharge was based on "willful & persistent" misconduct, the VA can only consider the misconduct that was a basis of your discharge.

COMPELLING CIRCUMSTANCES

For those discharged for:

- A continuous period of AWOL for at least 180 days
- An offense involving moral turpitude (generally includes a felony conviction)
- “Willful and persistent” misconduct*

If you were discharged for one of these three reasons, the VA’s next step is to look at your military records, medical records, and anything you send them in support of your COD, to determine if there was a “compelling circumstance” that excuses the misconduct. If there are, then the VA will grant your COD and find you eligible for benefits.

Here are three categories of “**compelling circumstances**” that the VA will consider:

1. All the good things you did in service outside the misconduct
2. Any factors that explain why the misconduct happened
3. If there was a legal defense to the misconduct

These are outlined in more detail over the next few pages. As you read this information over, jot down if any of these apply to your experiences in the military. At a minimum, you likely can tell the VA about #1 – all the good things you did prior to the misconduct.

It’s very important that you include **a personal statement** with your VA benefits application explaining what, if any, compelling circumstances apply to your case. We discuss that further in Step #2: Writing Your Personal Statement – on page 10,

COMPELLING CIRCUMSTANCES

(continued)

1. All the Good in Service

The VA wants to see that your service before the misconduct can generally be characterized as “honest, faithful, and meritorious and of benefit to the Nation,” so be sure to tell them about the good things you did in service.

EXAMPLE

- How long did you serve before you started having troubles?
- Did you receive any early promotions, commendations, awards, or medals?
- Did you deploy? Where to, and what work did you do on deployment?
- Did you attend special schools or training?
- Did you get good marks on performance reports?

2. Reasons for the Misconduct

The VA wants to know if you were coping with certain issues at the time that led you to commit the act that led to discharge. For example –

EXAMPLE

- Did you have a mental health condition, such as PTSD, traumatic brain injury (TBI), depression, schizophrenia, ADHD, impulsive disorder, cognitive disabilities, or a substance use disorder that was starting to affect you while in service?
- Were you experiencing issues with your physical health that affected your conduct?
- Were you experiencing a hardship related to combat experiences or being stationed overseas?
- Did you experience sexual abuse or sexual assault while in service?
- Did you feel under duress, coerced in service, or suffer from feelings of desperation at the time of the misconduct?
- Did your obligations to your family or others contribute to your misconduct?
- Was your age, education level, cultural background, or maturity a factor in your in-service misconduct?

COMPELLING CIRCUMSTANCES

(continued)

3. Legal Defense

Do you have a valid legal defense that would have prevented you from being convicted of the misconduct in a court martial?

The legal defense **must go directly** to the actual issue of the misconduct rather than to procedures, technicalities, or formalities.

Personal Statement to the VA:

You'll want to explain your "compelling circumstances" to the VA in a detailed personal statement that you'll submit with your claim so they understand what you were going through at the time.

Almost all veterans will have something to say about #1 – Good things they did in the service. And most will have something to say about #2 – their reason for committing the misconduct. But #3 – having a valid legal defense – will be rare.

That's not a problem though because the VA only needs to see at least one category of "compelling circumstance" to approve a veteran's COD. So, feel free to just focus on #1 or #2, or both.

More on writing your personal statement on page 10.

**Now, let's walk through the step-by-step process
of applying for a COD...**

STEP 1: APPLY FOR A BENEFIT

Apply to One of the Benefits Listed Below

Now that you understand a bit more about the VA's COD process, we want to provide you **step-by-step instructions** on how to initiate your COD determination at the VA.

The VA will conduct your COD determination after they receive your application for any VA benefit. Below are lists of common VA benefits and the form needed to apply.

- If you have a disability from service, file for Service-Connection with VA Form 21-526EZ
- If you are elderly or disabled, have a low income, and are a wartime veteran, file for Wartime or Non-Service Connected Pension with VA Form 21-527EZ
- If you want to VA healthcare, file VA Form 10-10EZ
- If you want a home loan, file for a Certificate of Eligibility for a VA Home loan using VA Form 26-1880

Previously denied? If you applied for a benefit in the past and we're denied because of your COD – you should try again. There were significant changes in the law in 2024 and you could be found eligible today even if you were denied in the past. To re-apply for a benefit in the past, you would file a Supplemental Claim using VA Form 20-0995.

The instructions for filing the claim are included with each form. You can also apply online at **vets.gov**.

STEP 2: WRITE YOUR PERSONAL STATEMENT

Use VA Form 21-4138

When you file for a benefit, it's important to attach a letter that explains the circumstances of your discharge. Although the VA will have access to your military record, it's important that you point out all the positive aspects of your service to them. If you were discharged but there are "compelling circumstances" that apply, tell the VA about what happened and why those circumstances excuse what happened at discharge.

Here are a few examples of what this might look like in your statement:

EXAMPLE

- I went AWOL because it was too difficult for me to see the person who assaulted me every day.
- I used drugs because I was suffering from feelings of depression due to what I witnessed on deployment and tried to self-medicate.
- I got in a fight with other soldiers because my PTSD caused me to act out aggressively towards others.

Other people can also send in letters to help tell the story of what happened before you were discharged. Are you in touch with any friends from service, or with people in your chain of command, or with family members who knew what was going on at the time? You can ask them to also write letters explaining what was going on at the time of your discharge.

You can write your statement on VA Form 21-4138 – Statement in Support of Claim.

STEP 3: REQUEST A HEARING?

When you file your benefits claim, you can also include on the VA Form 21-4138 statement a request for a hearing. You'd simply write –

"I request a hearing on the issue of my Character of Discharge."

This is **totally optional**, but if you do this, the VA will invite you in to talk directly with the person who will decide your eligibility. You will be able to tell them exactly what happened, and the VA employee will be able to ask you questions about your experience. You will also be able to bring other people with you, like friends or family members.

This can make a big difference, because it helps the VA see you as a person and better understand what happened to you. Doing so will **very likely delay** getting a decision from the VA though, so weigh that in your decision whether to request a hearing or not. And know that if you don't request a hearing and the VA denies your COD, you can always ask for a hearing on appeal.

STEP 4: RECEIVE A DECISION

Receive Your Decision from the VA

You should get a decision from the VA within a few months, between 4–8 months.

If your COD is **successful**, the VA will send you a letter telling you that and they will automatically start to process the underlying benefits claim that you submitted already. You don't need to submit anything else to initiate that claim process.

And your positive COD decision means you're generally eligible for VA benefits, not just the one you applied for. For example, if you applied for service-connection, your discharge status won't get in the way of you receiving healthcare, home loan, or most other VA benefits -- in addition to service-connection.

If the VA **denies** your COD, the VA will send you a letter explaining why they are denying your COD. Read the decision and appeal instructions enclosed with the letter carefully. You'll have **one year to appeal** the VA's decision, and you can reach out to a local VSO to help you figure out the best appeal option for you.

Resource

[Accredited Veteran Services Organization finder on the VA website.](#)

SPECIAL SITUATIONS

Re-enlistment and multiple periods of service

For many VA benefits, you only need one “good” period of service. If you have multiple periods of service, or if you re-enlisted, then you may already be eligible for benefits. The VA will look at the terms of your original enlistment contract. If there’s little or no misconduct in that original period of service, you’ll get all VA benefits, including GI Bill, earned from that completed enlistment period. They’ll then look at the rest of your time in service and conduct a COD for the remaining months or years. We have a separate guide that talks about this in more detail – [Back to Back & Conditional Discharges](#).

Education Benefits – G.I. Bill and VR&E

The G.I. Bill has special eligibility requirements. For the G.I. Bill, your DD-214 must actually say “Honorable.” For those with a less than honorable discharge, this means you must succeed in the Discharge Upgrade process to get this benefit. The VA does have a comparable benefit to the G.I. Bill for service-connected veterans (10%+) – Veteran Readiness & Employment (VR&E). It can pay for things like tuition, fees, and books. If you’re successful in your COD, and are service-connected, this may be a good benefit to look into to help pay for your education.

Insanity Defense

For veterans discharged for reasons listed in “**Group A**” on [page 5](#), the VA can only approve your COD if you were “**insane**” at the time of the misconduct that led to your discharge. The VA has it’s own definition of “insane” which you can read at [38 CFR § 3.354](#), and the VA will sometimes schedule an evaluation with a doctor to determine if a veteran meets that definition as part of the COD process.

If you experienced a serious change in your behavior and mental health at the time of the misconduct, you should include information about that in your personal statement to the VA. In that statement, you should clearly state: “I was insane per 38 CFR 3.354 at the time of the misconduct, and I am requesting that the VA schedule me a Compensation & Pension exam for insanity.”

AVAILABLE BENEFITS

Benefits You Can Get Regardless of the Outcomes of Your COD

Therapy

Counseling is available for OTH veterans who served in a combat theater, who have a service-connected mental health condition, or who experienced military sexual trauma at local VA healthcare facility and at local Vet Centers.

To locate a Vet Center near you, visit

http://www.va.gov/directory/guide/vetcenter_flsh.asp.

Service- Connected Disability Healthcare

For veterans with OTH discharges, you are eligible to receive free VA healthcare for all service-connected conditions, even if the VA denies your COD.

Housing Services

HUD-VASH vouchers, rental support under the Supportive Services for Veterans and Families (SSVF) program, and other homeless services from the VA are available to veterans with OTHs and BCDs from Special Court Martials.

NOTES

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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 January 2025.

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