



FLORIDA LEGAL SERVICES, INC.

# How to Help Veterans Access VA Health Care

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Justice Project

## Florida Legal Services: What We Do

- **Eviction Prevention**
- **Immigrant and Migrant Rights Project**
- **Florida Institutional Legal Services Project**
- **Domestic Violence Hotline**
- **Fair and Affordable Housing**
- **Economic Opportunity**
- **Children's Advocacy**
- **Connecting Kids to Coverage**
- **Veterans Advocacy**
- **Consumer Law**



NEED FREE LEGAL ASSISTANCE?

# FLORIDA LEGAL SERVICES



## FLORIDA VETERANS JUSTICE PROJECT

WE HELP WITH:

- DISCHARGE UPGRADES FOR VETERANS WHO RECEIVED LESS THAN HONORABLE DISCHARGES
- DADT DISCHARGE UPGRADES
- VA DISABILITY INITIAL CLAIMS & APPEALS
- VA RATING REDUCTION APPEALS
- VA OVERPAYMENT APPEALS
- INCREASING BENEFITS WHILE INCARCERATED AND APPORTIONING BENEFITS TO FAMILY MEMBERS
- DD-214 TRANSGENDER NAME CHANGES



**(855) 801-4811**





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# Who Does VA Consider a Veteran?

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*A person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.*

- 38 U.S.C. §101(2)

# Types of Discharges

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## **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/Undesirable:**

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:**

Typically 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. Note that shorter service will affect health care if they served post-1980.

# Sample DD214 Form

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY					
1 Name		2 Department, component, and branch		3 Social security number	
4a Grade, rate, or rank		5 Pay grade	5 Date of birth	6 Reserve obligation termination date	
7a Place of entry into active duty			b Home at time of record		
<p><b>NOTE FROM THE MDHE:</b> This section will help determine if the veteran was a <b>Missouri resident</b> at the time he or she entered the service.</p>					
8a Last duty assignment and major command			b Station where separated		
9 Command to which transferred			10 SLGI Coverage None Amount:		
11 F		12 Record of service		Year(s)	Month(s)
<p><b>NOTE FROM THE MDHE:</b> This section will help determine if the veteran served after September 11, 2001.</p>		a Date entered ad this period			
		b Separation date this period			
		c Net active service this period			
		d Total prior active service			
		e Total prior inactive service			
		f Foreign service			
		g Sea service			
		h Effective date of pay grade			
13 Decorations, medals, badges, citations, and campaign ribbons awarded or authorized			14 Military education		
<p><b>NOTE FROM THE MDHE:</b> This section will help determine whether the veteran served in <b>armed combat</b>.</p>					
15 a Member contributed to post-Vietnam era educational assistance program					
b High school graduate or equivalent					
16 Days accrued leave			17 Member was provided complete dental examination and all appropriate dental services and treatment within 90 days prior to separation		
18 Remarks					
<p><b>NOTE FROM THE MDHE:</b> This section will help determine whether the veteran served in <b>armed combat</b>.</p> <p>This section may contain references to the <u>geographic region where the veteran served</u> or references to service in support of <u>Operation Enduring Freedom</u> ("OEF") or <u>Operation Iraqi Freedom</u> ("OIF").</p>					
19 a Mailing address after separation				b Nearest relative	
20 Member requests copy 5 be sent to					
21 Signature of member			22 Official authorized to sign		
Special Additional Information					
23 Type of separation			24 Character of service		
<p><b>NOTE FROM THE MDHE:</b> This section will help determine if the veteran was discharged <b>under honorable conditions</b>.</p>					
25 Separation authority			26 Separation code	27 Reentry code	
28 Narrative of reason for separation					
<p><b>NOTE FROM THE MDHE:</b> This section may contain information relevant to the determination of whether the veteran was discharged <b>under honorable conditions</b>.</p>					
29 Dates of time lost during this period				30 Member requests copy 4	

# Percentages of Characterized Discharges

Enlisted Servicemembers Discharged as Percent of Characterized Discharges, FY11

	Honorable	General	Other Than Honorable	Bad Conduct	Dishonorable
Army	81%	15%	3%	0.6%	0.1%
Navy	85%	8%	7%	0.3%	0.0%
Marine Corps	86%	3%	10%	1%	0.1%
Air Force	89%	10%	0.5%	0.5%	0.0%
Total	84%	10%	5%	1%	0.1%



# 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



VA 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.

# New 2024 VA Character of Discharge Regulations



VA issued a [final rule](#) amending our regulations regarding character of discharge determinations, expanding access to VA care and benefits for some former service members discharged under other than honorable conditions or by special court-martial.

The final rule is effective as of June 25, 2024.

The new regulation expands access to care and benefits for certain former service members by:

- Eliminating the regulatory bar for “homosexual acts involving aggravating circumstances or other factors affecting the performance of duty” as a bar to benefits.
- Creating a “compelling circumstances exception” for certain former service members.
- Opening the door for previously denied service members to reapply for benefits.

Our character of discharge determination does not change the Armed Forces’ characterization of service and has no effect on the veteran’s military discharge status. Our determination is for VA benefits and services eligibility purposes only.

We encourage former service members with other than honorable and bad conduct discharges to apply for VA care and benefits today. We will carefully consider the circumstances of your discharge and determine if you are eligible.

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

- VA will send a letter to the veteran stating their service is “dishonorable for VA purposes” which is confusing/upsetting language.
- It could also say that even though the service is “dishonorable” that the veteran is entitled to Ch. 17 health care for any conditions determine to be service-connected.
- 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.
- 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!



# Statutory and Regulatory Bar to Benefits

## Insanity Exception (38. C.F.R. § 3.354)

If the service member can show that they were insane at the time, this bar may be waived.

- **§ 3.354 Determinations of insanity.**
- **(a) *Definition of insanity.*** An insane person is one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.
- **(b) *Insanity causing discharge.*** When a rating agency is concerned with determining whether a [veteran](#) was insane at the time he committed an offense leading to his court-martial, discharge or resignation ([38 U.S.C. 5303\(b\)](#)), it will base its decision on all the evidence procurable relating to the period involved, and apply the definition in [paragraph \(a\)](#) of this section.
- [[26 FR 1589](#), Feb. 24, 1961]



# 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.
- 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.
- **The Florida Veterans Justice Project may be able to help veterans with discharge upgrades as well as health care/benefits access: (855) 801-4811**

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?



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.





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QUESTIONS?